

Resolution No. _____

**A resolution approving amendments to the City of
Arlington's Chapter 380 Economic Development
Program Policies and Procedures**

WHEREAS, on January 27, 1998, the City Council approved Resolution No. 98-67 adopting the City of Arlington Chapter 380 Economic Development Program Policies and Procedures (Policy); and

WHEREAS, on December 6, 2005, the City Council approved Resolution No. 05-733 amending the Policy; and

WHEREAS, on December 14, 2010, the City Council approved Resolution No. 10-372 amending the policy to include the implementation and operation of the Arlington Home Improvement Incentive Program; and

WHEREAS, the Chapter 380 Economic Development Program is intended to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base and that may also diversify and expand job opportunities; and

WHEREAS, several desired revisions to the Policy have been identified; NOW
THEREFORE

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

I.

That the City Council hereby approves amendments to the City of Arlington Chapter 380 Economic Development Program Policies and Procedures.

II.

A substantial copy of the Chapter 380 Economic Development Program Policies and Procedures is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2012,
by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the
City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM

POLICIES AND PROCEDURES

I.

General Statement of Purpose and Policy

The City of Arlington is committed to the promotion of high quality development in all parts of the City and to an ongoing improvement in the quality of life for its citizens. The City of Arlington has previously developed economic development programs and incentives designed to encourage high quality business, commercial, professional sports and manufacturing concerns to locate, remain, and expand in the City of Arlington. Now the City of Arlington seeks to enhance its economic development efforts to attract and retain high quality development and jobs by establishing these Chapter 380 Economic Development Program Policies and Procedures.

These Policies and Procedures are established in an effort to develop and expand the local economy by promoting and encouraging development and redevelopment projects that enhance the City's economic base, and diversify and expand job opportunities or by promoting and encouraging projects that create additional revenue for the City without substantially increasing the demand on City services or infrastructure. The ultimate goal and public purpose of programs established hereunder is to protect and enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Arlington residents.

In furtherance of these objectives, the City of Arlington will, on a case-by-case basis, give consideration to providing economic incentives to applicants in accordance with these Policies and Procedures as authorized by Chapter 380 of the Texas Local Government Code, as amended from time to time.

Nothing in this document is intended to imply or suggest that the City of Arlington is under any obligation to provide economic incentives to any applicant. All applicants shall be considered on a case-by-case basis. The decision to approve or deny economic incentives shall be at the discretion of the City Council except for the Arlington Home Improvement Incentive Program which will be determined by policy requirements. Each applicant granted economic incentives as a Chapter 380 Economic Development Program (also referred to as Program) under these Policies and Procedures must enter into an agreement with the City of Arlington containing all terms required by these Policies and Procedures and by state law to protect the public interest of receiving a public benefit in exchange for public funds, assets and services invested to stimulate economic development in Arlington.

II.
Program Requirements

- A. To be considered for incentives as a Chapter 380 Economic Development Program under these Policies and Procedures, a project, except for Arlington Home Improvement Incentive Program projects, must at least meet the following minimum requirements:
1. Either the project
 - a. will result in a minimum increased taxable value for the City of \$25,000,000 in real and business personal property (excluding inventory and supplies); or
 - b. will result in a minimum increased taxable value for the City of \$250,000 in real and business personal property (excluding inventory and supplies) in the Downtown Business Zoning District or the Downtown Neighborhood Overlay District; or
 - c. is a multifamily housing project intended to redevelop and revitalize key areas that are zoned for multifamily or mixed use development within the City; **or**
 - c. is specifically determined by resolution of the Arlington City Council to bring benefit to the City consistent with the General Statement of Purpose and Policy as stated in Paragraph I above; and
 2. In addition, the project
 - a. is qualified as a target industry according to the City of Arlington Policy Statement for Tax Abatement; or
 - b. will make a unique or unequalled contribution to development or redevelopment efforts in the City of Arlington, due to its magnitude, significance to the community or aesthetic quality; or
 - c. will enhance the City's fiscal ability to provide high quality municipal services for the safety, comfort and enjoyment of Arlington residents, or
 - d. with regard to multifamily housing proposals, will target geographic areas such as Downtown Arlington, Lamar/Collins, and surrounding areas where there is an opportunity to support existing and new economic activity or job centers, or a need to redevelop existing multifamily housing that is in significant decline or blight.

- B. A project shall not be eligible for incentives under these Policies and Procedures if a building permit has been issued for the project prior to making application in accordance with these Policies and Procedures.
- C. Incentives provided in accordance with these Policies and Procedures will be provided only to the extent that the revenue realized by the City and attributable to a project exceeds a minimum amount established by the Agreement. The public benefit or amount of revenue realized by the City and attributable to the project must be commensurate with value of any incentives granted under this Program.

**III.
Additional Considerations**

Additional factors to be considered by the City Council in determining whether to authorize an Agreement for incentives as a Chapter 380 Economic Development Program (Program), except for Arlington Home Improvement Incentive Program projects, are:

- A. the number and types of jobs to be created or retained;
- B. the financial capacity of the applicant to undertake and complete the proposed project;
- C. other incentive programs for which the applicant has applied or is qualified;
- D. the market conditions and growth potential for the business activity, and
- E. any other factors the City Council finds helpful and relevant to accomplishing the City's economic development objectives.

**IV.
Application Process**

The following application process shall apply to all applications for consideration as a Program, with the exception of Arlington Home Improvement Incentive Program projects.

- A. An application for consideration as a Program shall be made on forms supplied by the City. An applicant may be required to provide additional information to show compliance with minimum Program requirements. If City staff determines minimum Program requirements have been met, City staff shall prepare and present a proposed Agreement with the applicant to the City Council.
- B. The City Council may consider the proposed Agreement and may take action on the proposal as it deems appropriate. Nothing in these Policies and Procedures

and nothing in the application form and process shall create any property, contract, or other legal right in any person to have the City Council consider or grant incentives.

**V.
Agreement Terms**

An Agreement established for a Program must include:

- A. a timetable and list of the kind of improvements or development that the Program will include, and conditions to assure that the Program meets or exceeds the City's requirements pertaining to property values and revenues, which in no event shall be less than the minimum Program requirements established in Paragraph II above;
- B. a complete description of the location of the proposed Program or projects included in the Program;
- C. a timetable and list of the kind and amount of property values, revenues, incomes or other public benefits that the proposed Program will provide;
- D. a provision establishing the duration of the Agreement;
- E. a provision identifying the method for calculating and source of funding for any grant, loan or other incentives provided in the Agreement;
- F. a provision providing a tangible means for measuring whether the applicant and other responsible parties have met their obligations under the Agreement;
- G. a provision providing for access to and authorizing inspection of the property and applicant's pertinent business records by municipal employees in order to determine compliance with the Agreement;
- H. a provision for cancellation of the Agreement and/or nonpayment of incentives if the Program is determined to not be in compliance with the Agreement;
- I. a provision for recapturing City funds granted or loaned, or for recapturing the value of other public assets granted or loaned, if the applicant does not meet its duties and obligations under the terms of the Agreement;
- J. a provision that allows assignment of the Agreement with prior written approval of the City Council, or without the prior written approval of the City Council provided that:
 - 1. all rights, duties, obligations and liabilities under the Agreement are assigned from the assignor to the assignee; and

2. the assignment is made subject and subordinate to the Agreement and the Chapter 380 Economic Development Program Policies and Procedures; and
 3. the assignment document is in a form and contains content acceptable to the City Attorney's Office;
- K. provisions relating to administration, delinquent taxes, reporting requirements and indemnification;
- L. a provision that the Agreement may be amended by the parties to the Agreement by using the same procedure for approval as is required for entering into the Agreement; and
- M. such other provisions as the City Council shall deem appropriate.

VI.

Arlington Home Improvement Incentive Program

- A. To be considered for an Arlington Home Improvement Incentive Program Chapter 380 Economic Development Program incentive under these Policies and Procedures, a project must at least meet the following minimum requirements:
1. Must be a single family residential homeowner within the Arlington city limits, including owners of rental properties.
 2. Must agree to expend at least \$20,000 in home improvements to the single family residential home that they own within the Arlington city limits that is the subject of the application.
 3. Must at the time of application be current on all state, federal, and local taxes related to the single family residential home that is the subject of the application.
 4. At the time of application the single family residential home must be occupied by homeowner(s) or renters.
- B. The application process will include the following:
1. Application for the incentive will be made at the same time as the request for a building permit on the subject property.
 2. The application for the incentive and the building permit will be determined at the same time.

3. If the incentive application and building permit is approved the applicant will sign an incentive contract in substantially the same form as **Exhibit “A”**, which is attached hereto and incorporated herein as if written word for word.
4. After the construction and a final inspection is completed on the subject property, the applicant will provide proof of the new Tarrant Appraisal District (TAD) value on the subject property.
5. If applicant has met all conditions of the program, the City will calculate the incentive and pay the applicant within 30 days of the submission of proof of the new TAD value on the subject property.

C. The incentive will be calculated as follows:

1. The incentive will be in an amount equal to up to ten (10) times the amount of increase in property taxes for the Residence for the first tax year following the Completion of Construction as the result of the increase in the Taxable Value of the Residence under the Arlington Home Improvement Incentive Program as determined by the City of Arlington Director of Community Planning and Development for the Approved Project.
2. The maximum incentive for any application will be \$5,000.00.
3. The applicant will have to refund any incentive paid if the applicant fails to meet the requirements of the policies and abide by the agreement signed by applicant.

D. Additional Provisions:

1. City Council will authorize through the City Manager the implementation of the Arlington Home Improvement Incentive Program by Community Planning and Development.
2. The number of active applications at any one time shall not exceed the amount of funds actually budgeted for the incentives divided by the maximum incentive available.

Adopted by Council Resolution 98-67.

(Revised 12/06/05, Resolution 05-733)

(Revised 12/14/10, Resolution 10-372)

Exhibit "A"

STATE OF TEXAS §
 §
TARRANT COUNTY § **ARLINGTON HOME IMPROVEMENT**
 § **PROGRAM INCENTIVE AGREEMENT**

This Arlington Home Improvement Program Incentive Agreement (“Agreement”) is made by and between the City of Arlington, Texas (the “City”) and _____ (“Property Owner”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

- WHEREAS, the Property Owner is the owner of a single-family residential structure located at _____, Arlington, Texas (the “Residence”); and
- WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives for the promotion of economic development; and
- WHEREAS, the promotion of the redevelopment of the existing residential housing stock in the City promotes economic development within the City and is essential for the continued economic growth and vitality of the City; and
- WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, and promotes the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and
- WHEREAS, the promotion of quality residential housing stock is a major contributing factor to the vitality of the City, which in turn stimulates trade and commerce and reduces unemployment; and
- WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion as businesses will look to the availability of quality residential housing stock to meet the needs of its work force and management; 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 and stimulate business and commercial activity 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 home improvements, modifications or remodeling of the Residence as approved by the City of Arlington’s Director of Community Planning and Development (or his designee) as being eligible for an incentive under the Arlington Home Improvement Incentive Program.

“City” shall mean the City of Arlington, Texas (Tarrant County).

“Commencement of Construction” shall mean that

- (i) the construction plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and
- (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

“Completion of Construction” shall mean the date of the City’s final inspection of the subject Residence following the construction of the Approved Project.

“Effective Date” shall mean the last date of execution hereof.

“Event of Bankruptcy or Insolvency” shall mean insolvency, appointment of receiver for the Property Owner and such appointment is not terminated within ninety (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 Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean two (2) years from Completion of Construction.

“Home Improvement Program” shall mean the Arlington Home Improvement Incentive Program authorized by Resolution No. 10-____.

“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 Property Owner or any property or any business owned by Property Owner within the City.

“Incentive” shall mean an economic development incentive in an amount equal to up to ten (10) times the amount of increase in property taxes for the Residence for the first tax year following the Completion of Construction as the result of the increase in the Taxable Value of the Residence under the Arlington Home Improvement Incentive Program as determined by the City of Arlington Director of Community Planning and Development for the Approved Project.

“Residence” shall mean the single-family residential structure, excluding the land, located at _____, Arlington, Texas.

“Property Owner” shall mean the owner of the Residence.

“Taxable Value” shall mean the appraised value of the Residence as certified by the applicable appraisal district, or its successor entity, as of January 1 of a given year.

Article III. **Warranties**

The Property Owner warrants that he/she has read the Arlington Chapter 380 Economic Development Program Policies and Procedures as amended by Resolution No. 10-_____ and that compliance with those policies and procedures are mandatory for the receipt of any incentive.

Article IV. **Economic Development Incentive**

4.1 **Payment.** Subject to the Property Owner’s continued satisfaction of the terms and conditions of this Agreement and the obligation of the Property Owner to repay the Incentive pursuant to Section 6.2 hereof, the City agrees to provide the Incentive to the Property Owner to be paid in a single lump-sum payment on April 1 of the first full calendar year following Completion of Construction. Payments shall only be made to homeowners that have met all program eligibility requirements. Homeowners that owe taxes or fines or other monies to the City of Arlington are not eligible to receive payment. Payments shall be made to homeowner participants that have successfully complied with the program requirements, including expending at least \$20,000 in home improvements to the subject dwelling in accordance with the program formula. Under no circumstances shall payment to any participating homeowner exceed \$5,000. The

Tarrant County Appraisal District determines the property tax amount for the City of Arlington, the Arlington Independent School District and Tarrant County. For the purposes of this program the City of Arlington shall utilize that portion of the property tax determined by the Tarrant County Appraisal District attributable to the City of Arlington. Payment shall be computed by calculating the difference between the pre home improvement property tax and the post home improvement property tax, multiplied by 10. Payments shall not exceed the total of \$5,000 per dwelling unit.

For example:

A home improvement project approved in October 2010 is completed in December 2010.

The City of Arlington property tax as defined by the Tarrant County Appraisal District prior to the improvements (January 1, 2010) was \$4,000.

The City of Arlington property tax as defined by the Tarrant County Appraisal District following the improvements (January 1, 2011) is \$4,300.

The difference between pre and post improvements is an increase of \$300.

Ten times the increase in taxable value improvements is ($\$300 \times 10 = \$3,000$).

In this example the total incentive is \$3,000, which would be paid on April 1, 2012.

- 4.2 **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 V. **Incentive Conditions**

The City's obligation to pay the Incentive shall be conditioned upon the Property Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

- 5.1 **Inspections.** The Property Owner agrees to submit to periodic inspections of the Residence by the City during the period beginning with the date of Commencement of Construction and ending on the date of Completion of Construction.
- 5.2 **Construction Costs.** The construction costs incurred and paid by the Property Owner for the Approved Project shall be at least \$20,000 (the "Certified Costs"). The Property Owner shall, as a condition precedent to the payment of the Incentive, provide copies of invoices, receipts and other documentation as may be reasonably requested by the City to verify the costs incurred and paid by the Property Owner for construction of the Approved Project.

- 5.3 **Completion of Construction.** The Property Owner shall cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the City approval of the Property Owner's proposed project for an Incentive.

Article VI.
Termination

- 6.1 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 owed to the City or the State of Texas by Property Owner shall become delinquent (provided, however Property Owner retains the right to timely and properly protest and contest any such Impositions);
 - (d) by the City, in the event Property Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof;
 - (e) by the City, if the Property Owner suffers an Event of Bankruptcy or Insolvency;
 - (f) by the City, if any subsequent Federal or State legislation 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 Residence following one assignment of this Agreement as provided herein.
- 6.2 In the event of termination by the City pursuant to 6.1(c), (d), (e), (f) or (g) the Property Owner shall immediately repay to the City an amount equal to Incentive paid to Property Owner, if any, prior to termination of this Agreement.

Article VII.
Miscellaneous

- 7.1 **Assignment.** This Agreement may not be assigned without the prior written consent of the City, except that this Agreement may be assigned by the Property Owner one (1) time in connection with the sale or transfer of the ownership (including a life estate) of the Residence to a subsequent owner of the Residence upon thirty (30) days prior written notice to the City. This Agreement shall

automatically terminate upon any subsequent sale or transfer of the ownership of the Residence.

- 7.2 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto.
- 7.3 **Limitation on Liability.** It is understood and agreed between the parties that the Property Owner(s), in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.
- 7.4 **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.
- 7.5 **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.
- 7.6 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, 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 Property Owner, to:

Arlington, Texas _____

If intended for City, to:

Attn: City Manager
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

With a copy to:

City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

- 7.7 **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.

- 7.8 **Governing Law.** The 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 Tarrant County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.
- 7.9 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.
- 7.10 **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.
- 7.11 **Recitals.** The recitals to this Agreement are incorporated herein.
- 7.12 **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.
- 7.13 **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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2010.

PROPERTY OWNER

BY _____
Signature

Typed or Printed Name

Typed or Printed Title

WITNESS:

CITY OF ARLINGTON, TEXAS

BY _____

Name: _____

Title: _____

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY _____

