

Staff Report



Update to City of Arlington Policy Statement for Chapter 380 Economic Development Program Policy	
City Council Meeting Date: 11-13-18	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution amending the City's Chapter 380 Economic Development Program Policies relative to the Arlington Home Improvement Incentive Program.

PRIOR BOARD OR COUNCIL ACTION

On January 27, 1998, the City Council approved Resolution No. 98-67 adopting the City of Arlington Chapter 380 Economic Development Program and Policies and Procedures.

On December 6, 2005, the City Council approved Resolution No. 05-733 amending the City of Arlington's Chapter 380 Economic Development Program Policies and Procedures.

On December 14, 2010, the City Council approved Resolution No. 10-372 amending the City of Arlington's Chapter 380 Economic Development Program Policies and Procedures to include the implementation and administration of the Arlington Home Improvement Incentive Program.

On October 30, 2012, the City Council approved Resolution No. 12-301 amending the City of Arlington's Chapter 380 Economic Development Program Policies and Procedures.

On November 13, 2018, the Economic Development Council Committee discussed and reviewed proposed revisions to the City of Arlington's Chapter 380 Economic Development Program Policies and Procedures as related to the Arlington Home Improvement Incentive Program.

ANALYSIS

The Chapter 380 Economic Development Program 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, create additional revenue to the city without substantially increasing demand on City services or infrastructure, and that may also diversify and expand job opportunities.

Related to the Arlington Home Improvement Incentive Program (AHIIP), the Policy is intended to provide an incentive to single-family residence owners to invest in their property to increase the quality of the housing stock and contribute to the growth of the City. In an effort to reinvigorate the AHIIP program and increase the use of this incentive for Arlington homeowners, recommended Policy updates provide clarification of program administration. Primary amendments include:

- Allowing AHIIP applications to be submitted at any point during the Building Permit application process, as long as required building permits are issued prior to beginning work on the approved project
- Requiring applicant to submit documentation of proof that property taxes have been paid prior to paying an incentive on the positive increase in city property tax value

- Update and clean-up to relative administrative procedures

FINANCIAL IMPACT

None

ADDITIONAL INFORMATION

Attached:

Resolution w/Amended Chapter 380
Agreement Policy

Under separate cover:

None

Available in the City Secretary's office:

None

STAFF CONTACTS

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Office of Strategic Initiatives

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Resolution No. 18-291

A resolution approving amendments to the City of Arlington's Chapter 380 Economic Development Program Policies and Procedures relative to the Arlington Home Improvement Incentive Program

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 (the "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, on October 30, 2012, the City Council approved Resolution No. 12-031 amending the Policy to facilitate redevelopment opportunities; 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, desired revisions to the Policy relative to the Arlington Home Improvement Incentive Program 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.

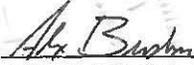
A substantial copy of the amended Chapter 380 Economic Development Program Policies and Procedures is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 13th day of November, 2018,
by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the
City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

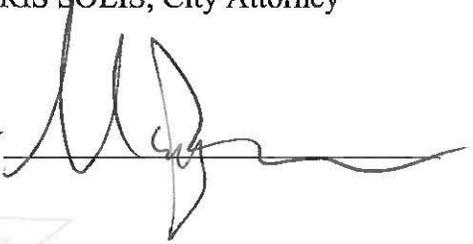
ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, 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**
 - d. 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 must be made to the Office of Strategic Initiatives prior to any work commencing on the project.

2. If the incentive application 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.
3. After the incentive contract is executed the the applicant will annually provide proof of payment of all taxes owed on the subject property for the term of the contract.
4. If applicant has met all conditions of the program, the City will calculate the incentive and pay the applicant the incentive in accordance with the terms of the incentive contract.

C. The incentive will be calculated as follows:

1. The incentive will be in an amount equal to up to ten (10) times the positive difference between the amount of ad valorem taxes paid by the applicant to the City for the subject property in the tax year beginning January 1st of the year following completion of the improvements and the amount of ad valorem taxes paid by the applicant to the City for the subject property in the tax year beginning January 1st of the year the incentive contract is executed.
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 incentive contract 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 the Office of Strategic Initiatives.
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.
3. The applicant shall comply with all City ordinances, state and federal laws in performing its obligations under the incentive contract. This includes obtaining any and all necessary governmental approvals and permits for the project.

Adopted by Council Resolution 98-67.

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

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

(Revised 10/30/12, Resolution 12-301)

Exhibit "A"

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:

I.
DEFINITIONS

- A. Added Tax Revenue – shall mean the positive difference between the amount of ad valorem taxes paid by the Property Owner to the City for the Residence in the tax year beginning January 1st of the year following the Completion Date and the Base Tax Revenue.
- B. Approved Project – shall mean a project for home improvements, modifications, or remodeling of the Residence approved by the City of Arlington’s City Manager (or his designee) as being eligible for an incentive under the Home Improvement Program and identified in the attached **Exhibit “A.”**
- C. Base Tax Revenue – shall mean the amount of ad valorem taxes paid by the Property Owner to the City for the Residence in the tax year beginning January 1st of the year this Agreement is executed.
- D. Commencement Date – shall mean the date when:
 - (i) the plans for the Approved Project 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 Approved Project have been issued by all applicable governmental authorities.
- E. Completion Date – shall mean the date of the City’s final inspection of the subject Residence following the conclusion of the Approved Project.
- F. Effective Date – shall mean the date of execution noted above.
- G. 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.
- H. Expiration Date – shall mean the day following the date the City pays the Incentive, if any, to the Property Owner.
- I. Home Improvement Program – shall mean the City of Arlington Home Improvement Incentive Program adopted by Resolution No. 10-372 on December 14, 2010.

- J. Incentive – shall mean a one-time payment provided by the City to the Property Owner in an amount equal to up to ten (10) times the Added Tax Revenue, provided, however, under no circumstances shall the Incentive paid under this Agreement exceed Five Thousand Dollars (\$5,000.00).
- K. Residence – shall mean the single-family residential structure, excluding the land, located at _____, Arlington, Texas.
- L. Property Owner – shall mean the owner of the Residence.

II.
TERM

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

III.
ECONOMIC DEVELOPMENT INCENTIVE

- A. Subject to the Property Owner’s continued compliance with and satisfaction of the terms and conditions of this Agreement as set forth in Article IV, as well as the Property Owner’s obligation to repay the Incentive pursuant to Section V.B., the City agrees to pay the Incentive to the Property Owner on or before April 1st of the second full calendar year following the Completion Date.
- B. The Incentive provided for in this Agreement shall be paid solely from lawfully available funds that have been appropriated by the City Council for the Home Improvement Program. Funds available for the Home Improvement Program shall be paid out on a first come first serve basis. Under no circumstances shall the City’s obligation to pay the Incentive 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 third party.

IV.
INCENTIVE CONDITIONS

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

- A. Inspections. The Property Owner agrees to submit to periodic inspections of the Residence by the City during the period beginning on the Commencement Date and ending on the Completion Date.

- B. Improvement Costs. The cost of the Approved Project incurred and paid by the Property Owner shall be at least Twenty Thousand Dollars (\$20,000). The Property Owner shall, as a condition precedent to the payment of the Incentive, provide copies of all invoices, receipts, and other documentation as may be reasonably requested by the City to verify that cost incurred for the Approved Project and payment thereof by the Property Owner.
- C. Completion of the Approved Project. The Property Owner shall cause the Completion Date to occur on or before the second anniversary of the Effective Date.
- D. Payment of Taxes, Fines, Other Monies. The Property Owner shall timely pay all taxes owed to the City for the Residence as well as any other property owned by the Property Owner and located in the City of Arlington, Texas throughout the term of this Agreement. In addition, the Property Owner shall timely pay all fines or other monies owed to the City of Arlington throughout the term of this Agreement.
- E. Undocumented Workers. The Property Owner shall not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if the Property Owner is convicted of a violation under 8 U.S.D. section 1324a(f), the Property Owner shall repay to the City the full amount of the Incentive plus 10% per annum from the date the Incentive was made. Repayment shall be paid within 120 days after the date the Property Owner receives notice of such from the City.
- F. Compliance with Laws. The Property Owner shall comply with all City ordinances, state and federal laws in performing its obligations under this Contract. This includes obtaining any and all necessary governmental approvals and permits for the Approved Project.

V.
TERMINATION

- A. This Agreement shall terminate upon the occurrence of any one of the following:
 - i. mutual agreement of the parties;
 - ii. the Expiration Date;
 - iii. by the City, in its sole discretion, in the event the Property Owner breaches any term or condition of this Agreement and such breach is not cured within sixty (60) days after written notice from the City thereof;
 - iv. by the City, in its sole discretion, if the Property Owner suffers an Event of Bankruptcy or Insolvency;

- v. by the City, in its sole discretion, if the Approved Project does not result in Added Tax Revenue;
 - vi. 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
 - vii. by the City, in its sole discretion, in the event that funding allocated by the City Council for purposes of funding the Home Improvement Program is depleted, reprogrammed for other purposes, or otherwise unavailable for the intended purposes of the Home Improvement Program.
- B. In the event of termination by the City pursuant to Section V.A.iii. or V.A.iv., the Property Owner shall immediately repay the City an amount equal to the Incentive, if any, paid to the Property Owner prior to termination of this Agreement. The Property Owner's obligation to repay the Incentive shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the City, to initiate any litigation necessary to pursue repayment of the Incentive pursuant to this Agreement.

VI. **MISCELLANEOUS**

- A. Assignment. This Agreement may not be assigned by the Property Owner without the prior written consent of the City.
- B. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto.
- C. Limitation on Liability. It is understood and agreed between the parties that the Property Owner, in satisfying the conditions of this Agreement, including but not limited to causing the completion of the Approved Project, is acting independently and the City assumes no responsibilities or liabilities to any third parties in connection with these actions.
- D. Appraisal. The final taxable value of the Residence shall be determined by the Tarrant Appraisal District. The City makes no representations as to the resulting amount of Added Tax Revenue, if any, from the Approved Project.
- E. 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.
- F. Authorization. Each party represents that they have full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

G. Notices. All notices called for or required by this Agreement shall be addressed to the following in writing, by certified mail, postage prepaid, or by hand delivery:

Property Owner: _____

City: City of Arlington
Attention: _____
Mail Stop _____
P.O. Box 90231
Arlington, Texas 76004-3231

With a copy to: City of Arlington
City Attorney
Mail Stop 63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

H. Applicable Law. This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

I. 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.

J. Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

K. Severability. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and it is the intention of the parties 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 to the original provision as possible.

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

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

N. Headings. The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

PROPERTY OWNER

BY _____
Signature

Typed or Printed Name

WITNESS:

CITY OF ARLINGTON, TEXAS

BY _____
Signature

Typed or Printed Name

Typed or Printed Title

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

PROPERTY OWNER
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, who is known to me or who was proved to me on the oath of _____ (*name of person identifying the acknowledging person*) or who was proved to me through _____ (*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20__.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as a _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 20__.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

Exhibit "A"

Approved Project