

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> November 12, 2013		<b>DATE SUBMITTED:</b> October 25, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Economic Development		<b>SUBMITTED BY:</b> Frank Clark	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<p><b>AGENDA ITEM DESCRIPTION:</b> Consider authorizing the City Council of the City of Bryan, Texas to create the Regency Gardens Economic Development Program pursuant to Chapter 380 of the Texas local Government Code; authorizing the Mayor to execute an agreement between the City of Bryan and R.A. Galindo Inc., the developer of the “Regency Gardens” multi-family residential project.</p>			
<p><b>SUMMARY STATEMENT:</b> The Chapter 380 Agreement (Agreement) is necessary to incentivize the 200 unit multi-family residential development that includes 186,028 square feet of living, club house, pool, and gym space located at 2551 West Villa Maria.</p> <p>The primary incentive of this proposed Agreement is to reimburse the Developer for expenses incurred (not to exceed \$134,000) to install public utilities (water/sewer/electrical) to the site of the multi-family complex. Reimbursement is to be paid to the Developer only if the following conditions are met:</p> <ul style="list-style-type: none"> <li>• after a period of five (5) years (after issuance of certificate of occupancy), the BCAD value is \$22 million or above;</li> <li>• taxes must be paid every year on BCAD value;</li> <li>• the Developer is to donate approximately 23 acres to the Turkey Creek Recreation &amp; Conservation Greenbelt Coalition when the tax-exempt organization is formed, satisfying the Developer’s parkland dedication requirements of 2.22 acres;</li> <li>• the Developer is required to pay the parkland development fee of \$58,400 and all City of Bryan permit fees.</li> </ul> <p>The Developer will be responsible for all costs of construction of the utility services to the site, and the City will reimburse hard costs, per Agreement terms, for which the Developer has documentation.</p>			
<p><b>STAFF ANALYSIS AND RECOMMENDATION:</b> The proposed agreement includes zero cash upfront for public infrastructure, while encouraging development of Bryan’s west side with the addition of a 200 unit multi-family complex. The proposed development, as a benchmark for compliance, is projected to add \$22,000,000 in BCAD value to the tax roll. The overall economic development of Bryan’s west side will be greatly enhanced by the added real estate value.</p> <p>Conversely, the proposed agreement requires the City of Bryan to reimburse the Developer up to \$134,000 in slightly less than six (6) years. This agreement will set precedence for future development requests in the City of Bryan for similar incentives on multi-family projects.</p> <p>Staff recommends approval of the proposed Chapter 380 Agreement. The proposed agreement requires zero up-</p>			

front City funding, with the bulk of the reimbursement coming from future ad valorem tax revenues. This reimbursement is capped both in terms of value and length of time.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve 380 Agreement.
2. Modify 380 Agreement and then approve, which may require consideration at a future City Council meeting and additional negotiation with the Developer.
3. Deny 380 Agreement and provide direction to City staff.

**ATTACHMENTS:** The Chapter 380 Agreement – Note that R.A. Galindo has signed the agreement and it is on file at the City Secretary’s office.

**FUNDING SOURCE:** General Fund and future ad valorem tax revenues from developed site.

**APPROVALS:** Hugh R. Walker, 10/30/2013

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 10-31-2013

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 11-04-2013

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**REGENCY GARDENS**  
**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 R. A. Galindo Inc, a Texas corporation, (“Developer”).

WHEREAS, the proposed development site, (“Premises”), consists of approximately 43 acres of land out of the Zeno Phillips League, the T.J. Wooten League, and the J.H. Jones League, located at the intersection of Kimmy Dr. and W. Villa Maria Rd, is owned by the Developer and is a prime location for multi-family development; and

WHEREAS, the Developer intends to construct a multi-family residential apartment development on the Premises, containing approximately 200 residential units, with appropriate amenities thereto, including green space (“Project”); and

WHEREAS, recent studies of and plans for development within the west side of Bryan ("Area") have demonstrated a need for multifamily residential development with active uses within the Area; and

WHEREAS, the City Council recognizes the positive economic impact that the Project will bring to the City through the attraction of new retail and commercial development to the Area; elimination of unemployment and underemployment through the creation and retention of new jobs, and the retention and growth of the ad valorem and personal property tax revenues generated by the Project; and

WHEREAS, the City Council finds a project of the type contemplated by Developer should maintain and/or enhance the economic strength of the City to the long-term interest and benefit of the City; and

WHEREAS, the City operates water and wastewater utility systems pursuant to the City’s Certificates of Convenience and Necessity to retail users within the City’s certificated area, which includes the Area; and

WHEREAS, the Developer has requested the City connect to the existing 12-inch water line located on the north side of Villa Maria by boring under Villa Maria approximately 200 feet and running an 8-inch water line to the Developer provided water vault/master meter located at the end island of the parking lot on the Northwest corner of the development, and provide a connection for the Developer to connect his private collection system to the public system, with all costs to be paid by the Developer to City; and

WHEREAS, the City owns and operates an electric utility system known as Bryan Texas Utilities (“BTU”) and the Premises is located within the service territory of BTU; and

WHEREAS, the Developer has requested BTU to provide electric service at a BTU provided switchgear on the Regency Garden site and the Developer has also requested that BTU construct a feeder circuit connecting the single switchgear to two other switchgears connected to a loop circuit; and

WHEREAS, Developer is required to pay all the costs incurred by the City in connecting these utilities, totaling \$199,303.89; and

WHEREAS, Developer requests an economic development incentive from the City in the form of a reimbursement of up to \$134,000.00 of the cost associated with getting the water, sewer, and electrical utilities to the property (specifically excluding the cost of the feeder circuit that will directly serve the complex), provided that the Property meets and maintains the required appraised value as set forth herein; and

WHEREAS, Developer has proposed to dedicate approximately 23 acres to the “Turkey Creek Recreation and Conservation Greenbelt Coalition,” a tax-exempt organization now being formed, and has requested that this dedication be accepted in lieu of the ordinance requirement of 2.22 acres of parkland or its alternate mode of \$26,200 cash compliance; and

WHEREAS, the Developer understands the ordinance requirement for payment of the park development fee of \$58,400 is not in any way affected; and

WHEREAS, the City Council has determined that it is in the best interests of the City’s residents to encourage residential growth in this area and that it is worth reimbursing Developer’s costs under this Agreement if the value of this Property meets the required thresholds; 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**  
**SCOPE OF WORK - CITY**

1. The City will bore under Villa Maria adjacent to the Regency Gardens development and connect a tee to the existing 12-inch water line and run an 8-inch water line under Villa Maria for the Developer to connect his master meter located at the northwest corner island of the development. The City will develop a construction plan for the waterline using the required sizing provided by the Developer to facilitate this connection. The City will make a connection for Developer to connect his private waste water collection system to the public system. The exact location of these connections will be determined during the Site Plan process and will be agreed to by the Parties. The cost of this work will be \$ \$70,000 which is to be paid by Developer but is reimbursable as set forth below.

2. The City, acting through BTU, will supply electrical service to the Regency Garden site at a location to be determined during the site plan process, but which is shown for reference on **Exhibit A**.

The cost of this work will be \$49,000.00 which is to be paid by Developer but is reimbursable as set forth below. The City will be responsible for the following:

- a. Bore under Villa Maria.
- b. Provide and install steel casing per TxDOT requirements.
- c. Provide and install switchgear.
- d. Provide and install switchgear pad.
- e. Provide and install conduit for 600 amp underground cable.
- f. Install and terminate 600 amp underground cable.

3. The City, acting through BTU, on a time schedule mutually agreed to by the parties, will construct a feeder circuit from the single switch gear to the two switch gears for the loop circuit. The cost of this work will be \$80,303.89 which is to be paid by Developer and is not reimbursable. The City will be responsible for the following:

- a. Provide pads and install two switchgears to serve the complex.
- b. Provide and install conduit for 600 amp underground cable.
- c. Install and terminate 600 amp underground cable.

4. The City, acting through BTU, construct the loop circuit from the two switchgears to the transformers. The cost of this work will be \$339,833.94 which will be paid by the City and not Developer. The City will be responsible for the following:

- a. Provide conduit for 200 amp underground cable and necessary glue, elbows, warning tape, etc.
- b. Provide conduit for service to the buildings and necessary glue, elbows, warning tape, etc.
- c. Provide and install pad mount transformers.
- d. Provide and install 200 amp underground cable.
- e. Provide and install service conductors to the buildings.
- f. Provide and install electric meters.

## **ARTICLE II**

### **SCOPE OF WORK - DEVELOPER**

5. For the water line, Developer will be responsible for providing a fire flow report, showing the required line size for the public water main, sealed by a professional engineer. The fire flow report shall show the flow requirement and the maximum velocity in the line. Developer shall also grant a 15-foot waterline easement (based on final installation) for the waterline perpendicular to the right of way line for the entire length of the waterline route and around the meter vault and irrigation meter. Developer shall clear the easement along the entire route of the waterline prior to construction of the waterline by the City. Once the necessary information has been provided by Developer to the City to size the master meter, the Developer shall pay for the master meter through the City's Water Services Department. Developer will be responsible for having the master meter installed and connected to the public water main. Developer shall construct on-site infrastructure in accordance with City standards.

6. For the wastewater line, Developer shall provide the required line size for the tap. Developer shall also provide a benchmark on site and the required elevation for the service stub at the point of connection.

7. With respect to the loop circuit from the switchgears to the transformers, Developer will be responsible for installing BTU supplied conduit from the feeder circuit switchgear through the complex. Developer will be responsible for constructing the pads for the pad mount transformers. Additionally, Developer will be responsible for supplying and installing the electric meter packs (including rigid conduit/elbows from meter pack to BTU's service conduit connection).

8. Any required design, material, or labor related to this project which is not specifically addressed by the City's scope of work, regardless of whether it is or is not specifically addressed by Developer's scope of work, shall be Developer's responsibility.

9. Developer is responsible for the cost of doing this work, which is not reimbursable.

### **ARTICLE III** **PAYMENT**

10. Within thirty days of the effective date of this Agreement, Developer will pay the City \$199,303.89 to cover the cost of the construction to be performed by the City. The City will not begin the work described in this Agreement until payment has been received.

### **ARTICLE IV** **PARKLAND DEDICATION**

11. The City hereby conditionally deems that Developer has complied with the parkland dedication requirement set forth in Section 110-60(b) of the City of Bryan Code of Ordinances, which requires dedication of 2.22 acres of parkland or payment in lieu of \$26,200. As a condition for the foregoing, Developer, through one of its affiliate companies, shall cause approximately twenty-three (23) acres to be dedicated to the "Turkey Creek Recreation and Conservation Greenbelt Coalition" or to an equivalent entity approved in advance by the City, when such entity is formed. Developer is still responsible for payment of the park development fee required by Section 110-60(d) of the City of Bryan Code of Ordinances, which amounts to \$58,400.00. If Developer has failed to cause the dedication of approximately twenty-three (23) acres within five (5) years immediately following issuance of a certificate of occupancy for the Property, Developer shall be in breach of this Agreement, and shall be required to make the payment in lieu of dedication of \$26,200.

### **ARTICLE V** **REIMBURSEMENT**

12. Developer or its assignee shall be entitled to a reimbursement of up to \$134,000.00 (the reimbursable costs paid by Developer as set forth above) but only if the Property reaches an appraised value of at least \$22,000,000.00, as appraised by the Brazos County Appraisal District ("BCAD"), within five years immediately following issuance of a certificate of occupancy for the Property. Developer must pay all taxes owed for the Property for all five years that this Agreement is in place. Developer, through an affiliate company, must also have dedicated the approximately twenty-three (23) acres to the "Turkey Creek recreation and Conservation Greenbelt Coalition", or equivalent entity approved in advance by the City, as well as payment of the park development fee. At the end of the fifth year following issuance of the certificate of occupancy, Developer may submit a request for reimbursement of the \$134,000.00 by providing the City with documentation that taxes have been paid for all five years and that the Property has reached the required valuation. Provided that Developer is not in breach of this Agreement, the City will tender payment within thirty (30) days of receiving all required information. This reimbursement

shall be due to Developer or its assignee regardless of who the title owner of the property may at that time be.

13. Developer agrees to pay all ad valorem taxes and assessments owed for the Property prior to such taxes and/or assessments becoming delinquent. Developer shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. In the event that Developer contests such tax or assessment, all uncontested taxes and assessments shall be promptly paid prior to delinquency. If Developer undertakes any such contest, it shall notify City and keep City apprised of the status of such contest. Should Developer be unsuccessful in any such contest, Developer shall promptly pay all taxes, penalties and interest resulting therefrom.

14. This Agreement is subject to annual appropriation of funds for same by the City Council. Nothing herein shall constitute a debt as that term is used in Article 11, Section 5 of the Texas Constitution.

## **ARTICLE VI** **MISCELLANEOUS**

15. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.

16. 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.

17. 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.

18. 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.

19. 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.

20. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive

its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

21. 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.

22. 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**

Ramiro A. Galindo, Inc.  
Ramiro Galindo  
1920 W. Villa Maria Ave.  
Bryan, Texas 77807

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

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

25. 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.

26. 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.

**Executed and effective on this the \_\_\_\_ day of \_\_\_\_\_, 2013.**

**ATTEST:**

**CITY OF BRYAN, TEXAS**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**RAMIRO A. GALINDO, INC.**

\_\_\_\_\_  
Ramiro A. Galindo