

This Small Business Stimulus Incentive Agreement, ("Agreement"), is made by and between the City of Kaufman, Texas, ("City") and Dr. Terry Kay the owner of Terry A. Kay, O.D./Kaufman Optical, ("Business"), a local business located within the corporate limits of the City of Kaufman, Texas, (each a "Party" or collectively "the Parties"), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Business is located at 1915 S. Washington St., Kaufman, TX 75142 within the corporate limits of the City of Kaufman, Texas; and

WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives for the promotion of economic development; and

WHEREAS, as a result of the multiple disaster declarations and emergency orders issued by Texas Governor Greg Abbott due to the influx of the COVID-19 pandemic, many local small businesses suffered negative financial impacts due to their inability to operate at all or to operate at full capacity under the state restrictions placed upon them in an effort to reduce the spread of COVID-19; and

WHEREAS, on May 5, 2020, the Kaufman Economic Development Corporation, ("KEDC"), approved an Agreement for Funding of Small Business Incentive Program to assist Kaufman's small business negatively impacted by the pandemic; and

WHEREAS, the City determined that the promotion of local small businesses negatively impacted by the COVID-19 pandemic due to the restrictions imposed on businesses within the City is crucial to the City's continued economic stability and development; and

WHEREAS, the City has determined that providing an economic development incentive in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date unless sooner terminated as provided herein.

**Article II
Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Approved Project" shall mean a project for Rent/Mortgage, employee support and utilities, of the Business as approved by the City Manager or designee as being eligible for an incentive under the Small Business Incentive Program.

"Bankruptcy or Insolvency" shall mean insolvency, appointment of receiver for the Business Owner and such appointment is not terminated within 90 days after such appointment is initially made, any general

assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Business Owner and such proceeding is not dismissed within 90 days after the filing thereof.

"City" shall mean the City of Kaufman, Texas.

"City Manager" shall mean the Kaufman City Manager or designee.

"Effective Date" shall mean the last date of execution hereof.

"Expiration Date" shall mean two (2) years from the Effective Date.

"Small Business Incentive Program" shall mean the City of Kaufman Small Business Incentive Stimulus Program adopted by Ordinance No. O-13-20, and codified as part of Chapter 2, "Administration" of the Code of Ordinances of the City, as amended or recodified.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Business Owner or any property or any business owned by Business Owner within the City.

"Incentive" shall mean an economic development incentive in an amount equal to five thousand and no/100 dollars (\$5,000), under the Small Business Incentive Program as determined by the City Manager or designee for the Approved Project and paid in accordance with the terms of this Agreement and the City adopted regulations for the Small Business Incentive Program.

"Owner" shall mean the owner of the Business.

Article III Economic Development Incentive

3.1 Payment. Subject to the Business Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of the Business Owner to repay the Incentive pursuant to Section 5.2 hereof, the City agrees to provide the Incentive to the Business Owner to be paid in a single lump-sum payment on or about \$5,000.00

3.2 Current Revenue. The Incentive made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other Party.

Article IV Incentive Conditions

The obligation of the City to pay the Incentive shall be conditioned upon the continued compliance with and satisfaction of the terms and conditions of this Agreement by the Business Owner and each of the conditions set forth in this Article:

4.1 Limitation on Approved Projects. The Small Business Incentive Program is limited to the projects listed in the Small Business Incentive Program application and approved by the City Manager or designee in the application presented to the KEDC by Business Owner on 28th day of May 2020 a copy of which is attached hereto as Exhibit "A".

4.2 Remain in Good Standing with City. The Owner and Business shall remain in good standing with the City in regard to licensing and permits.

4.3 Continued Adherence to all Eligibility Requirements of Program. The Owner and Business must continue to satisfy all eligibility requirements of the Small Business Incentive Program.

Article V Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

- (a) mutual agreement of the Parties;
- (b) the Expiration Date;
- (c) at the City's option, if any Impositions owned to the City or the State of Texas by the Business Owner shall become delinquent (provided, however, Business Owner retains the right to timely and properly protest and contest any such imposition);
- (d) by the City, in the event the Business Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within 60 days after written notice thereof;
- (e) by the City if the Business Owner suffers an event of Bankruptcy or Insolvency;
- (f) by the City if any subsequent Federal or State legislation or regulation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; or
- (g) the sale or transfer of the Business following one assignment of this Agreement, as provided herein.

5.2 In the event of termination by the City pursuant to 5.1(c), (d), (e), or (g), the Business Owner shall immediately repay to the City an amount equal to the Incentive paid to the Business Owner, if any, prior to termination of this Agreement.

Article VI Miscellaneous

6.1 Assignment. Neither this Agreement nor any benefit received under this Agreement shall be assigned.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties hereto.

6.3 Limitation on Liability. It is understood and agreed between the Parties that the Business Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third Parties in connection with these actions.

6.4 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.5 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Business Owner:
Dr. Terry Kay
1915 S. Washington St.
Kaufman, TX 75142

If intended for City:
Michael T. Slye, City Manager
209 S. Washington Street
Kaufman, Texas 75142

6.7 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.8 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Kaufman County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.9 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

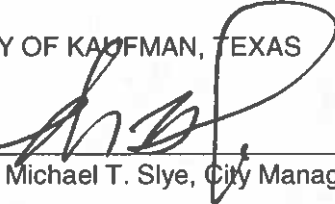
6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement the Business Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a(f), the Business Owner shall repay the amount of the Grant and any other funds received by the Business Owner from the City as of the date of such violation within 120 business days after the date the Business Owner is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid.

EXECUTED this 4 day of June, 2020

CITY OF KAUFMAN, TEXAS

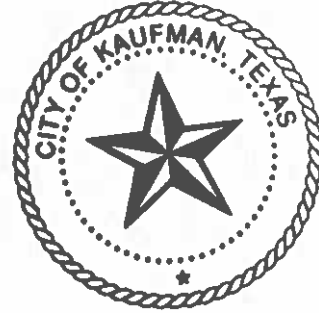
By: 
Michael T. Slye, City Manager

ATTEST:

By: 
Jessie Hanks, City Secretary

APPROVED AS TO FORM:

By: 
Patricia A. Adams, City Attorney



BUSINESS OWNER

By: 

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NOTARY ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF KAUFMAN §

CITY

BEFORE ME, the undersigned authority, on this day personally appeared **Mike Slye, City Manager of the City of Kaufman, Texas**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of the City of Kaufman, Texas.

Given under my hand and seal of office this 4 day of June, 2020

(SEAL)

Jessie Hanks
NOTARY PUBLIC in and for the
STATE OF TEXAS

Jessie Hanks
Printed Name
My commission expires: 1-6-24



STATE OF TEXAS §
COUNTY OF KAUFMAN §

BUSINESS OWNER

BEFORE ME, the undersigned authority, on this day personally appeared Terry Kay, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of the Business Owner.

Given under my hand and seal of office this 4 day of June, 2020

(SEAL)

Lexie Hanson
NOTARY PUBLIC in and for the
STATE OF TEXAS

Lexie Hanson
Printed Name
My commission expires: 7-23-2023

