

Sutton Frost Cary LLP, a regional accounting firm with offices in Fort Worth and Arlington for over 30 years, constructed a new office building at the intersection of Front and Mesquite streets in downtown Arlington. They consolidated their offices and moved 50 employees to this new headquarters location.

In 2021, the City of Arlington entered into two agreements with Sutton Frost Cary LLP: a TIRZ 1 Chapter 380 agreement committing only City increment revenue and an additional Chapter 380 agreement offering developer fee reimbursement and grants.

The agreements were amended in 2023 to extend the construction deadline due to pandemic-related supply chain issues, expand the building size from 21,000 to 25,000 square feet, and revise the employee count from 45 to 50. They have agreed to maintain a minimum of 30 jobs for the duration of the agreements. The project also includes a 30% MWBE goal for construction, and the firm must conduct six financial literacy courses per quarter for those in need. Additionally, Sutton Frost Cary LLP committed to hiring Arlington residents and donating \$50,000 annually to local charities.

The TIRZ Chapter 380 agreement provides a \$500,000 performance grant, paid in three installments: \$200,000 upon issuance of the certificate of occupancy, \$150,000 on the first anniversary, and \$150,000 on the second anniversary.

The City Chapter 380 agreement offers two \$61,000 grants on the first and second anniversaries of the certificate of occupancy and reimburse all development fees related to the project.

Sutton Frost Cary Contractual Obligations

First Amended TIRZ Chapter 380 Agreement (Amended 2-28-23)

Obligation	By What Timeframe	Due	Status
SFC shall construct of shall cause Landlord to construct the Project on the Site (a 25K sf office building)	no later than June 1, 2024	June 1, 2024	complete
SFC shall obtain a certificate of occupancy for the project	no later than June 1, 2024	June 1, 2024	complete
SFC shall consult with City Manager or designee regarding the design of the project	no later than June 1, 2024	June 1, 2024	complete
SFC shall relocate its business to the project and shall continuously operate its Business there for the term of agreement	no later than June 1, 2024	June 1, 2024	complete
SFC shall relocate 50 jobs to the project and maintain a minimum of 50 jobs for term of agreement	no later than June 1, 2024	June 1, 2024	complete
During design and construction, SFC shall cause Landlord to develop 30% MWBE contracting goal via policy	during design and construction	June 1, 2024	complete
SFC shall provide TIRZ board with a report documenting its efforts towards achieving the MWBE contracting goal	upon completion of the project	June 1, 2024	in progress
TIRZ shall provide a grant of \$200,000	within 30 days of SFC submitting proof to TIRZ of issuance of CO for project	July 1, 2024	complete
TIRZ shall provide a grant of \$150,000	on or before the first anniversary of the first payment	July 1, 2025	
TIRZ shall provide a grant of \$150,000	on or before the second anniversary of the first payment	July 1, 2026	
SFC agrees to market and promote job opportunities at the site to residents of Arlington	during term of agreement	December 31, 2030	
SFC shall make commercially reasonable efforts to hire residents of Arlington to fill open jobs	during term of agreement	December 31, 2030	
SFC shall conduct 6 free financial literacy courses per year for people in need in coordination with the City	during term of agreement	December 31, 2030	

City Chapter 380 Agreement (Approved 4-25-23)

Obligation	By What Timeframe	Due	Status
SFC shall construct of shall cause Landlord to construct the Project on the Site (a 25K sf office building)	no later than June 1, 2024	June 1, 2024	complete
SFC shall obtain a certificate of occupancy for the project	no later than June 1, 2024	June 1, 2024	complete
SFC shall relocate its business to the project and shall continuously operate its Business there for the term of agreement	no later than June 1, 2024	June 1, 2024	complete
SFC shall relocate 50 jobs to the project and maintain a minimum of 50 jobs for term of agreement	no later than June 1, 2024	June 1, 2024	complete
During design and construction, SFC shall cause Landlord to develop 30% MWBE contracting goal via policy	during design and construction	June 1, 2024	complete
City shall reimburse all development fees paid to City if all requirements met	By CO issuance, with some requirements lasting through term of agreement	June 1, 2024 and beyond	in progress
City shall provide a \$61,000 grant	by first anniversary of issuance of CO (issued 11.08.23)	November 8, 2024	
City shall provide a \$61,000 grant	by second anniversary of issuance of CO (issued 11.08.23)	November 8, 2025	
SFC agrees to market and promote job opportunities at the site to residents of Arlington	during term of agreement	December 31, 2030	
SFC shall make commercially reasonable efforts to hire residents of Arlington to fill open jobs	during term of agreement	December 31, 2030	
SFC shall conduct 6 free financial literacy courses per year for people in need in coordination with the City	during term of agreement	December 31, 2030	
SFC shall donate \$50,000 annually towards philanthropic charitable organizations in Arlington	during term of agreement	December 31, 2030	

Sutton Frost Cary - TIRZ City Increment Only Grants

Maximum Authorization: \$500,000.00

Grant	Amount	Payment Date	Fiscal Year
Issuance of CO	200,000	01.17.24	FY24
First anniversary of CO issuance	150,000	01.17.25	FY25
Second anniversary of CO issuance	150,000	01.17.26	FY26
Total Paid to Date		200,000	
<i>Remaining Authorization:</i>		<i>300,000</i>	

Chapter 380 Grant. If all applicable Improvement Conditions and Requirements set forth in Section IV are satisfied, TIRZ agrees to provide grant payments totaling Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to SFC. Grant payments will be paid by TIRZ to SFC based upon the following schedule:

- i. Two Hundred Thousand and 00/100 Dollars (\$200,000.00) (the "First Payment") within 30 days of SFC submitting proof to the TIRZ of the issuance of a certification of occupancy for the Project.
- ii. One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) on or before the first anniversary of the First Payment.
- iii. One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) on or before the second anniversary of the First Payment.

Sutton Frost Cary - Ch 380 Grants

Maximum Authorization: \$194,910.33

Grant	Amount	Payment Date	Fiscal Year
Developer Fee reimbursement	72,910	01.26.24	FY24
Ch 380 grant pmt 1	61,000	11.08.24	FY25
Ch 380 grant pmt 2	61,000	11.08.25	FY26
Total Paid to Date	72,910		
<i>Remaining Authorization:</i>	122,000		

IV. **Incentive Program**

In exchange for SFC's development of the Project, CITY agrees to provide the following Incentive Program to SFC:

- A. **Fee Reimbursement.** If all applicable Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to reimburse SFC for all development fees paid to the CITY for development of the Project. Development fees shall include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. **Grant.** If all Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to provide a grant to SFC of One-Hundred and Twenty-Two Thousand Dollars (\$122,000) payable in two installments of Sixty-One Thousand Dollars (\$61,000) payable on the first and second anniversary following the issuance of a certificate of occupancy.



Staff Report

Sutton Frost Cary LLP –Chapter 380 Performance Agreement	
City Council Meeting Date: 04-25-2023	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the City Manager or his designee to execute a Chapter 380 Performance Agreement by and between Sutton Frost Cary LLP and the City of Arlington relative to the development of property located at 100 East Front Street in Arlington, Texas.

PRIOR BOARD OR COUNCIL ACTION

The Economic Development Committee was briefed on the project at the February 7, 2023.

ANALYSIS

Sutton Frost Cary LLP is in the process of the constructing of a building at the corner of Front Street and Mesquite Street. Sutton Frost Cary LLP is a full-service regional accounting firm with locations in Fort Worth and Arlington serving clients for over 30 years. The company will consolidate its offices to the downtown location and move its 50 employees to the new building.

The project will be completed by June 1, 2024 and result in an additional twenty-five thousand (\$25,000) square feet of office space in Downtown Arlington. Sutton Frost Cary LLP agrees to make commercially reasonable efforts to hire residents of Arlington, to conduct a minimum of six (6) financial literacy courses annually during the term of the agreement, and to donate fifty-thousand (\$50,000) dollars annually to charitable organizations in the City.

During the term of the agreement, Sutton Frost Cary LLP shall continuously operate at 100 East Front Street. The term of the agreement expires December 30, 2023. If all conditions are met, the City agrees to provide two grant payments of sixty-one thousand (\$61,000) dollars. These grants shall be paid upon the first and second anniversary of Sutton Frost Cary LLP receiving a certificate of occupancy. Additionally, the City agrees to reimburse Sutton Frost Cary LLP for all development fees paid by Sutton Frost Cary related to the project.

FINANCIAL IMPACT

The Innovation & Venture Capital Fund (Act. #910103-61002) will be used to fund the grants. The total financial impact is expected to be one-hundred and twenty-two thousand (\$122,000) dollars.

ADDITIONAL INFORMATION

Attached:	Resolution with Amended Chapter 380 Performance Agreement
Under Separate Cover:	None
Available in the City Secretary's Office:	None

STAFF CONTACT(S)

Trey Yelverton
City Manager
817-459-6101
Trey.Yelverton@arlingontx.gov

Resolution No. 23-062

A resolution of the City Council accepting and approving Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown Board of Directors' Resolution TIRZ1 23-03 authorizing the Chair of the Board of Directors to execute a First Amendment to the TIRZ Chapter 380 Grant Agreement by and between Sutton Frost Cary LLP and the Board relative to the development of a new 25,000 square foot office building and relocation of its business to the property located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 23-03

- WHEREAS, on November 3, 1998, by Ordinance No. 98-142, the Arlington City Council created Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (hereinafter "the Zone" or "TIRZ Number One"), established the Board of Directors of the TIF District (hereinafter "the Board"), and established the TIF Fund, all for the purpose of developing and redeveloping the Downtown Arlington area; and
- WHEREAS, three primary responsibilities of the Board are to prepare and adopt a Project Plan and Financing Plan for the Zone for City Council approval; to make recommendations to the City Council of the City of Arlington to implement the Project Plan; and to execute agreements the Board considers necessary or convenient to implement the Project Plan with City Council approval; and
- WHEREAS, the Board has prepared and adopted a Project Plan and Financing Plan (the "Project Plan") containing a list of proposed public works or public improvements in the Zone to promote development and redevelopment of Downtown Arlington, and the City Council has approved the Plan; and
- WHEREAS, on November 27, 2018, the City Council considered and passed Ordinance No. 18-074 extending the duration of the Zone; and
- WHEREAS, on December 6, 2018, the Board approved the Amended and Restated Project Plan and Financing Plan (the "Amended Plan") for TIRZ Number One; and
- WHEREAS, on January 29, 2019, City Council approved Ordinance No. 19-003 approving the Amended Plan; and
- WHEREAS, on June 11, 2021, the Board approved TIRZ Resolution No. 21-02 authorizing the Chair of the Board to execute a TIRZ Chapter 380 Agreement (the "Agreement") with Sutton Frost Cary LLP for the development of property located at 100 East Front Street in Arlington, Texas (the "Project"); and

WHEREAS on February 14, 2023, the Board approved TIRZ1 Resolution No. 23-03 authorizing the Chair of the Board to execute a First Amendment to the Agreement; and

WHEREAS, due to the COVID-19 pandemic and related supply-chain/construction delays, Sutton Frost Cary LLP was unable to meet the project completion date; and

WHEREAS, Sutton Frost Cary LLP has requested the Agreement be amended to extend the completion deadline and expand the Project by 4,000 square feet; and

WHEREAS, Sutton Frost Cary LLP has agreed to relocate and maintain fifty (increase by 20) full time jobs at the project and conduct at least six (6) financial literacy courses per year; and

WHEREAS the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown has forwarded its recommendation and findings to City Council; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the facts and recitations contained in the preamble of this Resolution are found and declared to be true and correct.

2.

That the City Council authorizes the Chair of the Board of Directors to execute a First Amendment to the TIRZ Chapter 380 Grant Agreement between the Board and Sutton Frost Cary LLP, relative to the development located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 23-03.

3.

A substantial copy of the First Amendment to the TIRZ Chapter 380 Grant Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 28th day of February, 2023, by a vote of 9 ayes and 0 nays at a special meeting of the City Council of the City of Arlington, Texas.



JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY 



Exhibit "A"



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

FIRST AMENDMENT TO THE CHAPTER 380 AGREEMENT

BETWEEN

SUTTON FROST CARY, LLP

AND

**THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF ARLINGTON, TEXAS - DOWNTOWN**

THIS FIRST AMENDMENT TO THE TAX INCREMENT REINVESTMENT ZONE CHAPTER 380 AGREEMENT (this “Amendment”) dated July 20, 2021 is executed by the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (the “TIF BOARD”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas (“CITY”), and SUTTON FROST CARY, LLP (hereinafter called “SFC”) as of this 17th day of March, 2023 (the “Execution Date”). All capitalized terms used and not defined herein have the meaning ascribed to them in the Agreement (defined below).

THIS Agreement is executed on 3/17, 2023, by and between SUTTON FROST CARY LLP an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “SFC”), and THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS (hereinafter referred to as “TIRZ”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas. SFC and TIRZ may be referred to jointly herein as the “Parties” or individually as a “Party.”

WITNESSETH:

WHEREAS, the Parties have entered into that certain Tax Increment Reimbursement Agreement, dated as of July 20, 2021 (the “Agreement”), pursuant to which the TIF BOARD provided SFC with reimbursement for certain public improvements pursuant to the TIF Project and Financing Plan in exchange for SFC developing certain property inside the TIF District; and

WHEREAS, the Parties intend to amend the Agreement to revise certain terms pertaining to the Private Improvements, and timeline for reimbursement;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Agreement is amended as follows:

1. Definitions

Section I.D. of the Agreement is hereby amended and restated in its entirety as follows:

“Project” is defined as an approximately 25,000 square foot office building constructed on the Site, as further depicted in Exhibit “A” attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.

2. Improvement Conditions and Requirements.

Section IV.A. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than June 1, 2024. SFC shall consult with the City Manager, or his/her designee; regarding the design of the Project.

Section IV.C. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall relocate 50 Jobs to the Project by no later than June 1, 2024 and maintain a minimum of 50 Jobs at the Project for the remaining years of the Term. SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.

Section IV.D. of the Agreement is hereby amended and restated in its entirety as follows:

SFC agrees to conduct free from charge six (6) financial literacy course per calendar year of the Term for populations in need of this information in coordination with the City of Arlington.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

SUTTON FROST CARY LLP

BY 

Name : Paul Cary


Title: Partner

WITNESS:



**THE BOARD OF DIRECTORS OF TAX
INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF
ARLINGTON, TEXAS**

Attest:



Alex Busken, City Secretary

BY 

Name Jim Cross

Title TIRZ Chairman

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

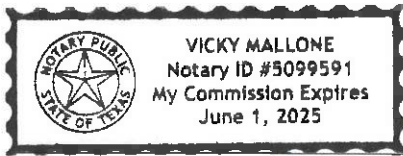
BY: 

THE STATE OF TEXAS §
COUNTY OF Tarrant §

SUTTON FROST CARY LLP
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Cary, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the Partner thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 6th day of March, 2023.



My Commission Expires

Vicky Mallone

Notary Public in and for
The State of Texas
Vicky Mallone

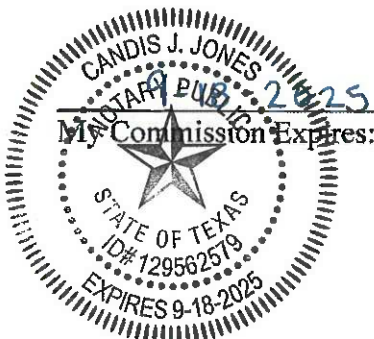
Notary's Printed Name

THE STATE OF TEXAS §
COUNTY OF TARRANT §

**THE BOARD OF DIRECTORS OF
TAX INCREMENT REINVESTMENT
ZONE NUMBER ONE,
CITY OF ARLINGTON, TEXAS**
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jim Ross, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS, and as the Chairman thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

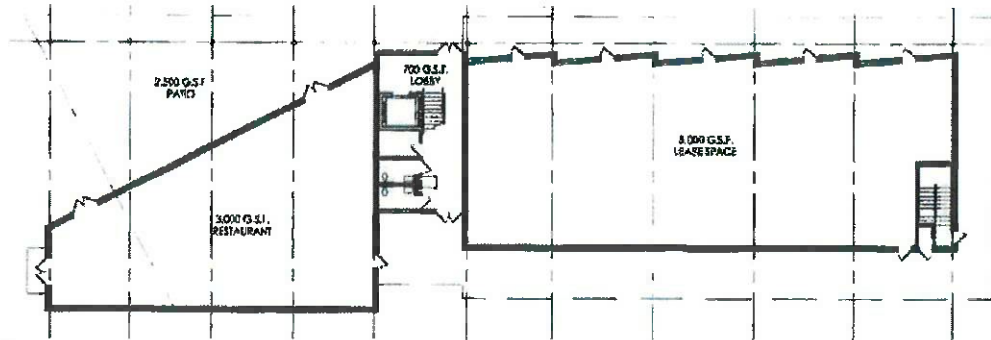
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 17th day of March, 2023.



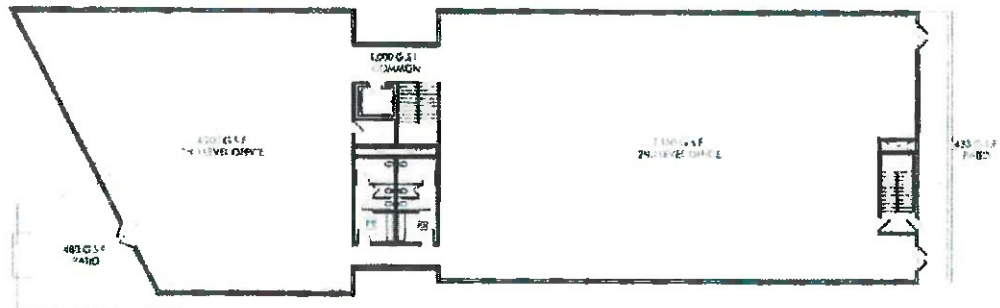
Candis J. Jones
Notary Public In and For
The State of Texas
Candis J. Jones

Exhibit "A"

PROJECT



LEVEL 1



LEVEL 2



Resolution No. 23-111

A resolution authorizing the execution of a Chapter 380 Performance Agreement by and between Sutton Frost Cary LLP and the City of Arlington, Texas relative to the development located at 100 East Front Street, Arlington, Texas 76011

WHEREAS, CITY has found that providing a program consisting of a grant of funds to Sutton Frost Cary LLP (hereinafter referred to as "OWNER") in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute a Chapter 380 Performance Agreement with OWNER to provide certain economic incentives associated with the development located at 100 East Front Street, Arlington, Texas 76011.

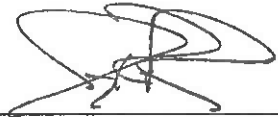
III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Chapter 380 Performance Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 25th day of April, 2023, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY

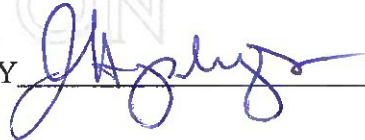


Exhibit "A"



- C. "Philanthropic Organization" means a charitable organization as defined by Tex. Tax Code Ann. § 11.18 whose principle place of business is within the city limits or which principally serves residents of the City.
- D. "Premises" is means 100 East Front Street, Arlington, Texas 76011, as depicted in in **Exhibit "A"** attached hereto and incorporated herein for all purposes.
- E. "Project" is defined as an approximately 25,000 square foot office building constructed on the Site, as further depicted in **Exhibit "B"** attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.

II. **Term**

This Agreement shall be effective on the date of execution and shall expire on December 30, 2030 (the "Term"), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III. **Improvement Conditions and Requirements**

- A. SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than June 1, 2024.
- B. Once a certificate of occupancy is obtained, SFC shall relocate its Business to the Project and shall continuously operate its Business at the Project for the remaining Term of this Agreement.
- C. SFC shall relocate 50 Jobs to the Project by no later than June 1, 2024 and maintain a minimum of 50 Jobs at the Project for the remaining years of the Term. SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.
- D. SFC agrees to conduct free from charge six (6) financial literacy course per each year of the Term for populations in need of this information in coordination with the City of Arlington
- E. SFC agrees donate Fifty-Thousand Dollars annually towards philanthropic charitable organizations in the City of Arlington.
- E. Throughout the Term all activity on the Site shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations. SFC shall apply for any obtain all necessary

governmental permits and approvals for all construction and operations at the Site.

- F. Throughout the Term SFC shall not fail to render for taxation any property owned by SFC and located within the City of Arlington. In addition, throughout the Term the ad valorem taxes owed for the Project shall not become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- G. During design and construction of the Project, SFC agrees to cause Landlord to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. SFC also agrees to cause Landlord to develop a policy that establishes a goal of thirty percent (30%) use by Landlord of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project.

IV. Incentive Program

In exchange for SFC's development of the Project, CITY agrees to provide the following Incentive Program to SFC:

- A. Fee Reimbursement. If all applicable Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to reimburse SFC for all development fees paid to the CITY for development of the Project. Development fees shall include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. Grant. If all Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to provide a grant to SFC of One-Hundred and Twenty-Two Thousand Dollars (\$122,000) payable in two installments of Sixty-One Thousand Dollars (\$61,000) payable on the first and second anniversary following the issuance of a certificate of occupancy.

V.

Annual Certification, Records, Audits and Inspections

- A. Additional Records and Information - Throughout the Term of this Agreement, SFC shall furnish CITY any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Article III of this Agreement.
- B. Right to Audit Books and Records - CITY shall have the right to audit the books and records of SFC related to the Project and Incentive Program. CITY shall notify SFC in advance in writing of their intent to audit in order to allow SFC adequate time to make such books and records available.
- C. Inspection - At all times throughout the Term of this Agreement, CITY shall, upon prior written notice to SFC, have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Project is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Premises. The inspections shall be conducted within a reasonable time period after SFC's receipt of written notice by CITY.

VI.

Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws. SFC must operate its business at the premise throughout the term of this Agreement. Failure to operate its business at the premise during the term of this Agreement shall constitute a breach.

VII.

Breach and Recapture

- A. Breach - A breach of this Agreement by SFC may result in termination or modification of this Agreement and recapture by CITY of fees waived and annual grant payments provided under Article IV. SFC's failure to satisfy any of the Conditions and Requirements as specified in Section III above, after written notice and opportunity to cure, shall constitute a breach of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that SFC has breached this Agreement, then CITY shall give SFC written notice of such. SFC has sixty (60) days following receipt of said written notice to cure such breach, or this Agreement may be terminated by CITY, and recapture of fees waived, and annual grant payments provided under Article IV may occur. Notice

of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to SFC at its address provided in Section X of this Agreement.

- C. Recapture - During the Term of this Agreement, should SFC commit and fail to timely cure a breach of this Agreement, CITY may terminate this Agreement and recapture all fees reimbursed and any grant payments provided under Article IV prior to the occurrence of such breach. It shall be the duty of CITY to determine whether to require recapture and to demand payment of such. Repayment of grant payments and waived fees shall become due sixty (60) days following receipt of such demand. The rights of CITY to require recapture and demand repayment of annual grant payments made and fees waived, and the obligation of SFC to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the CITY, to initiate any litigation necessary to pursue payment of recaptured annual grant payments and fees waived pursuant to this Agreement.

VIII.

Undocumented Workers

SFC covenants and certifies that SFC does not and will not knowingly employ an undocumented worker at the Project as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if SFC is convicted of a violation under 8 U.S.D. Section 132a(f), SFC shall repay to the CITY the full amount of the fees waived and annual grant payments provided under Article IV of this Agreement, plus 10% per annum from the date such fees were waived or grant payments were made. Repayment shall be paid within 120 days after the date following such conviction for which SFC receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code.

IX.

Effect of Sale or Lease of Property

The Incentive Program authorized by this Agreement shall not be assignable to any new SFC or lessee of all or a portion of the Project or Premises unless such assignment is approved in writing by the CITY with approval of the City Council.

X.

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 designates in writing, by certified mail postage prepaid or by hand delivery:

SFC: SUTTON FROST CARY LLP
Paul Cary, Partner
600 Six Flags Drive
Arlington, Texas 76001

CITY: City of Arlington
Attention: City Manager's Office
Post Office Box 90231
Arlington, Texas 76004-3231

cc: City of Arlington
Attention: City Attorney's Office
Post Office Box 90231
Arlington, Texas 76004-3231

XI.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XII.
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.

XIII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of SFC, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XIV.
SFC's Standing

SFC, 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 SFC shall be entitled to intervene in said litigation.

XV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVI.
Indemnification

It is understood and agreed between the parties that the SFC, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and SFC agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the SFC assumes no responsibility or liability to third parties in connection therewith.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XVIII.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

SUTTON FROST CARY LLP

BY _____
Name: Paul Cary
Title: Partner
Date _____

WITNESS:

CITY OF ARLINGTON, TEXAS

BY _____
TREY YELVERTON
City Manager
Date _____

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY _____
JOSH HUMPHREYS

THE STATE OF TEXAS §
 §
 §
COUNTY OF _____ §

SUTTON FROST CARY LLP

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2023.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2023.

Notary Public in and for
The State of Texas

My Commission Expires

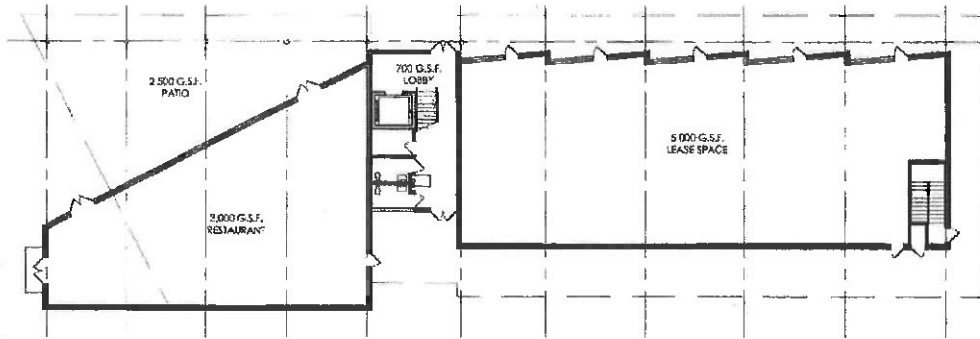
Notary's Printed Name

Exhibit "A"
PREMISES

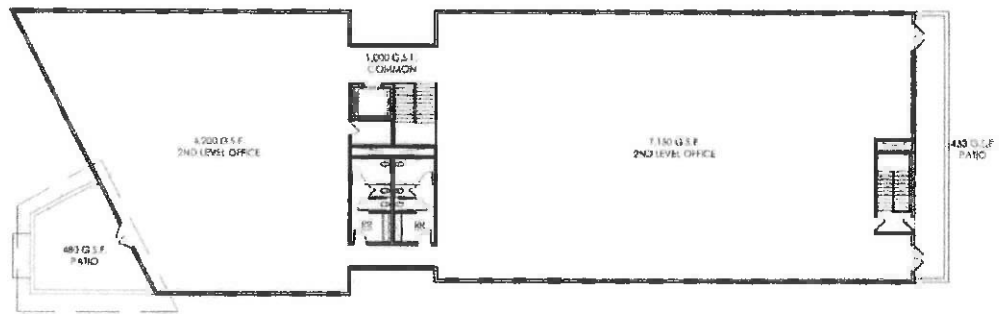
100 East Front Street



Exhibit "B" PROJECT



LEVEL 1



LEVEL 2

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

Chapter 380 Performance Agreement

THIS Agreement is executed on May 8, 2023, by and between **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “**SFC**”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as “**CITY**”).

WITNESSETH:

WHEREAS, CITY has found that providing a program of incentives to SFC in exchange for SFC’s development of a 25,000 square-foot office building and relocation of its business to property located at 100 East Front Street, Arlington, Texas 76011 will promote local economic development and stimulate business and commercial activity and retain jobs within the City of Arlington (hereafter referred to as the “Program” or “Incentive Program”); and

WHEREAS, the CITY has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the Program provided herein; NOW THEREFORE;

The CITY and SFC, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant, and contract as set forth below:

I.
Definitions

- A. “Job” is defined as a permanent, full-time employment position that results in actual paid employment of an employee, not independent contractor, at the Project of at least 1,820 hours per position in a year. It shall not include part time employees.
- B. “Landlord” is defined as 100 East Front LLP, the fee owner of the Site and Project, from whom SFC will lease the Project.

- C. “Philanthropic Organization” means a charitable organization as defined by Tex. Tax Code Ann. § 11.18 whose principle place of business is within the city limits or which principally serves residents of the City.
- D. “Premises” is means 100 East Front Street, Arlington, Texas 76011, as depicted in in **Exhibit “A”** attached hereto and incorporated herein for all purposes.
- E. “Project” is defined as an approximately 25,000 square foot office building constructed on the Site, as further depicted in **Exhibit “B”** attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.

II. **Term**

This Agreement shall be effective on the date of execution and shall expire on December 30, 2030 (the “Term”), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III. **Improvement Conditions and Requirements**

- A. SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than June 1, 2024.
- B. Once a certificate of occupancy is obtained, SFC shall relocate its Business to the Project and shall continuously operate its Business at the Project for the remaining Term of this Agreement.
- C. SFC shall relocate 50 Jobs to the Project by no later than June 1, 2024 and maintain a minimum of 50 Jobs at the Project for the remaining years of the Term. SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.
- D. SFC agrees to conduct free from charge six (6) financial literacy course per each year of the Term for populations in need of this information in coordination with the City of Arlington
- E. SFC agrees donate Fifty-Thousand Dollars annually towards philanthropic charitable organizations in the City of Arlington.
- E. Throughout the Term all activity on the Site shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations. SFC shall apply for any obtain all necessary

governmental permits and approvals for all construction and operations at the Site.

- F. Throughout the Term SFC shall not fail to render for taxation any property owned by SFC and located within the City of Arlington. In addition, throughout the Term the ad valorem taxes owed for the Project shall not become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- G. During design and construction of the Project, SFC agrees to cause Landlord to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. SFC also agrees to cause Landlord to develop a policy that establishes a goal of thirty percent (30%) use by Landlord of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project.

IV. **Incentive Program**

In exchange for SFC's development of the Project, CITY agrees to provide the following Incentive Program to SFC:

- A. Fee Reimbursement. If all applicable Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to reimburse SFC for all development fees paid to the CITY for development of the Project. Development fees shall include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. Grant. If all Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to provide a grant to SFC of One-Hundred and Twenty-Two Thousand Dollars (\$122,000) payable in two installments of Sixty-One Thousand Dollars (\$61,000) payable on the first and second anniversary following the issuance of a certificate of occupancy.

V.

Annual Certification, Records, Audits and Inspections

- A. Additional Records and Information - Throughout the Term of this Agreement, SFC shall furnish CITY any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Article III of this Agreement.
- B. Right to Audit Books and Records - CITY shall have the right to audit the books and records of SFC related to the Project and Incentive Program. CITY shall notify SFC in advance in writing of their intent to audit in order to allow SFC adequate time to make such books and records available.
- C. Inspection - At all times throughout the Term of this Agreement, CITY shall, upon prior written notice to SFC, have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Project is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Premises. The inspections shall be conducted within a reasonable time period after SFC's receipt of written notice by CITY.

VI.

Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws. SFC must operate its business at the premise throughout the term of this Agreement. Failure to operate its business at the premise during the term of this Agreement shall constitute a breach.

VII.

Breach and Recapture

- A. Breach - A breach of this Agreement by SFC may result in termination or modification of this Agreement and recapture by CITY of fees waived and annual grant payments provided under Article IV. SFC's failure to satisfy any of the Conditions and Requirements as specified in Section III above, after written notice and opportunity to cure, shall constitute a breach of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that SFC has breached this Agreement, then CITY shall give SFC written notice of such. SFC has sixty (60) days following receipt of said written notice to cure such breach, or this Agreement may be terminated by CITY, and recapture of fees waived, and annual grant payments provided under Article IV may occur. Notice

of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to SFC at its address provided in Section X of this Agreement.

- C. Recapture - During the Term of this Agreement, should SFC commit and fail to timely cure a breach of this Agreement, CITY may terminate this Agreement and recapture all fees reimbursed and any grant payments provided under Article IV prior to the occurrence of such breach. It shall be the duty of CITY to determine whether to require recapture and to demand payment of such. Repayment of grant payments and waived fees shall become due sixty (60) days following receipt of such demand. The rights of CITY to require recapture and demand repayment of annual grant payments made and fees waived, and the obligation of SFC to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the CITY, to initiate any litigation necessary to pursue payment of recaptured annual grant payments and fees waived pursuant to this Agreement.

VIII.

Undocumented Workers

SFC covenants and certifies that SFC does not and will not knowingly employ an undocumented worker at the Project as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if SFC is convicted of a violation under 8 U.S.C. Section 132a(f), SFC shall repay to the CITY the full amount of the fees waived and annual grant payments provided under Article IV of this Agreement, plus 10% per annum from the date such fees were waived or grant payments were made. Repayment shall be paid within 120 days after the date following such conviction for which SFC receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code.

IX.

Effect of Sale or Lease of Property

The Incentive Program authorized by this Agreement shall not be assignable to any new SFC or lessee of all or a portion of the Project or Premises unless such assignment is approved in writing by the CITY with approval of the City Council.

X.

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 designates in writing, by certified mail postage prepaid or by hand delivery:

SFC: SUTTON FROST CARY LLP
Paul Cary, Partner
600 Six Flags Drive
Arlington, Texas 76001

CITY: City of Arlington
Attention: City Manager's Office
Post Office Box 90231
Arlington, Texas 76004-3231

cc: City of Arlington
Attention: City Attorney's Office
Post Office Box 90231
Arlington, Texas 76004-3231

XI.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XII.
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.

XIII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of SFC, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XIV.
SFC's Standing

SFC, 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 SFC shall be entitled to intervene in said litigation.

XV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVI.
Indemnification

It is understood and agreed between the parties that the SFC, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and SFC agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the SFC assumes no responsibility or liability to third parties in connection therewith.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XVIII.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

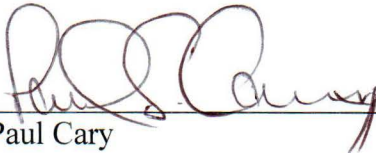
XX.
Successors and Assigns

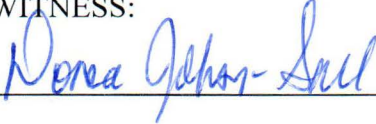
The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

[Signature Page to Follow]


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.


SUTTON FROST CARY LLP

BY 
Name: Paul Cary
Title: Partner
Date 5-8-23

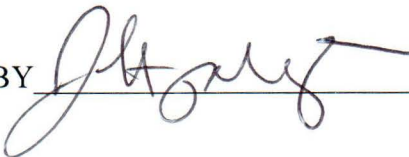
WITNESS:


CITY OF ARLINGTON, TEXAS

BY 
TREY YELVERTON
City Manager
Date 5/9/23

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY 

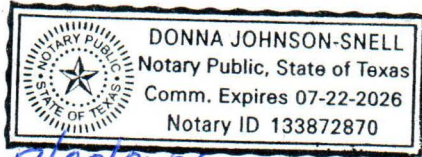
THE STATE OF TEXAS §
§
§
COUNTY OF _____ §

SUTTON FROST CARY LLP

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Scott Cary, known to me (or proved to me on the oath of _____ or through Texas D.L. (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 8th day of May, 2023.



7/22/2026
My Commission Expires

Donna Johnson-Snell
Notary Public in and for
The State of Texas
Donna Johnson-Snell
Notary's Printed Name

THE STATE OF TEXAS §
§
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 9th day of May, 2023.

4/27/25
My Commission Expires

Donna S. King
Notary Public in and for
The State of Texas
Donna S. King
Notary's Printed Name

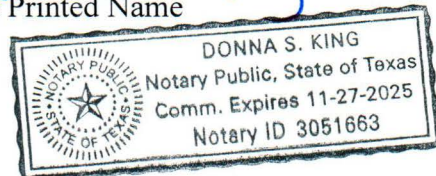


Exhibit "A"
PREMISES

100 East Front Street

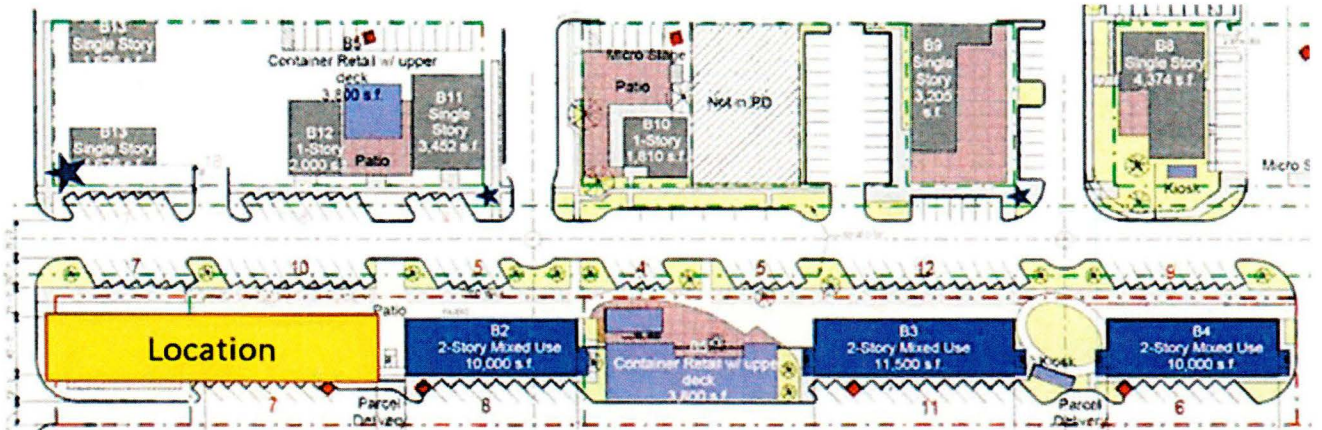
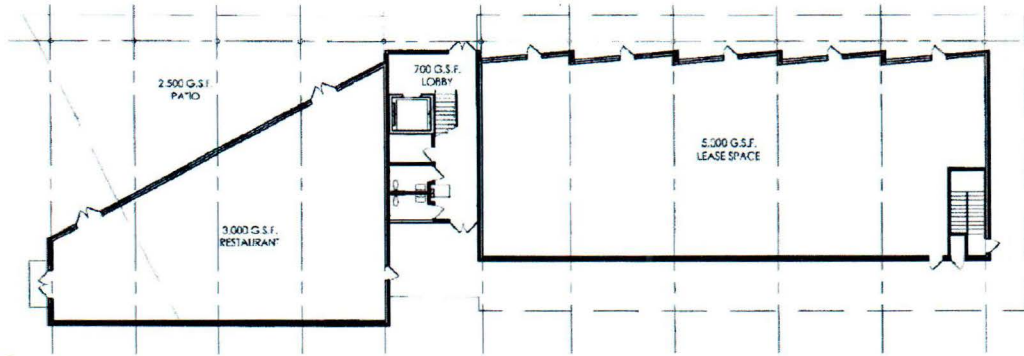
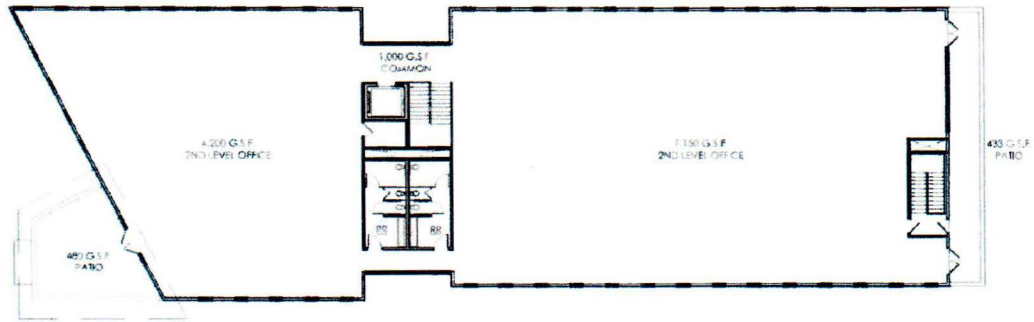


Exhibit "B" PROJECT



LEVEL 1



LEVEL 2

Staff Report



Tax Increment Reinvestment Zone Number One, City of Arlington, Texas – Sutton Frost Cary LLP	
City Council Meeting Date: 02-28-2023	Documents being Considered: Resolution

RECOMMENDATION

Approve a resolution accepting and approving Tax Increment Reinvestment Zone Number One (TIRZ 1), City of Arlington, Texas - Downtown Board of Directors’ Resolution No. 23-03, to execute a First Amendment to the Tax Increment Reimbursement Zone Chapter 380 Grant Agreement by and between Sutton Frost Cary LLP and the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas.

PRIOR BOARD OR COUNCIL ACTION

On November 3, 1998, the City Council considered and passed Ordinance No. 98-142, designating Tax Increment Reinvestment Zone Number One, City of Arlington, Texas – Downtown, (“TIRZ Number One”), creating the board of directors and granting to the board all legally permissible powers granted to it by chapter 311 of the Texas Tax Code, including the power to enter into agreements that the board considers necessary or convenient to implement TIRZ Number One project and financing plans.

On April 12, 1999, the Board of Directors of TIRZ 1 (the “TIRZ Board”) adopted a Project Plan and Financing Plan for TIRZ 1 (the “Plan”), as required by Section 311.011(a) of the Texas Tax Code.

On May 11, 1999, the City Council considered and passed Ordinance No. 99-65, to approve the Plan in accordance with Section 311.011(d) of the Texas Tax Code.

On December 6, 2018, the TIRZ Board approved the Amended and Restated Project Plan and Financing Plan (the “Amended Plan”) for TIRZ Number One.

On January 29, 2019, the City Council considered and passed Ordinance No. 19-003, to approve the Amended Plan.

On June 11, 2021, the TIRZ Board approved TIRZ1 Resolution No. 21-02, authorizing the Chair of the Board to execute a TIRZ Chapter 380 Agreement with Sutton Frost Cary LLP for the development of property located at 100 East Front Street in Arlington, Texas.

On February 14, 2023, the TIRZ Board approved TIRZ1 Resolution No. 23-03, authorizing the Chair of the Board to execute a First Amendment to the Tax Increment Reimbursement Zone Chapter 380 Grant Agreement by and between Sutton Frost Cary LLP and the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas.

ANALYSIS

Sutton Frost Cary LLP is in the process of constructing a building at the corner of Front Street and Mesquite Street. Sutton Frost Cary LLP is a full-service regional accounting firm with locations in Fort Worth and Arlington serving clients for over 30 years. The company will consolidate its offices to the downtown location and move its 45 employees to the new building.

The original agreement provided the company with a performance grant of \$500,000 to assist with the project. The grant would be paid in three payments: \$200,000 upon issuance of the

certificate of occupancy, \$150,000 on the first anniversary of certificate of occupancy, and \$150,000 after the second year following the certificate of occupancy. In exchange for the grant, the owner was obligated to cause the construction of a 21,000 square foot building to be completed by December 31, 2022, relocate their business operations to the new building upon completion, and relocate 45 full time jobs to the new building by no later than January 1, 2023. The owner was required to maintain a minimum of 30 full time jobs at the new building for the remainder of the term of the agreement. The project is also required to include a 30% MWBE goal for construction and the owner is required to conduct a minimum of one financial literacy course per quarter for populations in need of this information (financial literacy was one of the elements of the recent Unity Council's plan).

The pandemic and related supply-chain/construction delays have caused the Sutton Frost Cary, LLP to be unable to meet the project completion date. Proposed amendments to the agreement are as follows:

The first amendment to the agreement extends the completion deadline to June 1, 2024, and expands the project by 4,000 square feet creating a total of approximately 25,000 square feet of office space. In addition, Sutton Frost Cary LLP agrees to relocate and maintain fifty (increase by 20) full time jobs at the project and conduct at least six (6) financial literacy courses per year (increase by two). All other conditions and requirements of the agreement will remain the same.

FINANCIAL IMPACT

None.

ADDITIONAL INFORMATION

Attached:	Resolution with agreement attached.
Under separate cover:	None
Available in the City Secretary's office:	None
Form 1295:	No
MWBE:	No

STAFF CONTACT(S)

Bruce Payne, CEcD, AICP
Economic Development Manager
817-459-6114
Bruce.Payne@arlingtontx.gov

Resolution No. 23-062

A resolution of the City Council accepting and approving Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown Board of Directors' Resolution TIRZ1 23-03 authorizing the Chair of the Board of Directors to execute a First Amendment to the TIRZ Chapter 380 Grant Agreement by and between Sutton Frost Cary LLP and the Board relative to the development of a new 25,000 square foot office building and relocation of its business to the property located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 23-03

WHEREAS, on November 3, 1998, by Ordinance No. 98-142, the Arlington City Council created Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (hereinafter "the Zone" or "TIRZ Number One"), established the Board of Directors of the TIF District (hereinafter "the Board"), and established the TIF Fund, all for the purpose of developing and redeveloping the Downtown Arlington area; and

WHEREAS, three primary responsibilities of the Board are to prepare and adopt a Project Plan and Financing Plan for the Zone for City Council approval; to make recommendations to the City Council of the City of Arlington to implement the Project Plan; and to execute agreements the Board considers necessary or convenient to implement the Project Plan with City Council approval; and

WHEREAS, the Board has prepared and adopted a Project Plan and Financing Plan (the "Project Plan") containing a list of proposed public works or public improvements in the Zone to promote development and redevelopment of Downtown Arlington, and the City Council has approved the Plan; and

WHEREAS, on November 27, 2018, the City Council considered and passed Ordinance No. 18-074 extending the duration of the Zone; and

WHEREAS, on December 6, 2018, the Board approved the Amended and Restated Project Plan and Financing Plan (the "Amended Plan") for TIRZ Number One; and

WHEREAS, on January 29, 2019, City Council approved Ordinance No. 19-003 approving the Amended Plan; and

WHEREAS, on June 11, 2021, the Board approved TIRZ Resolution No. 21-02 authorizing the Chair of the Board to execute a TIRZ Chapter 380 Agreement (the "Agreement") with Sutton Frost Cary LLP for the development of property located at 100 East Front Street in Arlington, Texas (the "Project"); and

WHEREAS on February 14, 2023, the Board approved TIRZ1 Resolution No. 23-03 authorizing the Chair of the Board to execute a First Amendment to the Agreement; and

WHEREAS, due to the COVID-19 pandemic and related supply-chain/construction delays, Sutton Frost Cary LLP was unable to meet the project completion date; and

WHEREAS, Sutton Frost Cary LLP has requested the Agreement be amended to extend the completion deadline and expand the Project by 4,000 square feet; and

WHEREAS, Sutton Frost Cary LLP has agreed to relocate and maintain fifty (increase by 20) full time jobs at the project and conduct at least six (6) financial literacy courses per year; and

WHEREAS the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown has forwarded its recommendation and findings to City Council; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the facts and recitations contained in the preamble of this Resolution are found and declared to be true and correct.

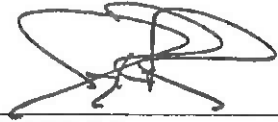
2.

That the City Council authorizes the Chair of the Board of Directors to execute a First Amendment to the TIRZ Chapter 380 Grant Agreement between the Board and Sutton Frost Cary LLP, relative to the development located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 23-03.

3.

A substantial copy of the First Amendment to the TIRZ Chapter 380 Grant Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 28th day of February, 2023, by a vote of 9 ayes and 0 nays at a special meeting of the City Council of the City of Arlington, Texas.



JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY 



Exhibit "A"



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

FIRST AMENDMENT TO THE CHAPTER 380 AGREEMENT

BETWEEN

SUTTON FROST CARY, LLP

AND

**THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF ARLINGTON, TEXAS - DOWNTOWN**

THIS FIRST AMENDMENT TO THE TAX INCREMENT REINVESTMENT ZONE CHAPTER 380 AGREEMENT (this “**Amendment**”) dated **July 20, 2021** is executed by the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (the “**TIF BOARD**”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas (“**CITY**”), and SUTTON FROST CARY, LLP (hereinafter called “**SFC**”) as of this _____ day of _____, 2023 (the “**Execution Date**”). All capitalized terms used and not defined herein have the meaning ascribed to them in the Agreement (defined below).

THIS Agreement is executed on _____, 2023, by and between SUTTON FROST CARY LLP an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “**SFC**”), and THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS (hereinafter referred to as “**TIRZ**”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas. SFC and TIRZ may be referred to jointly herein as the “**Parties**” or individually as a “**Party**.”

WITNESSETH:

WHEREAS, the Parties have entered into that certain Tax Increment Reimbursement Agreement, dated as of July 20, 2021 (the “**Agreement**”), pursuant to which the TIF BOARD provided SFC with reimbursement for certain public improvements pursuant to the TIF Project and Financing Plan in exchange for SFC developing certain property inside the TIF District; and

WHEREAS, the Parties intend to amend the Agreement to revise certain terms pertaining to the Private Improvements, and timeline for reimbursement;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Agreement is amended as follows:

1. Definitions

Section I.D. of the Agreement is hereby amended and restated in its entirety as follows:

“Project” is defined as an approximately 25,000 square foot office building constructed on the Site, as further depicted in **Exhibit “A”** attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.

2. Improvement Conditions and Requirements.

Section IV.A. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than June 1, 2024. SFC shall consult with the City Manager, or his/her designee; regarding the design of the Project.

Section IV.C. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall relocate 50 Jobs to the Project by no later than June 1, 2024 and maintain a minimum of 50 Jobs at the Project for the remaining years of the Term. SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.

Section IV.D. of the Agreement is hereby amended and restated in its entirety as follows:

SFC agrees to conduct free from charge six (6) financial literacy course per calendar year of the Term for populations in need of this information in coordination with the City of Arlington.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

SUTTON FROST CARY LLP

BY _____

Name : Paul Cary

Title: Partner

WITNESS:

**THE BOARD OF DIRECTORS OF TAX
INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF
ARLINGTON, TEXAS**

BY _____

Name _____

Title TIRZ Chairman _____

WITNESS:

THE STATE OF TEXAS §
§
COUNTY OF _____ §

SUTTON FROST CARY LLP
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2023.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §
§
§
§
COUNTY OF TARRANT §

THE BOARD OF DIRECTORS OF
TAX INCREMENT REINVESTMENT
ZONE NUMBER ONE,
CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS**, and as the Chairman thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

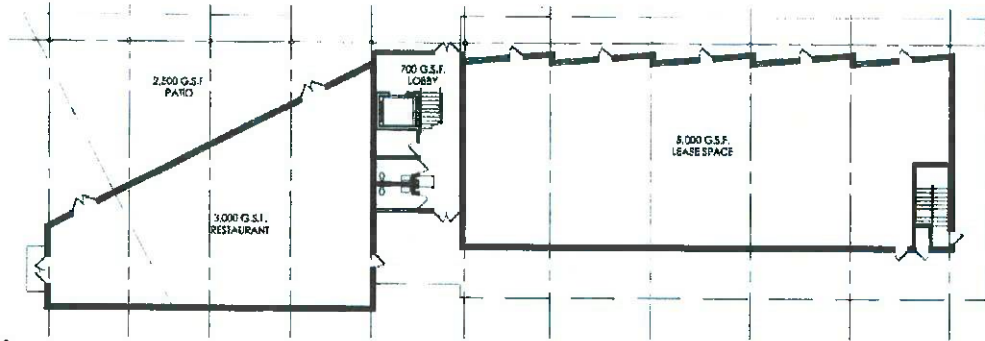
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

Notary Public In and For
The State of Texas

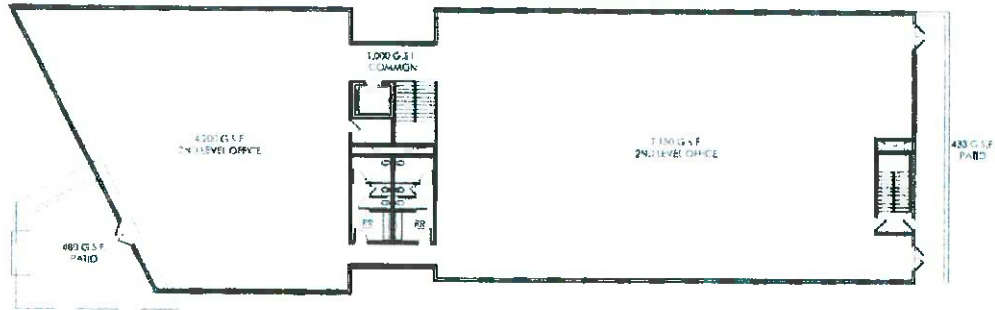
My Commission Expires:

Exhibit "A"

PROJECT



LEVEL 1



LEVEL 2



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

FIRST AMENDMENT TO THE CHAPTER 380 AGREEMENT

BETWEEN

SUTTON FROST CARY, LLP

AND

**THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF ARLINGTON, TEXAS - DOWNTOWN**

THIS FIRST AMENDMENT TO THE TAX INCREMENT REINVESTMENT ZONE CHAPTER 380 AGREEMENT (this “Amendment”) dated July 20, 2021 is executed by the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (the “TIF BOARD”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas (“CITY”), and SUTTON FROST CARY, LLP (hereinafter called “SFC”) as of this 17th day of March, 2023 (the “Execution Date”). All capitalized terms used and not defined herein have the meaning ascribed to them in the Agreement (defined below).

THIS Agreement is executed on 3/17, 2023, by and between SUTTON FROST CARY LLP an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “SFC”), and THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS (hereinafter referred to as “TIRZ”), as established by the City of Arlington, a Texas municipal corporation of Tarrant County, Texas. SFC and TIRZ may be referred to jointly herein as the “Parties” or individually as a “Party.”

WITNESSETH:

WHEREAS, the Parties have entered into that certain Tax Increment Reimbursement Agreement, dated as of July 20, 2021 (the “Agreement”), pursuant to which the TIF BOARD provided SFC with reimbursement for certain public improvements pursuant to the TIF Project and Financing Plan in exchange for SFC developing certain property inside the TIF District; and

WHEREAS, the Parties intend to amend the Agreement to revise certain terms pertaining to the Private Improvements, and timeline for reimbursement;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Agreement is amended as follows:

1. Definitions

Section I.D. of the Agreement is hereby amended and restated in its entirety as follows:

“Project” is defined as an approximately 25,000 square foot office building constructed on the Site, as further depicted in Exhibit “A” attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.

2. Improvement Conditions and Requirements.

Section IV.A. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than June 1, 2024. SFC shall consult with the City Manager, or his/her designee; regarding the design of the Project.

Section IV.C. of the Agreement is hereby amended and restated in its entirety as follows:

SFC shall relocate 50 Jobs to the Project by no later than June 1, 2024 and maintain a minimum of 50 Jobs at the Project for the remaining years of the Term. SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.

Section IV.D. of the Agreement is hereby amended and restated in its entirety as follows:

SFC agrees to conduct free from charge six (6) financial literacy course per calendar year of the Term for populations in need of this information in coordination with the City of Arlington.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

SUTTON FROST CARY LLP

BY 

Name : Paul Cary

Title: Partner

WITNESS:



**THE BOARD OF DIRECTORS OF TAX
INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF
ARLINGTON, TEXAS**

Attest:



Alex Busken, City Secretary

BY 

Name Jim Cross

Title TIRZ Chairman

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

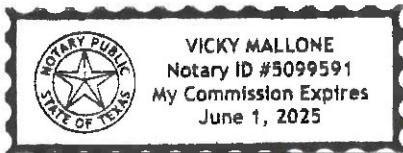
BY: 

THE STATE OF TEXAS §
COUNTY OF Tarrant §

SUTTON FROST CARY LLP
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Cary, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the Partner thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 6th day of March, 2023.



My Commission Expires

Vicky Mallone

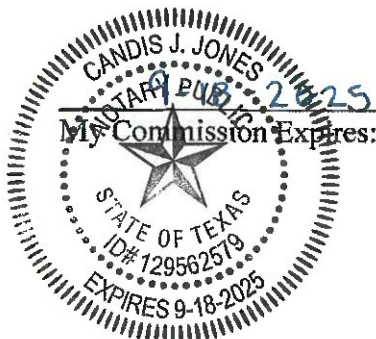
Notary Public in and for
The State of Texas
Vicky Mallone
Notary's Printed Name

THE STATE OF TEXAS §
COUNTY OF TARRANT §

**THE BOARD OF DIRECTORS OF
TAX INCREMENT REINVESTMENT
ZONE NUMBER ONE,
CITY OF ARLINGTON, TEXAS**
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jim Ross, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS, and as the Chairman thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

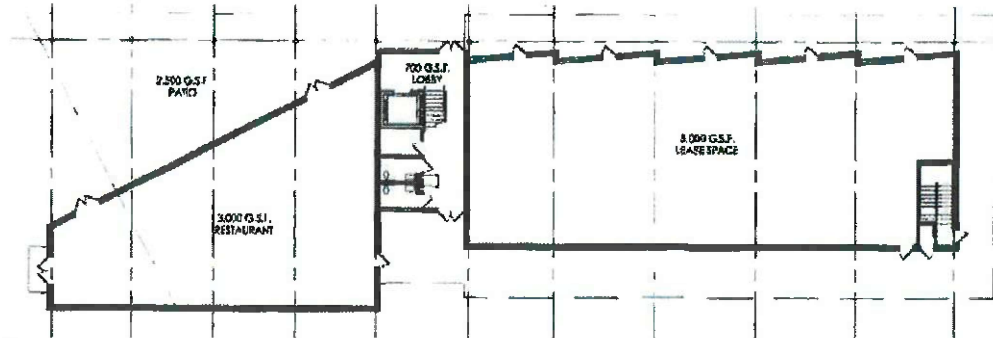
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 17th day of March, 2023.



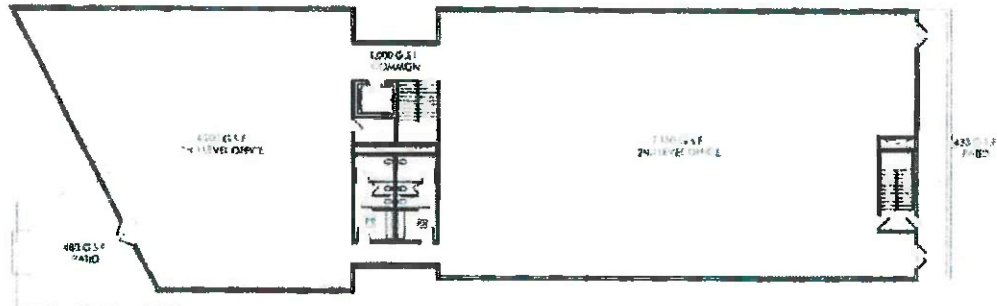
Candis J. Jones
Notary Public In and For
The State of Texas
Candis J. Jones

Exhibit "A"

PROJECT



LEVEL 1



LEVEL 2



Staff Report



Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Sutton Frost Cary LLP-Chapter 380 Agreement	
City Council Meeting: 06-15-2021	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution accepting and approving Tax Increment Reinvestment Zone Number One, City of Arlington, Texas- Downtown Board of Directors' Resolution TIRZ1 21-02 authorizing the Chair of the Board of Directors to execute a TIRZ Chapter 380 Agreement with Sutton Frost Cary LLP for the development of property located at 100 East Front Street in Arlington, Texas.

PRIOR BOARD OR COUNCIL ACTION

On November 3, 1998, the City Council considered and passed Ordinance No. 98-142 designating Tax Increment Reinvestment Zone Number One, City of Arlington, Texas – Downtown, (“TIRZ Number One”), creating the board of directors and granting to the board all legally permissible powers granted to it by chapter 311 of the Texas Tax Code, including the power to enter into agreements that the board considers necessary or convenient to implement TIRZ Number One project and financing plans.

On April 12, 1999, the Board of Directors of TIRZ Number One (the “TIRZ Board”) adopted a Project Plan and Financing Plan for TIRZ Number One (the “Plan”), as required by Section 311.011(a) of the Texas Tax Code.

On May 11, 1999, the City Council considered and passed Ordinance No. 99-65 to approve the Plan in accordance with Section 311.011(d) of the Texas Tax Code.

On December 6, 2018, the TIRZ Board approved the Amended and Restated Project Plan and Financing Plan (the “Amended Plan”) for TIRZ Number One.

On January 29, 2019, the City Council considered and passed Ordinance No. 19-003 to approve the Amended Plan.

On June 11, 2021, the TIRZ Board approved TIRZ Resolution No. 21-02 authorizing the Chair of the Board to execute a TIRZ Chapter 380 Agreement with Sutton Frost Cary LLP for the development of property located at 100 East Front Street in Arlington, Texas.

ANALYSIS

The company, Sutton Frost Cary LLP plans to cause the construction of an approximate 21,000 square foot building at the corner of Front Street and Mesquite Street. Sutton Frost Cary LLP is a full-service regional accounting firm with locations in Fort Worth and Arlington serving clients for over 30 years. The company has agreed to consolidate its offices to this downtown location and move its 45 employees to the new building.

The proposed agreement would run until December 31, 2030 and provide the company with a performance grant of \$500,000. The grant would be paid in three payments: \$200,000 upon issuance of the certificate of occupancy, \$150,000 on first anniversary of certificate of occupancy, and \$150,000 after the second year following the certificate of occupancy. In exchange for the grant, the owner would be obligated to cause the construction of a 21,000 square foot building to be completed by December 31, 2022, relocate their business operations to the new building upon completion, and relocate 45 full time jobs to the new building by no later than January 1, 2023. The owner would be required to maintain a minimum of 30 full

time jobs at the new building for the remainder of the term of the agreement. The project is also required to include a 30% MWBE goal for construction and the owner is required to conduct a minimum of 1 financial literacy course per quarter for populations in need of this information (financial literacy was one of the elements of the recent Unity Council's plan), required the building to be at the corner and required to consult with the City on the design of the project.

FINANCIAL IMPACT

The total financial impact of this contract is \$500,000.

Funds are available in the TIRZ No. 1 Account No. 3025-480102-61002.

ADDITIONAL INFORMATION

Attached:	Resolution with agreement attached.
Under Separately:	None
Available in the City Secretary's office:	None
Form 1295:	No
MWBE:	No

STAFF CONTACT(S)

Jim Parajon, FAICP

Deputy City Manager

817-459-6103

Jim.parajon@arlingtontx.gov

Resolution No. 21-133

A resolution of the City Council accepting and approving Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown Board of Directors' Resolution TIRZ1 21-02 authorizing the Chair of the Board of Directors to execute a TIRZ Chapter 380 Grant Agreement by and between Sutton Frost Cary LLP and the Board relative to the development of a new 21,000 square foot office building and relocation of its business to the property located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 21-02

WHEREAS, on November 3, 1998, by Ordinance No. 98-142, the Arlington City Council created Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown (hereinafter "the Zone" or "TIRZ Number One"), established the Board of Directors of the TIF District (hereinafter "the Board"), and established the TIF Fund, all for the purpose of developing and redeveloping the Downtown Arlington area; and

WHEREAS, three primary responsibilities of the Board are to prepare and adopt a Project Plan and Financing Plan for the Zone for City Council approval; to make recommendations to the City Council of the City of Arlington to implement the Project Plan; and to execute agreements the Board considers necessary or convenient to implement the Project Plan with City Council approval; and

WHEREAS, the Board has prepared and adopted a Project Plan and Financing Plan (the "Project Plan") containing a list of proposed public works or public improvements in the Zone to promote development and redevelopment of Downtown Arlington, and the City Council has approved the Plan; and

WHEREAS, on November 27, 2018, the City Council considered and passed Ordinance No. 18-074 extending the duration of the Zone; and

WHEREAS, on December 6, 2018, the Board approved the Amended and Restated Project Plan and Financing Plan (the "Amended Plan") for TIRZ Number One; and

WHEREAS, on January 29, 2019, City Council approved Ordinance No. 19-003 approving the Amended Plan; and

WHEREAS Sutton Frost Cary LLP, a full service certified public accountant firm ("OWNER") proposes to construct a new 21,000 square foot office building and relocate its business to the property located at 100 East Front Street Arlington, Texas 760111; and

WHEREAS Section 311.010(h) of the Tax Increment Financing Act provides that the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas (“TIRZ”) may establish and provide for the administration of one or more programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding business and commercial activity in the zone, including programs to make grants and loans from tax increment of the zone; and

WHEREAS the TIRZ has found that providing a program consisting of grants of funds to the OWNER in exchange for OWNER’s development and operation of a grocery store in the zone will promote local economic development and stimulate business and commercial activity and create jobs within the zone (the “Program”); and

WHEREAS the TIRZ has found that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administrative of the Program contain controls likely to ensure that the public purpose is achieved, and

WHEREAS Chapter 380 of the Texas Local Government Code and Section 311.010 of the Texas Tax Code provide statutory authority for establishing and administering the Program; and

WHEREAS the Board of Directors of Tax Increment Reinvestment Zone Number One, City of Arlington, Texas - Downtown has forwarded its recommendation and findings to City Council; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the facts and recitations contained in the preamble of this Resolution are found and declared to be true and correct.

2.

That the City Council authorizes the Chair of the Board of Directors to execute a Chapter 380 Grant Agreement between the Board and Sutton Frost Cary LLP, relative to the development located at 100 East Front Street, Arlington, Texas, consistent with the terms set forth in Resolution TIRZ1 21-02.

3.

A substantial copy of the Chapter 380 Grant Agreement is attached hereto as Exhibit “A” and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 15th day of June, 2021,
by a vote of 6 ayes and 0 nays at a special meeting of the City Council of the
City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY  _____



Exhibit "A"



- B. “Job” is defined as a permanent, full-time employment position that results in actual paid employment of an employee, not independent contractor, at the Project of at least 1,820 hours per position in a year. It shall not include part-time employees.
- C. “Landlord” is defined as 100 East Front LLC, the fee owner of the Site and Project, from whom SFC will lease the Project.
- D. “Project” is defined as an approximately 21,000 square foot office building constructed on the Site, as further depicted in **Exhibit “A”** attached hereto and incorporated herein for all purposes. The Project shall be situated on the Site so that the building occupies the southeast corner of Mesquite Street and Front Street.
- E. “Site” is defined as 100 East Front Street Arlington, Texas 76011, as depicted in **Exhibit “B”** attached hereto and incorporated herein for all purposes.

II. **Term**

This Agreement shall commence as of the date of execution and shall expire on December 31, 2030 (the “Term”), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III. **General Provisions**

The Incentive Program provided here in is not an improvement project financed by tax increment bonds. The Site is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of the CITY.

IV. **Improvement Conditions and Requirements**

- A. SFC shall construct or shall cause Landlord to construct the Project on the Site. SFC shall obtain a certificate of occupancy for the Project by no later than December 31, 2022. SFC shall consultant with the City Manager, or his/her designee; regarding the design of the Project.
- B. Once a certificate of occupancy is obtained, SFC shall relocate its Business to the Project and shall continuously operate its Business at the Project for the remaining Term of this Agreement.
- C. SFC shall relocate 45 Jobs to the Project by no later than January 1, 2023 and maintain a minimum of 30 Jobs at the Project for the remaining years of the Term.

SFC agrees to market and promote Job opportunities at the Project to residents of the City of Arlington. SFC shall make commercially reasonable efforts to hire residents of the City of Arlington to fill open Jobs.

- D. SFC agrees to conduct free from charge one (1) financial literacy course per calendar quarter of the Term for populations in need of this information in coordination with the City of Arlington.
- E. Throughout the Term all activity on the Site shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations. SFC shall apply for any obtain all necessary governmental permits and approvals for all construction and operations at the Site.
- F. Throughout the Term SFC shall not fail to render for taxation any property owned by SFC and located within the City of Arlington. In addition, throughout the Term the ad valorem taxes owed for the Project shall not become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- G. During design and construction of the Project, SFC agrees to cause Landlord to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. SFC also agrees to cause Landlord to develop a policy that establishes a goal of thirty percent (30%) use by Landlord of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project. SFC shall provide the TIRZ with a report documenting its efforts towards achieving such goal upon completion of the Project.

V.

Incentive Program

- A. In exchange for SFC's development and operation of the Project, TIRZ agrees to provide the following Incentive Program:

Chapter 380 Grant. If all applicable Improvement Conditions and Requirements set forth in Section IV are satisfied, TIRZ agrees to provide grant payments totaling Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to SFC. Grant payments will be paid by TIRZ to SFC based upon the following schedule:

- i. Two Hundred Thousand and 00/100 Dollars (\$200,000.00) (the “First Payment”) within 30 days of SFC submitting proof to the TIRZ of the issuance of a certification of occupancy for the Project.
 - ii. One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) on or before the first anniversary of the First Payment.
 - iii. One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) on or before the second anniversary of the First Payment.
- B. SFC acknowledges and agrees that the grant payment provided herein will be made solely from the CITY’s increment deposited into the Tax Increment Fund of the TIRZ, established pursuant to Ordinance no. 98-142 (the “TIF Fund”) and shall be subject to the availability of increment from the CITY on deposit within the TIF Fund. SFC agrees to look solely to the City’s increment on deposit in the TIF Fund, not CITY general funds or CITY bond funds, or any other TIRZ or CITY funds for payment of the grant provided herein. Nothing in this Agreement shall be construed to require the CITY to approve payment from any source of CITY funds other than the CITY increment on deposit in the TIF Fund. Upon the expiration of the term of the TIRZ on December 31, 2038, or any subsequently extended date, as provided in the ordinance creating same, as amended, any grant payment that remains unpaid due to the lack of monies on deposit in the TIF Fund or due to SFC’s failure to meet any precondition of payment of such grant shall no longer be considered Project Costs of the TIRZ, and any obligation of the TIRZ to pay such grant to SFC shall automatically expire; provided, any CITY increment that has accrued during the term of the TIRZ but is collected or disbursed subsequent to the expiration of the TIRZ shall be applied to pay Project Costs that remain unpaid immediately prior to the TIRZ expiration.

VI.

Records, Audits and Inspections

- A. Additional Records and Information - Throughout the Term of this Agreement, SFC shall furnish TIRZ any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Section IV of this Agreement.
- B. Right to Audit Books and Records - TIRZ shall have the right to audit the books and records of SFC related to the Improvement Conditions and Requirements. TIRZ shall notify SFC in advance in writing of their intent to audit in order to allow SFC adequate time to make such books and records available.
- C. Inspection - At all times throughout the Term of this Agreement, TIRZ shall have reasonable access to the Site for the purpose of inspecting the Site to ensure that

the Project is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Site. The inspections shall be conducted within a reasonable time period after notice by TIRZ.

VII.
Use of Site

The Site at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws.

VIII.
Breach and Recapture

- A. **Breach** - A breach of this Agreement by SFC may result in termination or modification of this Agreement and recapture by TIRZ of all grant payments made. SFC's failure to satisfy any of the Conditions and Requirements as specified in Section IV above shall constitute a breach of this Agreement.
- B. **Notice of Breach** - In the event that TIRZ makes a reasonable determination that SFC has breached this Agreement, then TIRZ shall give SFC written notice of such. SFC has sixty (60) days following receipt of said written notice to cure such breach, or this Agreement may be terminated by TIRZ, and recapture of grant payments made may occur. Notice of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to SFC at its address provided in Section XI of this Agreement.
- C. **Recapture** - During the Term of this Agreement, should SFC commit and fail to timely cure a breach of this Agreement, TIRZ may terminate this Agreement and recapture all grant payments made under this Agreement. It shall be the duty of TIRZ to determine whether to require recapture and to demand payment of such. Repayment of grant payments shall become due 60 days following receipt of such demand. The rights of TIRZ to require recapture and demand repayment of grants made, and the obligation of SFC to pay such, shall survive termination of this Agreement. The City Attorney for the CITY has the authority, on behalf of the TIRZ, to initiate any litigation necessary to pursue payment of recaptured grants and fees waived pursuant to this Agreement.

IX.
Undocumented Workers

SFC covenants and certifies that SFC does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if SFC is convicted of a violation under 8 U.S.D. Section 132a(f), SFC shall repay to the TIRZ the full amount of the grant payments provided under Section V of this Agreement,

plus 10% per annum from the date such fees were waived or grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that SFC receives notice of violation from the TIRZ as provided by 2264.101(c) of the Texas Government Code.

X.

Effect of Sale or Lease of Property

The Incentive Program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Site unless such assignment is approved in writing by the TIRZ, with approval by the City Council, which approval shall not be unreasonably withheld.

XI.

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 designates in writing, by certified mail postage prepaid or by hand delivery:

SFC: Sutton Frost Cary LLP
Paul Cary, Partner
600 Six Flags Drive
Arlington, Texas 76001

TIRZ: Tax Increment Reinvestment Zone Number One
Attention: City Manager's Office
Post Office Box 90231
Arlington, Texas 76004-3231

cc: Tax Increment Reinvestment Zone Number One
Attention: City Attorney's Office
Post Office Box 90231
Arlington, Texas 76004-3231

XII.

Authorization and Board Representation

This Agreement was authorized by resolution of the TIRZ authorizing the Chairman of the Board of Directors for Tax Increment Reinvestment Zone Number One to execute this Agreement on behalf of the TIRZ. SFC understands and agrees that TIRZ, in its sole discretion, may appoint certain CITY staff members, a CITY department, or another entity to serve as its representative in carrying out any and all of the responsibility of the TIRZ hereunder, and that reference to the TIRZ in this Agreement means the Board of Directors for Tax Increment Reinvestment Zone Number One or any such designed representative.

XIII.
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.

XIV.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of SFC, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XV.
SFC's Standing

SFC, 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 TIRZ or CITY actions authorizing same, and SFC shall be entitled to intervene in said litigation.

XVI.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVII.
Indemnification

SFC AGREES TO DEFEND, INDEMNIFY AND HOLD THE TIRZ, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY SFC'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF

SFC, ITS OFFICERS, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE TIRZ OR THE CITY OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH SFC, TIRZ, OR CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND THE TIRZ UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

SFC HEREBY ACKNOWLEDGES THAT NEITHER THE TIRZ NOR THE CITY CAN GUARANTEE OR CONTROL THE TAXABLE APPRAISED VALUE OF PROPERTY WITHIN THE BOUNDARIES OF THE ZONE, AND THUS CANNOT GUARANTEE OR CONTROL THE AMOUNT OF TAX INCREMENT THAT MAY BE DEPOSITED INTO THE TIF FUND THROUGHOUT OR AT ANY TIME DURING THE TERM OF THE TIRZ. SFC HAS ENTERED INTO THIS AGREEMENT WITHOUT RELYING ON ANY ASSERTIONS, REPRESENTATIONS OR ASSUMPTIONS THAT MAY HAVE BEEN MADE BY THE TIRZ AND/OR THE CITY, THEIR OFFICERS, AGENTS, SERVANTS AND EMPLOYEES WITH RESPECT TO THE TIRZ'S FINANCING PLAN AND THE POTENTIAL AMOUNT OF TAX INCREMENT THAT MAY BE DEPOSITED INTO THE TIF FUND THROUGHOUT OR AT ANY TIME DURING THE TERM OF THE TIRZ. SFC HEREBY AGREES TO RELEASE AND HOLD HARMLESS THE TIRZ AND THE CITY, THEIR OFFICERS, AGENTS, SERVANTS, EMPLOYEES AND CONTRACTORS, FOR ANY DAMAGES OR CLAIMS, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST INVESTMENT, LOST OR UNREALIZED PROFITS OR INVESTMENT, AND LOST OR UNREALIZED FINANCING, THAT MAY ARISE OUT OF OR BE OCCASIONED BY A FAILURE OF THE TIRZ TO PRODUCE SUFFICIENT TAX INCREMENT TO SUPPORT ALL OF THE TIRZ'S FINANCIAL OBLIGATIONS UNDER THIS AGREEMENT OR TO MEET ANY FINANCIAL BENCHMARKS, MILESTONES OR PERFORMANCES ANTICIPATED BY SFC.

XVIII.

Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their

contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XIX.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXI.
Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of TIRZ and such consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

SUTTON FROST CARY LLP

BY _____

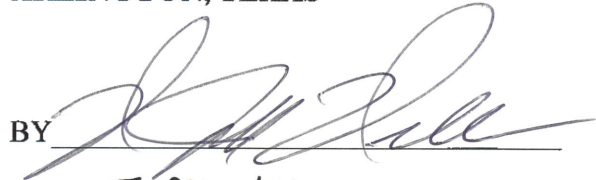
Name : Paul Cary

Title: Partner

WITNESS:



**THE BOARD OF DIRECTORS OF TAX
INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF
ARLINGTON, TEXAS**

BY 

Name Jeff Williams

Title TIRZ Chairman

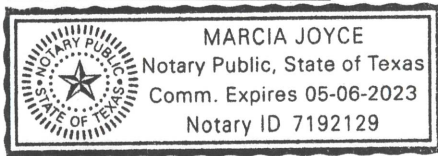
WITNESS:

THE STATE OF TEXAS §
§
COUNTY OF Tarrant §

SUTTON FROST CARY LLP
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Cary, known to me (or proved to me on the oath of N/A or through N/A (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **SUTTON FROST CARY LLP**, an entity duly authorized to do business in the State of Texas, and as the Partner thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 23 day of June, 2021.



5-6-2023
My Commission Expires

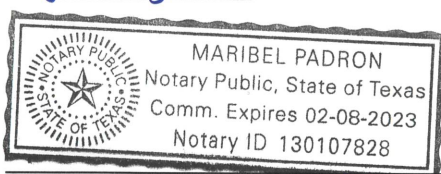
Marcia Joyce
Notary Public in and for
The State of Texas
Marcia Joyce
Notary's Printed Name

THE STATE OF TEXAS §
§
§
§
COUNTY OF TARRANT §

THE BOARD OF DIRECTORS OF
TAX INCREMENT REINVESTMENT
ZONE NUMBER ONE,
CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared JLA Williams, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF ARLINGTON, TEXAS, and as the Chairman thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day of July, 2021.

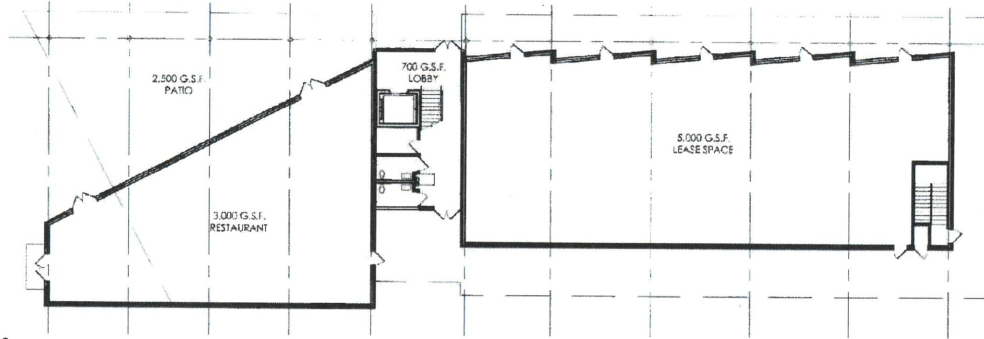


My Commission Expires: 2/8/2023

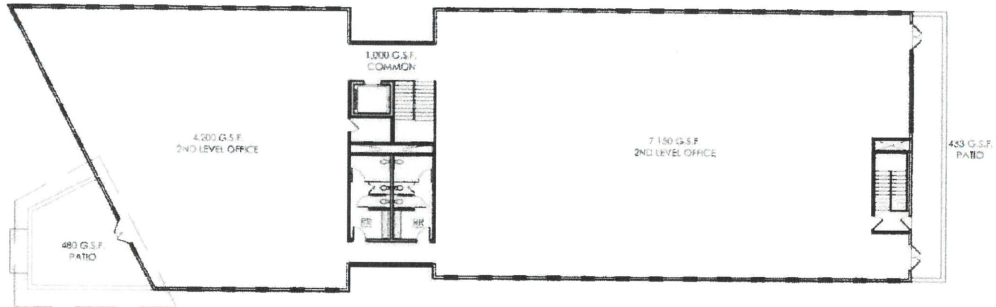
Maribel Padron
Notary Public In and For
The State of Texas
Maribel Padron

Exhibit "A"

PROJECT



LEVEL 1



LEVEL 2



Exhibit "B"

SITE

100 East Front Street

