

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS, APPROVING A GRANT APPLICATION OF JOHN WITHERS, REPRESENTING WITHHICKS, LLC, LOCATED 112 W. OAK STREET, FROM THE DOWNTOWN REINVESTMENT GRANT PROGRAM NOT TO EXCEED \$25,000; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 3, 2007, the City Council approved a Downtown Incentive Reimbursement Program by Ordinance No. 2007-072; and

WHEREAS, on December 6, 2011, the City Council approved changes to the Downtown Reinvestment Grant Program by Ordinance No. 2012-001; and

WHEREAS, John Withers applied for a \$25,000 grant; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council of the City of Denton hereby approves the Agreement attached hereto from John Withers, representing Withhicks, LLC, in an amount not to exceed \$25,000 from the Downtown Incentive Reimbursement Grant Program.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City, including the expenditure of funds as provided in the Agreement.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

DOWNTOWN REIMBURSEMENT GRANT INCENTIVE AGREEMENT

This Downtown Reinvestment Grant Agreement (the "Agreement") is entered into by and between the City of Denton, Texas (the "City"), duly acting herein by and through its Mayor, and John Withers, representing Withhicks, LLC, located at 112 W. Oak Street (the "Grantee"), duly authorized to do business and in good standing in the State of Texas, duly acting herein by and through its authorized officer.

WHEREAS, the City has adopted a resolution which provides that it elects to be eligible to participate in downtown reinvestment grant incentives and has adopted guidelines and criteria governing downtown reinvestment grant incentive agreements known as the Denton Downtown Reinvestment Grant Incentive Program; and

WHEREAS, on the 3rd day of April, 2007, the City Council of Denton, Texas (the "City Council") adopted the Denton Downtown Incentive Reimbursement Program (the "Program"), a copy of which is on file in the City of Denton Economic Development Office and which is incorporated herein by reference; and

WHEREAS, the Denton Downtown Incentive Reimbursement Program Policy constitutes appropriate "guidelines and criteria" governing downtown reinvestment grant incentive agreements to be entered into by the City; and

WHEREAS on October 13, 2011, the Downtown Task Force recommended changes to the original Downtown Incentive Reimbursement Grant Program; and

WHEREAS on November 1, 2011, the Economic Development Partnership Board recommended the changes to the City Council of the City of Denton, including changing the name of the program to "Downtown Reinvestment Grant Program" (the "Program"); and

WHEREAS, on December 6, 2011, the City Council approved said changes to the Downtown Reinvestment Grant Program; and

WHEREAS, the Owner will be the Owner, as of the Effective Date (as hereinafter defined), which status is a condition precedent, of certain real property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference and made a part of this Agreement for all purposes (the "Premises") as of the Effective Date; and

WHEREAS, on the 10th day of January, 2017, Owner submitted an application for reinvestment with various attachments to the City concerning the contemplated use of the Premises (the "Application"), which is attached hereto and incorporated herein by reference as Exhibit "B"; and

WHEREAS, the City Council finds that the contemplated use of the Premises, the Contemplated Improvements (as hereinafter defined) to the Premises as set forth in this Agreement, and the other terms hereof are consistent with encouraging development in accordance with the

NOW, THEREFORE, the City and Owner for and in consideration of the premises and the promises contained herein do hereby contract, covenant, and agree as follows:

1.

TERMS AND CONDITIONS OF REIMBURSEMENT

A. In consideration of and subject to the Owner meeting all the terms and conditions of reimbursement set forth herein, the City hereby grants the following reimbursement:

1. A reimbursement in an amount not to exceed \$25,000 attributable to new capital investments, as hereinafter described, being constructed on the Premises.

B. A condition of the Reimbursement is that, by May 9, 2018 (subject to force majeure delays not to exceed 180 days), a capital investment in the form of façade work, as described in Exhibit "B" be constructed on the Premises. For the purposes of this paragraph, the term "force majeure" shall mean any circumstance or any condition beyond the control of Owner, as set forth in Section XXI "Force Majeure" which makes it impossible to meet the above-mentioned thresholds.

C. The term "capital investment" is defined as the construction, renovation and equipping of façade work, as described in Exhibit "C" (the "Improvements on the Premises", the "Contemplated Improvements" or "Improvements") to include costs related to the construction of the Improvements on the Premises.

D. A condition of the Reimbursement is that the Contemplated Improvements be constructed and the Premises be used substantially in accordance with the description of the project set forth in Exhibit "B".

E. Owner agrees to comply with all the terms and conditions set forth in this Agreement.

2.

CONDITION OF REIMBURSEMENT

A. At the time of the award of the Grant, all ad valorem real property taxes with respect to said property owned within the City shall be current.

B. Prior to the award of the Grant, Grantee shall have constructed the Capital Improvements as specified in Exhibit "B".

3.

RECORDS AND EVALUATION OF PROJECT

A. The Owner shall provide access and authorize inspection of the Premises by City employees and allow sufficient inspection of financial information related to construction of the Improvements to insure that the Improvements are made and the thresholds are met according to the specifications and conditions of this Agreement. Such inspections shall be done in a way that will not interfere with Owner's business operations.

4.

GENERAL PROVISIONS

A. The City has determined that it has adopted guidelines and criteria for the Downtown Reinvestment Grant Program agreements for the City to allow it to enter into this Agreement containing the terms set forth herein.

B. The City has determined that procedures followed by the City conform to the requirements of the Code and the Policy, and have been and will be undertaken in coordination with Owner's corporate, public employee, and business relations requirements.

C. Neither the Premises nor any of the Improvements covered by this Agreement are owned or leased by any member of the City Council, any member of the City Planning and Zoning Commission of the City, or any member of the governing body of any taxing units joining in or adopting this Agreement.

D. In the event of any conflict between the City zoning ordinances, or other City ordinances or regulations, and this Agreement, such ordinances or regulations shall control.

5.

NOTICE

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designated in writing, by certified mail postage prepaid, by hand delivery or via facsimile:

GRANTEE:

Withhicks LLC
Attn: John Withers
1400 Dallas Drive
Denton, Texas 76205
Fax No. 940.320.1201

CITY:

Todd Hileman, City Manager
City of Denton
215 East McKinney
Denton, Texas 76201
Fax No. 940.349.8596

6.

CITY COUNCIL AUTHORIZATION

This Agreement was authorized by the City Council by passage of an enabling ordinance at its meeting on the 2nd day of December, 2014, authorizing the Mayor to execute this Agreement on behalf of the City, a copy of which is attached hereto and incorporated herein by reference as Exhibit "D".

7.

SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word. In the event that (i) the term of the Grant with respect to any property is longer than allowed by law, or (ii) the Grant applies to a broader classification of property than is allowed by law, then the Grant shall be valid with respect to the classification of property abated hereunder, and the portion of the term, that is allowed by law.

8.

OWNER STANDING

Owner, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same and Owner shall be entitled to intervene in said litigation.

9.

APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas and is fully performable in Denton County, Texas. Venue for any action under this Agreement shall be in Denton County,

10.

ENTIRE AGREEMENT

This instrument with the attached exhibits contains the entire agreement between the parties with respect to the transaction contemplated in this Agreement.

11.

BINDING

This Agreement shall be binding on the parties and the respective successors, assigns, heirs, and legal representatives.

12.
COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.
SECTION AND OTHER HEADINGS

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.
NO JOINT VENTURE

Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby disavowed.

15.
AMENDMENT

This Agreement may be modified by the parties hereto to include other provisions which could have originally been included in this Agreement or to delete provisions that were not originally necessary to this Agreement.

16.
FORCE MAJEURE

If, because of flood, fire, explosions, civil disturbances, strikes, war, acts of God, or other causes beyond the control of either Party, either Party is not able to perform any or all of its obligations under this Agreement, then the respective Party's obligations hereunder shall be suspended during such period but for no longer than such period of time when the party is unable to perform.

This Agreement is executed to be effective 30 days after the executed date of the ____ day of _____, 2017, (the "Effective Date") by duly authorized officials of the City and Owner.

PASSED AND APPROVED this the _____ day of _____, 2017.

CITY OF DENTON

TODD HILEMAN
CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY: Jennifer W. Walters

[Signature]

WITHHICKS LLC
JOHN WITHERS, MEMBER

STATE OF TEXAS §
COUNTY OF DENTON §

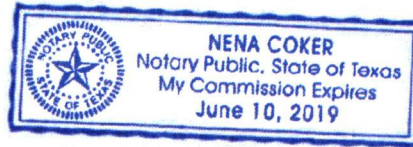
Before me, the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared Todd Hileman, City Manager for the City of Denton, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed.

Given under my hand and seal of office this the ____ day of _____, 2017.

Notary Public in and for the
State of Texas
My Commission Expires: _____

STATE OF TEXAS
COUNTY OF DENTON

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Before me, the undersigned authority, a Notary Public in and for said State of Texas, on this day personally appeared John Withers, Member, known to me to be the person who signed and executed the foregoing instrument, and acknowledged to me that this instrument was executed for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 27 day of April, 2017.

Nena Coker
Notary Public in and for the
State of TX
My Commission Expires: June 10, 2019