

STATE OF TEXAS §

COUNTY OF BRAZOS §

CLAY STREET TOWNHOMES
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (“Agreement”) is entered into by and between the City of Bryan, Texas, a Texas home-rule municipal corporation, (“City”), and ROCK PAD, LLC (“Developer”).

WHEREAS, the Texas Constitution prohibits any city, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is the owner of approximately ½ acre of property that consisted previously of two parcels identified by the Brazos Central Appraisal District (“BCAD”) as properties 28905 and 28908, and which is being re-platted as lots 14R-23R, Block 4, of the replat of the Highland Park Phase 1 subdivision (“Property”), which is more fully described in the re-plat which is attached to this Agreement as **Exhibit A**; and

WHEREAS, the Property is located off College Main Street, a thoroughfare the City has been upgrading in an attempt to spur further growth and redevelopment in the area; and

WHEREAS, Developer desires to redevelop the property into townhomes, but requires upgrades to the infrastructure and is requesting assistance with the cost of constructing Clay Street, and reimbursement of a portion of the cost of relocation of electrical lines; and

WHEREAS, the City Council is willing to assist with the cost of upgrading Clay Street, provided it is publicly bid, and is willing to offer a further incentive of reimbursement of a portion of the cost of moving electrical lines in exchange for the property generating at least \$3,000,000.00 in new ad valorem taxable value; and

WHEREAS, the City Council has determined that it is in the best interests of the City to continue to redevelop the area surrounding College Main Street in order to spur further growth and redevelopment in the area and that the project planned by Developer will be beneficial to the citizens of this City at large; and

NOW, THEREFORE, for and in consideration of the premises and mutual agreements and covenants set forth herein, the City and the Developer agree as follows:

ARTICLE I
CLAY STREET

1. Developer will be responsible for engaging a contractor to construct the public infrastructure necessary to develop the Property into townhomes, including construction of sewer improvements, water improvements, and paving of Clay Street, as shown on the engineer’s estimate attached to this Agreement

as **Exhibit B**, (“Project”). Developer shall have the Project constructed at its own expense. However, the City shall reimburse the portion of the cost related to the repaving of Clay Street, which shall be subject to the conditions and as otherwise provided below.

2. Within thirty (30) days of the effective date of this Agreement, Developer shall have a professional engineer provide the City Engineer with design plans for the Project. The design plans shall be subject to final approval by the City Engineer. Prior to commencing work, Developer will obtain the necessary permits to conduct work within City right of way, including obtaining bonds, insurance, and meeting other requirements related thereto.

3. The contract for construction of the Clay Street paving improvements shall be let on a competitive bidding basis as required by law applicable to the City, specifically Texas Local Government Code Chapter 252. After approval of the Project design plans, the Developer shall advertise for or solicit bids for the construction of the Clay Street paving improvements. The City Engineer, or his designee, shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts. The selection of the contractor shall be to the lowest responsible bidder as required by law. The Developer will require the winning bidder to supply payment and performance bonds in amounts equal to the cost of the Project.

4. Upon acceptance of all or a portion of the construction of the Clay Street paving improvements, the City will reimburse the Developer for the actual cost of paving Clay Street, up to \$83,267.80. Developer may present a request for reimbursement to the City, along with copies of invoices from the contractor showing actual amounts paid. As a condition for reimbursement, the City must have accepted the water improvements and the sewer improvements and must have accepted the portion of the work on the Clay Street paving improvements for which reimbursement is being sought. Additionally, Developer must not otherwise be in breach of this Agreement.

ARTICLE II
CHAPTER 380 GRANT

5. The City will provide a Chapter 380 Economic Development grant of up to \$82,500, subject to the conditions and as otherwise provided below. The grant will be paid periodically, upon request by the Developer. Developer must have met the conditions set forth below in order to be eligible for a grant:

- a. Developer must not be in breach of this Agreement;
- b. A certificate of occupancy must have been issued for the Property;
- c. All ad valorem taxes for the Property must have been paid; and
- d. The BCAD appraised value for the Property must be at least \$3,316,840.

6. The grant will be equal to fifty percent (50%) of the taxes generated by the Increased Value of the Property. The Increased Value of the Property is the BCAD appraised value of the property (following issuance of one or more certificates of occupancy by the City), less the base value of \$316,840.

7. Once the Developer has met the above conditions, and on an annual basis thereafter while this Agreement remains in effect, the Developer may submit a request for a grant payment to the City. Requests shall be made in the month of October, and shall be payable out of the taxes paid for that year only. The Developer must include a receipt from the Brazos County Tax Office showing that the taxes for the year have been paid. Failure to request reimbursement waives any right to a reimbursement out of

8. The City’s obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

ARTICLE V
TERM

9. The term of this Agreement shall be from the effective date, which shall be the date signed by the last party to sign, and shall terminate upon the occurrence of one of the following:
- a. Developer has received a combined total of \$82,500 in grant payments;
 - b. Developer has received seven (7) annual grant payments; or
 - c. Thirty (30) months have passed since the effective date of this Agreement and Developer has not yet qualified for, or has not yet requested, a grant payment.

ARTICLE VI
MISCELLANEOUS

10. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the term of this Agreement, Developer shall notify City of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the City not later than the 120th day after the date the City notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

11. **Indemnification.** DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

12. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

13. **Texas law to apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the

City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

14. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

15. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

16. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

17. Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY

City of Bryan
City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

DEVELOPER

Rock Pad, LLC
attn: Philip Carey
PO Box 12221
College Station, Texas 77842

18. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

19. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

20. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

21. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

22. Time is of the Essence. Time is of the essence in all matters pertaining to the performance of this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal holiday, then that obligation shall be performable the next following regular business day.

[signatures to follow]

Executed to be effective this ___ day of _____, 20__.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

**DEVELOPER
ROCK PAD, LLC**

By: _____
Philip Carey, Managing Member

EXHIBIT B
Engineer's Estimate

Clay Street Townhomes
Infrastructure Construction Costs
REVISED 7/7/2016

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Cost	City	Developer	% Split
Paving								
1	Mobilization/ Construction Staking	1	LS	\$ 7,500.00	\$ 7,500.00	\$ 3,750.00	\$ 3,750.00	50%
2	Traffic Control	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ -	
3	Demo Existing Pvmnt & Curb	5,700	SF	\$ 5.00	\$ 28,500.00	\$ 28,500.00	\$ -	
4	Hydrated Lime - 6" @ 6% (115 lbs/cf)	15	TN	\$ 160.00	\$ 2,400.00	\$ 2,400.00	\$ -	
5	Mixing & Compaction of 6" Lime Subgrade	930	SY	\$ 3.50	\$ 3,255.00	\$ 3,255.00	\$ -	
6	6" Concrete Paving w/ Mono Curb	811	SY	\$ 38.00	\$ 30,818.00	\$ 30,818.00	\$ -	
7	4" Sidewalk	1,350	SF	\$ 5.00	\$ 6,750.00	\$ 3,375.00	\$ 3,375.00	50%
8	ADA Ramp	4	EA	\$ 550.00	\$ 2,200.00	\$ 1,100.00	\$ 1,100.00	50%
Subtotal Street & Sitework:					\$ 83,923.00	\$ 75,698.00	\$ 8,225.00	
Water								
1	8" PVC DR-14,CL200 (AWWA C900), Structural	275	LF	\$ 40.00	\$ 11,000.00	\$ 5,500.00	\$ 5,500.00	50%
2	Connection to Existing Waterlines (2 total)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00	50%
3	Misc Gate Valves w/ CI Valve Box	5	EA	\$ 950.00	\$ 4,750.00	\$ 2,375.00	\$ 2,375.00	50%
4	Misc Fittings	6	EA	\$ 400.00	\$ 2,400.00	\$ 1,200.00	\$ 1,200.00	50%
5	Hydrant Assembly w/ Tee	1	EA	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00	50%
6	Double Water Service	5	EA	\$ 2,500.00	\$ 12,500.00	\$ 6,250.00	\$ 6,250.00	50%
Subtotal Water:					\$ 38,650.00	\$ 19,325.00	\$ 19,325.00	
Sewer								
1	6" PVC SDR-26 D3034, Structural	275	EA	\$ 55.00	\$ 15,125.00	\$ 7,562.50	\$ 7,562.50	50%
2	4' STD Manhole (6-8' Depth)	2	EA	\$ 3,000.00	\$ 6,000.00	\$ 3,000.00	\$ 3,000.00	50%
3	Single Sewer Service	2	EA	\$ 1,300.00	\$ 2,600.00	\$ 1,300.00	\$ 1,300.00	50%
4	Double Sewer Service	5	EA	\$ 1,300.00	\$ 6,500.00	\$ 3,250.00	\$ 3,250.00	50%
5	Trench Safety	275	LF	\$ 1.50	\$ 412.50	\$ 206.25	\$ 206.25	50%
6	TV Inspection	275	LF	\$ 5.00	\$ 1,375.00	\$ 687.50	\$ 687.50	50%
Subtotal Sewer:					\$ 32,012.50	\$ 16,006.25	\$ 16,006.25	
Misc								
1	Electrical Relocation (Quote via BTU)	1	LS	\$ 150,000.00	\$ 150,000.00	\$ 75,000.00	\$ 75,000.00	50%
2				\$ -	\$ -	\$ -	\$ -	
3				\$ -	\$ -	\$ -	\$ -	
Subtotal Misc:					\$ 150,000.00	\$ 75,000.00	\$ 75,000.00	

Construction Estimate:	\$ 304,585.50	\$ 186,029.25	\$ 118,556.25
Contingency (10%):	\$ 30,458.55	\$ 18,602.93	\$ 11,855.63
Total:	\$ 335,044.05	\$ 204,632.18	\$ 130,411.88

