TIRZ #11 DOWNTOWN REGULAR MEETING
CELINA ISD ADMIN BLDG., BOARD ROOM
205 S. COLORADO STREET
TUESDAY, SEPTEMBER 10, 2019
4:55 PM

AGENDA

I. CALL TO ORDER:

II. ACTION ITEM:

1. TIRZ #11 Downtown - Regular Meeting - Jan 9, 2018 5:02 PM

2. Consider and act upon a resolution of the Board of Directors of Tax Increment Investment Zone No. Eleven to recommend approval of an incentive agreement between the City of Celina and Celina Community Development Corporation for projects within Tax Increment Investment Zone No. Eleven (Downtown). (CDC TIRZ/sales tax agreement) (DeBuff)

3. Consider and act upon a resolution of the Board of Directors of Tax Increment Investment Zone No. Eleven to recommend approval of an incentive agreement between the City of Celina and Celina Economic Development Corporation for projects within Tax Increment Investment Zone No. Eleven (Downtown). (EDC TIRZ/sales tax agreement) (DeBuff)

III. ADJOURNMENT:

City Council Chambers is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf, or hearing impaired, or readers of large print, are requested to contact the City Secretary's Office at 972-382-2682, or fax 972-382-3736 at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

The Board reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Chapter 551. "I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board at City Hall of the City of Celina, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: ____________________ at ____ p.m. and remained so posted continuously for at least 72 hours prior to the scheduled time of said meeting."

________________________________ ________________________________
Vicki Faulkner, TRMC Date Notice Removed
City Secretary, City of Celina, TX

NOTICE OF
TIRZ #11 DOWNTOWN REGULAR
CELINA COUNCIL CHAMBERS 112 N. COLORADO ST., CELINA, TX 75009
TUESDAY, JANUARY 9, 2018 AT 5:02 PM

MINUTES

I. CALL TO ORDER:

Attendee Name	Organization	Title	Status	Arrived
Wayne Nabors	City of Celina	Place 2	Present	
Carmen Roberts	City of Celina	Place 4	Present	
Chad Anderson	City of Celina	Place 6	Present	
Andy Hopkins	City of Celina	Place 3	Absent	
Bill Webber	City of Celina	Place 1	Present	
Mindy Koehne	City of Celina	Place 5	Present	
Sean Terry	City of Celina	Mayor	Absent	

Mayor Pro Tem Anderson acting as Chairman called the meeting to order at 5:04 p.m.

II. ACTION ITEM:

1. Consider and act upon a resolution of the Board of Directors for Reinvestment Zone Number Eleven, City of Celina, Texas, approving and recommending the final reinvestment zone project plan and financing plan to the City Council.

RESULT:	**APPROVED [UNANIMOUS]**
AYES:	Nabors, Roberts, Anderson, Webber, Koehne
ABSENT:	Hopkins, Terry

III. ADJOURNMENT:

There being no further comment Mayor Pro Tem Anderson adjourned the meeting at 5:05 p.m.

____
Chairman

____
Vicki Faulkner, TRMC
City Secretary, City of Celina, Texas

____
Date Minutes Approved

Administration
City of Celina, Texas

Memorandum

To:	**Honorable Mayor Terry and the Celina City Council**
From:	Paul DeBuff, Assistant to the City Manager
CC:	Jason Laumer, City Manager
Date:	September 10, 2019
Re:	Resolution approving CDC TIRZ/Sales Tax Agreement

Action Requested:
Consider and act upon a resolution of the Board of Directors of Tax Increment Investment Zone No. Eleven to recommend approval of an incentive agreement between the City of Celina and Celina Community Development Corporation for projects within Tax Increment Investment Zone No. Eleven (Downtown). (CDC TIRZ/sales tax agreement) (DeBuff)

Background Information:
This item approves a sales tax sharing agreement between the Celina Community Development Corporation (CDC) and the City of Celina, in order to facilitate development and encourage private investment over property that would otherwise impair the sound growth of the City.

Board Review/Citizen Input:
This item is a resolution of the TIRZ #11 Board of Directors, approving the agreement and recommending it to the Celina City Council.

Alternatives:
N/A

Financial Considerations:
The proposed agreement contemplates the CDC sharing one-half of its sales tax revenues earned within the 687 acres of the Downtown TIRZ #11 district with the TIRZ #11 fund for the purposes of infrastructure improvements to the area.

The estimated cost of necessary infrastructure and project costs, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205.

Legal Review:
The City Attorney has reviewed this agreement and resolution.

Supporting Documents:
- Proposed resolution & agreement as Exhibit A.

Staff Recommendation:
Staff recommends approval.

CITY OF CELINA, TEXAS

RESOLUTION NO. ___________

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN TO RECOMMEND APPROVAL OF AN INCENTIVE AGREEMENT BETWEEN THE CITY OF CELINA AND CELINA COMMUNITY DEVELOPMENT CORPORATION FOR PROJECTS WITHIN TAX INCREMENT INVESTMENT ZONE NO. ELEVEN (DOWNTOWN).

WHEREAS, the City of Celina is a home-rule municipality ("City"); and

WHEREAS, the Celina Community Development Corporation ("CDC") is a Type B community development corporation operating pursuant to the Development Corporation Act, Title 12, Subtitle C1, of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean targeted infrastructure and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: manufacturing and industrial facilities, distribution centers, and small warehouse facilities capable of serving as decentralized storage and distribution centers; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

WHEREAS, the City created "City of Celina Tax Increment Reinvestment Zone Number Eleven", in Celina, Texas covering approximately 687 acres in and around downtown Celina, including a portion of a rail line and deteriorating or abandoned industrial buildings adjacent thereto, to facilitate development and encourage private investment over property that would otherwise continue to impair the sound growth of the City (the "Zone") governed by an appointed Board of Directors ("Board"); and

WHEREAS, the promotion and development of the Zone will require public infrastructure to support approximately 687 acres of development; and

WHEREAS, the estimated cost of necessary infrastructure and project costs identified in the Zone's Project and Financing Plan, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205 (the "Project"); and

WHEREAS, City has requested assistance with infrastructure improvements authorized by Section 501.103 of the Act from the CDC in the amount of half of the sales tax received by the CDC from within the Zone; and

WHEREAS, the City has demonstrated that development of the Zone is a project that will promote and/or develop new and/or expanded business development and the Board of Directors of CDC hereby finds that such project will promote and/or develop new and/or expanded business development; and

WHEREAS, the City and the CDC believe that entering into this Agreement will be in the best interests of the economic development of the City of Celina and assist with financing of the Project; and

WHEREAS, the CDC's Board of Directors has determined that financial assistance provided to the City for the Project is consistent with and meets the definition of "project" as that term is defined in Sections 501.101, 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code and that requirements of Section 505.159(b) of the Act do not apply to this project because it is undertaken under Subchapter C of Chapter 501; and

WHEREAS, the CDC has determined that granting economic development incentives in accordance with this Agreement will further the objectives of the CDC, will benefit the CDC and the City and the City's inhabitants, will promote local economic development, and retain employment, business and commercial activity in the City; and

WHEREAS, the City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Celina, Texas, to approve all programs and expenditures of CDC, and accordingly this Agreement is not effective until the City Council has approved this project and expenditure at a City Council meeting called and held for that purpose.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN, THAT:

SECTION 1. The Incentive Agreement between the City of Celina and Celina Community Development Corporation is hereby recommended to the City Council for approval substantially as attached in **Exhibit A** hereto.

SECTION 2. This Resolution shall be effective from and after its passage as provided by law.

PASSED AND APPROVED BY THE BOARD OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN, this ______ day of _______________, 2019.

____

Board President

ATTEST:

____

Board Secretary

EXHIBIT A

INCENTIVE AGREEMENT

This **INCENTIVE AGREEMENT** by and between the City of Celina, Texas, a home-rule municipality (the "City"), and the Celina Community Development Corporation (the "CDC"), is made and executed on the following terms and conditions.

WHEREAS, the CDC is a Type B community development corporation operating pursuant to the Development Corporation Act, Title 12, Subtitle C1, of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean targeted infrastructure and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: manufacturing and industrial facilities, distribution centers, and small warehouse facilities capable of serving as decentralized storage and distribution centers; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

WHEREAS, the City created "City of Celina Tax Increment Reinvestment Zone Number Eleven", in Celina, Texas covering approximately 687 acres in and around downtown Celina, including a portion of a rail line and deteriorating or abandoned industrial buildings adjacent thereto, to facilitate development and encourage private investment over property that would otherwise continue to impair the sound growth of the City (the "Zone"); and

WHEREAS, the promotion and development of the Zone will require public infrastructure to support approximately 687 acres of development; and

WHEREAS, the estimated cost of necessary infrastructure and project costs, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205 (the "Project"); and

WHEREAS, City has requested assistance with infrastructure improvements authorized by Section 501.103 of the Act from the CDC in the amount of half of the sales tax received by the CDC from within the Zone; and

WHEREAS, the City has demonstrated that development of the Zone is a project that will promote and/or develop new and/or expanded business development and the Board of Directors of CDC hereby finds that such project will promote and/or develop new and/or expanded business development; and

WHEREAS, the City and the CDC believe that entering into this Agreement will be in the best interests of the community development of the City of Celina; and

WHEREAS, the CDC's Board of Directors has determined that financial assistance provided to the City for the Project is consistent with and meets the definition of "project" as that term is defined in Sections 501.101, 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code, and that requirements of Section 505.159(b) of the Act do not apply to this project because it is undertaken under Subchapter C of Chapter 501; and

WHEREAS, the CDC has determined that granting community development incentives in accordance with this Agreement will further the objectives of the CDC, will benefit the CDC and the City and the City's inhabitants, will promote local community development, and retain employment, business and commercial activity in the City; and

WHEREAS, the City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Celina, Texas, to approve all programs and expenditures of CDC, and accordingly this Agreement is not effective until the City Council has approved this project and expenditure at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CDC and the City agree as follows:

SECTION 1. FINDINGS INCORPORATED. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM. This Agreement shall be effective as of the Effective Date of this Agreement and shall continue thereafter until the earlier of December 31, 2048 or termination of the Zone by the City (the "Term").

SECTION 3. ECOMONIC ASSISTANCE.

A. The CDC collects a one-half cent sales and use tax on taxable purchases within the City of Celina ("CDC Sales Tax"). Subject to the terms, covenants, and conditions of this Agreement, the CDC agrees to provide Community development incentives to the City for the Project totaling fifty percent (50%), being a one-quarter cent, of the CDC Sales Tax collected in the Zone during the Term of this Agreement (the "Incentive"). The City will deposit all Incentive payments received from the CDC into the Tax Increment Fund created by City Ordinance No. 2017-136.

B. City shall only use the Incentive to pay for Project costs, which are site improvements, streets and roads, water and sewer utilities, gas utilities, electric utilities, drainage, rail spurs and related improvements within the Zone, as permitted under the Zone's Project and Financing Plan, as it presently exists or may be amended.

C. The CDC shall make Incentive payments to the City within thirty (30) days of receiving CDC Sales Tax proceeds from the City pursuant to Section 504.301 of the Act. The CDC and City shall work cooperatively to determine the portion of the CDC Sales Tax that was collected from the Zone, with the City making the final determination as to the amount of CDC Sales Tax collected from the Zone and the number or identity of taxpayers located in the Zone. The City will provide CDC with the receipts or other documents that reflect the use of the Incentive on permissible Project expenditures each fiscal year within ninety (90) days of the end of the City's fiscal year.

D. To the extent an audit or review by the Texas Comptroller results in an adjustment to the sales and use taxes being collected from the Zone, City and CDC agree to promptly adjust the Incentive accordingly to reflect the true measure of the CDC Sales Tax collected from within the Zone.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF CITY. City covenants and agrees with CDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) **Performance**. City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and to only use the Incentive for the Project.

(b) **Certain Prohibited Community Incentives.** City covenants and agrees that this Agreement does not violate Section 501.161 of the Texas Local Government Code, as amended.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF CDC. The CDC agrees to make Incentive payments to City after the Effective Date in accordance with the terms and provisions set forth in this Agreement.

SECTION 6. EVENTS OF DEFAULT. No party shall be in default under this Agreement until notice of the alleged failure of such party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given an opportunity to cure the alleged failure as provided herein. In the case of a failure of an obligation to make a payment required under this Agreement, the failure to pay must be cured by making the payment within five (5) business days after written notice of the failure to pay. For all other failures, no party shall be in default under this Agreement if, within thirty (30) days, the party to whom the notice was given cures the failure. A party that does not timely cure a failure shall be deemed in default. Except for failures of an obligation to make a payment under this Agreement, if a party who has received notice under this Section 6 cannot cure an alleged failure using reasonable efforts within thirty (30) days after receipt of written notice, such party shall give written notice to the other party within such thirty (30) day period (a) stating that the party cannot cure the alleged failure within thirty (30) days after receipt of written notice, and explaining the reason; and (b) providing a date by which such Party can reasonably cure the alleged failure ("Cure Time Notice"). A party who does not timely provide a Cure Time Notice shall be deemed to be able to cure the alleged failure to perform within thirty (30) days after the initial written notice of the alleged failure has been given.

SECTION 7. REMEDIES. If a Party is in default under this Agreement as provided in Section 6, the aggrieved party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

(a) entitle the aggrieved party to terminate this Agreement; or

(b) entitle the aggrieved party to suspend performance under this Agreement; or

(c) entitle the aggrieved party to seek or recover monetary damages of any kind; or

(d) limit the Term.

In addition, in the event that a failure by CDC to timely make an Incentive payment to City is not cured within five (5) days as provided in Section 6 above, the CDC expressly grants, authorizes, and assigns to the City the right to withhold the past-due amount, as determined by the City, from the CDC Sales Tax received by the City from the Comptroller of the State of Texas and then provide the remaining CDC Sales Tax to the CDC pursuant to Section 504.301 of the Act.

SECTION 8. TERMINATION OF AGREEMENT WITHOUT DEFAULT. The CDC or City, respectively, may terminate this Agreement immediately if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal. Termination of this Agreement under this Section 8 shall render this Agreement null and void from that point forward with each party having no further rights against each other under this Agreement or at law; provided, however, that (i) City shall be entitled to receive from CDC any payment due the City through the date of termination and (ii) the CDC and City agree to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible including, without limitation, the creation of an interest and sinking fund.

SECTION 9. EMPLOYMENT OF UNDOCUMENTED WORKERS. As required by Chapter 2264 of the Texas Government Code, during the term of this Agreement, City agrees not to knowingly employ any undocumented workers.

SECTION 10. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments**. This Agreement, together with any related documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this

Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton and Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton or Collin County, Texas.

(c) **Assignment.** This Agreement may not be assigned.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. CDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) **Caption Headings**. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be April 9, 2019.

(h) **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, or court injunction, 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 obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(i) **Notices**. Any notice or other communication required or permitted by this Agreement is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand, (deliveries after 5:00 p.m. shall be considered delivered on the following day), (ii) by electronic mail to the electronic mail address below (deliveries after 5:00 p.m. shall be considered delivered on the following day), or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to the City:	City of Celina, Texas Attn: Jason Laumer, City Manager 142 North Ohio Street Celina, Texas 75009 E-mail: jlaumer@celina-tx.gov
if to the CDC:	Celina Community Development Corporation c/o City of Celina, Texas Attn: Vicki Faulkner, City Secretary 142 N. Ohio Street Celina, Texas 75009 E-mail: vfaulkner@celina-tx.gov

(j) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.

(k) **Severability**. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(l) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

THIS INCENTIVE AGREEMENT IS ENTERED INTO AS OF _______________, 2019.

THE CITY:

THE CITY OF CELINA TEXAS

By: ______________________________

Name & Title: Sean Terry, Mayor

Date: ____________________

ATTEST:

____

____________________, City Secretary

<u>CDC</u>:

CELINA COMMUNITY DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: ____
Name and Title: ____
Date: ________________________________

ATTEST:

____
_________________________, Secretary

Administration
City of Celina, Texas

Memorandum

To:	**Honorable Mayor Terry and the Celina City Council**
From:	Paul DeBuff, Assistant to the City Manager
CC:	Jason Laumer, City Manager
Date:	September 10, 2019
Re:	Resolution approving EDC TIRZ/Sales Tax Agreement

Action Requested:
Consider and act upon a resolution of the Board of Directors of Tax Increment Investment Zone No. Eleven to recommend approval of an incentive agreement between the City of Celina and Celina Economic Development Corporation for projects within Tax Increment Investment Zone No. Eleven (Downtown). (EDC TIRZ/sales tax agreement) (DeBuff)

Background Information:
This item approves a sales tax sharing agreement between the Celina Economic Development Corporation (EDC) and the City of Celina, in order to facilitate development and encourage private investment over property that would otherwise impair the sound growth of the City.

Board Review/Citizen Input:
This item is a resolution of the TIRZ #11 Board of Directors, approving the agreement and recommending it to the Celina City Council.

Alternatives:
N/A

Financial Considerations:
The proposed agreement contemplates the EDC sharing one-half of its sales tax revenues earned within the 687 acres of the Downtown TIRZ #11 district with the TIRZ #11 fund for the purposes of infrastructure improvements to the area.

The estimated cost of necessary infrastructure and project costs, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205.

Legal Review:
The City Attorney has reviewed this agreement and resolution.

Supporting Documents:
- Proposed resolution & agreement as Exhibit A.

Staff Recommendation:
Staff recommends approval.

CITY OF CELINA, TEXAS

RESOLUTION NO. __________

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN TO RECOMMEND APPROVAL OF AN INCENTIVE AGREEMENT BETWEEN THE CITY OF CELINA AND CELINA ECONOMIC DEVELOPMENT CORPORATION FOR PROJECTS WITHIN TAX INCREMENT INVESTMENT ZONE NO. ELEVEN (DOWNTOWN).

WHEREAS, the City of Celina is a home-rule municipality ("City"); and

WHEREAS, the Celina Economic Development Corporation ("EDC") is a Type A economic development corporation operating pursuant to the Development Corporation Act, Title 12, Subtitle C1, of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean targeted infrastructure and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: manufacturing and industrial facilities, distribution centers, and small warehouse facilities capable of serving as decentralized storage and distribution centers; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

WHEREAS, the City created "City of Celina Tax Increment Reinvestment Zone Number Eleven", in Celina, Texas covering approximately 687 acres in and around downtown Celina, including a portion of a rail line and deteriorating or abandoned industrial buildings adjacent thereto, to facilitate development and encourage private investment over property that would otherwise continue to impair the sound growth of the City (the "Zone") governed by an appointed Board of Directors ("Board"); and

WHEREAS, the promotion and development of the Zone will require public infrastructure to support approximately 687 acres of development; and

WHEREAS, the estimated cost of necessary infrastructure and project costs, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205 (the "Project"); and

WHEREAS, City has requested assistance with infrastructure improvements authorized by Section 501.103 of the Act from the EDC in the amount of half of the sales tax received by the EDC from within the Zone; and

WHEREAS, the City has demonstrated that development of the Zone is a project that will promote and/or develop new and/or expanded business development and the Board of Directors of EDC hereby finds that such project will promote and/or develop new and/or expanded business development; and

WHEREAS, the City and the EDC believe that entering into this Agreement will be in the best interests of the economic development of the City of Celina; and

WHEREAS, the EDC's Board of Directors has determined that financial assistance provided to the City for the Project is consistent with and meets the definition of "project" as that term is defined in Sections 501.101, 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, the EDC has determined that granting economic development incentives in accordance with this Agreement will further the objectives of the EDC, will benefit the EDC and the City and the City's inhabitants, will promote local economic development, and retain employment, business and commercial activity in the City; and

WHEREAS, the City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Celina, Texas, to approve all programs and expenditures of EDC, and accordingly this Agreement is not effective until the City Council has approved this project and expenditure at a City Council meeting called and held for that purpose.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN, THAT:

SECTION 1. The Incentive Agreement between the City of Celina and Celina Economic Development Corporation is hereby recommended to the City Council for approval substantially as attached in **Exhibit A** hereto.

SECTION 2. This Resolution shall be effective from and after its passage as provided by law.

PASSED AND APPROVED BY THE BOARD OF TAX INCREMENT INVESTMENT ZONE NO. ELEVEN, this ______ day of _______________, 2019.

____

Board President

ATTEST:

____

Board Secretary

EXHIBIT A

INCENTIVE AGREEMENT

This **INCENTIVE AGREEMENT** by and between the City of Celina, Texas, a home-rule municipality (the "City"), and the Celina Economic Development Corporation (the "EDC"), is made and executed on the following terms and conditions.

WHEREAS, the EDC is a Type A economic development corporation operating pursuant to the Development Corporation Act, Title 12, Subtitle C1, of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean targeted infrastructure and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: manufacturing and industrial facilities, distribution centers, and small warehouse facilities capable of serving as decentralized storage and distribution centers; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; and

WHEREAS, the City created "City of Celina Tax Increment Reinvestment Zone Number Eleven", in Celina, Texas covering approximately 687 acres in and around downtown Celina, including a portion of a rail line and deteriorating or abandoned industrial buildings adjacent thereto, to facilitate development and encourage private investment over property that would otherwise continue to impair the sound growth of the City (the "Zone"); and

WHEREAS, the promotion and development of the Zone will require public infrastructure to support approximately 687 acres of development; and

WHEREAS, the estimated cost of necessary infrastructure and project costs, including streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements, for development of the Zone is $58,304,205 (the "Project"); and

WHEREAS, City has requested assistance with infrastructure improvements authorized by Section 501.103 of the Act from the EDC in the amount of half of the sales tax received by the EDC from within the Zone; and

WHEREAS, the City has demonstrated that development of the Zone is a project that will promote and/or develop new and/or expanded business development and the Board of Directors of EDC hereby finds that such project will promote and/or develop new and/or expanded business development; and

WHEREAS, the City and the EDC believe that entering into this Agreement will be in the best interests of the economic development of the City of Celina; and

WHEREAS, the EDC's Board of Directors has determined that financial assistance provided to the City for the Project is consistent with and meets the definition of "project" as that term is defined in Sections 501.101, 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, the EDC has determined that granting economic development incentives in accordance with this Agreement will further the objectives of the EDC, will benefit the EDC and the City and the City's inhabitants, will promote local economic development, and retain employment, business and commercial activity in the City; and

WHEREAS, the City agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Celina, Texas, to approve all programs and expenditures of EDC, and accordingly this Agreement is not effective until the City Council has approved this project and expenditure at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EDC and the City agree as follows:

SECTION 1. FINDINGS INCORPORATED. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM. This Agreement shall be effective as of the Effective Date of this Agreement and shall continue thereafter until the earlier of December 31, 2048 or termination of the Zone by the City (the "Term").

SECTION 3. ECONOMIC ASSISTANCE.

A. The EDC collects a one-half cent sales and use tax on taxable purchases within the City of Celina ("EDC Sales Tax"). Subject to the terms, covenants, and conditions of this Agreement, the EDC agrees to provide economic development incentives to the City for the Project totaling fifty percent (50%), being a one-quarter cent, of the EDC Sales Tax collected in the Zone during the Term of this Agreement (the "Incentive"). The City will deposit all Incentive payments received from the EDC into the Tax Increment Fund created by City Ordinance No. 2017-136.

B. City shall only use the Incentive to pay for Project costs, which are site improvements, streets and roads, water and sewer utilities, gas utilities, electric utilities, drainage, rail spurs and related improvements within the Zone, as permitted under the Zone's Project and Financing Plan, as it presently exists or may be amended.

C. The EDC shall make Incentive payments to the City within thirty (30) days of receiving EDC Sales Tax proceeds from the City pursuant to Section 504.301 of the Act. The EDC and City shall work cooperatively to determine the portion of the EDC Sales Tax that was collected from the Zone, with the City making the final determination as to the amount of EDC Sales Tax collected from the Zone and the number or identity of taxpayers located in the Zone. The Incentive money may not be spent unless the EDC Board of Directors has voted in favor of the expenditure. The City will provide EDC with the receipts or other documents that reflect the use of the Incentive on permissible Project expenditures each fiscal year within ninety (90) days of the end of the City's fiscal year.

D. To the extent an audit or review by the Texas Comptroller results in an adjustment to the sales and use taxes being collected from the Zone, City and EDC agree to promptly adjust the Incentive accordingly to reflect the true measure of the EDC Sales Tax collected from within the Zone.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF CITY. City covenants and agrees with EDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) **Performance**. City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and to only use the Incentive for the Project.

(b) **Certain Prohibited Economic Incentives.** City covenants and agrees that this Agreement does not violate Section 501.161 of the Texas Local Government Code, as amended.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF EDC. The EDC agrees to make Incentive payments to City after the Effective Date in accordance with the terms and provisions set forth in this Agreement.

SECTION 6. EVENTS OF DEFAULT. No party shall be in default under this Agreement until notice of the alleged failure of such party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given an opportunity to cure the alleged failure as provided herein. In the case of a failure of an obligation to make a payment required under this Agreement, the failure to pay must be cured by making the payment within five (5) business days after written notice of the failure to pay. For all other failures, no party shall be in default under this Agreement if, within thirty (30) days, the party to whom the notice was given cures the failure. A party that does not timely cure a failure shall be deemed in default. Except for failures of an obligation to make a payment under this Agreement, if a party who has received notice under this Section 6 cannot cure an alleged failure using reasonable efforts within thirty (30) days after receipt of written notice, such party shall give written notice to the other party within such thirty (30) day period (a) stating that the party cannot cure the alleged failure within thirty (30) days after receipt of written notice, and explaining the reason; and (b) providing a date by which such Party can reasonably cure the alleged failure ("Cure Time Notice"). A party who does not timely provide a Cure Time Notice shall be deemed to be able to cure the alleged failure to perform within thirty (30) days after the initial written notice of the alleged failure has been given.

SECTION 7. REMEDIES. If a Party is in default under this Agreement as provided in Section 6, the aggrieved party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

(a) entitle the aggrieved party to terminate this Agreement; or

(b) entitle the aggrieved party to suspend performance under this Agreement; or

(c) entitle the aggrieved party to seek or recover monetary damages of any kind; or

(d) limit the Term.

In addition, in the event that a failure by EDC to timely make an Incentive payment to City is not cured within five (5) days as provided in Section 6 above, the EDC expressly grants, authorizes, and assigns to the City the right to withhold the past-due amount, as determined by the City, from the EDC Sales Tax received by the City from the Comptroller of the State of Texas and then provide the remaining EDC Sales Tax to the EDC pursuant to Section 504.301 of the Act.

SECTION 8. TERMINATION OF AGREEMENT WITHOUT DEFAULT. The EDC or City, respectively, may terminate this Agreement immediately if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal. Termination of this Agreement under this Section 8 shall render this Agreement null and void from that point forward with each party having no further rights against each other under this Agreement or at law; provided, however, that (i) City shall be entitled to receive from EDC any payment due the City through the date of termination and (ii) the EDC and City agree to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible including, without limitation, the creation of an interest and sinking fund.

SECTION 9. EMPLOYMENT OF UNDOCUMENTED WORKERS. As required by Chapter 2264 of the Texas Government Code, during the term of this Agreement, City agrees not to knowingly employ any undocumented workers.

SECTION 10. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments**. This Agreement, together with any related documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton and Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton or Collin County, Texas.

(c) **Assignment.** This Agreement may not be assigned.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual or individuals executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. EDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) **Caption Headings**. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be April 9, 2019.

(h) **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, or court injunction, 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 obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(i) **Notices**. Any notice or other communication required or permitted by this Agreement is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand, (deliveries after 5:00 p.m. shall be considered delivered on the following day), (ii) by electronic mail to the electronic mail address below (deliveries after 5:00 p.m. shall be considered delivered on the following day), or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to the City: City of Celina, Texas
Attn: Jason Laumer, City Manager
142 North Ohio Street
Celina, Texas 75009
E-mail: jlaumer@celina-tx.gov

if to the EDC: Celina Economic Development Corporation
c/o City of Celina, Texas
Attn: Alexis Jackson, Executive Director
302 W. Walnut
Celina, Texas 75009
E-mail: ajackson@celinaedc.com

(j) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.

(k) **Severability**. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(l) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

THIS INCENTIVE AGREEMENT IS ENTERED INTO AS OF APRIL 9, 2019.

THE CITY:

THE CITY OF CELINA TEXAS

By: ______________________________

Name & Title: Sean Terry, Mayor

Date: ____________________

ATTEST:

____

____________________, City Secretary

EDC:

CELINA ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: ______________________________________
Name and Title: ____
Date: ______________________________

ATTEST:

____
________________________, Secretary