



RESOLUTION NO. 2014-078

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 14302 JUNIPER COVE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City (“the Incentive Program”); and

WHEREAS, the owner of the property generally located at 14302 Juniper Cove has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement Todd W. Warren and wife, Sonya Gay Warren with respect to property generally known as 14302 Juniper Cove, Farmers Branch, Texas 75234, substantially in the form set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS
BRANCH, TEXAS, THIS 6TH DAY OF OCTOBER, 2014.**

ATTEST:

APPROVED:

Angela Kelly, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:9/8/14)

STATE OF TEXAS §
 § **RESIDENTIAL DEMOLITION/REBUILD PROGRAM**
 § **INCENTIVE AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (the “City”), and Todd W. Warren and wife, Sonya Gay Warren (collectively, the “Property Owner”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

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 existing 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, as well as 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 the housing stock is a major contributing factor to the growth 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 since business will look to the available housing stock to meet the needs of management and the work force; 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; and

WHEREAS, the Property Owner is the owner of a one-family detached residential dwelling located at 14302 Juniper Cove, Farmers Branch, Texas 75234 (hereinafter defined as the “Residence”); and

WHEREAS, the Property Owner intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the “New Residence”); and

WHEREAS, the Property Owner has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an “Approved Project”) under the City Demolition/Rebuild Property Incentive Program (hereinafter defined as a “Program”);

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 last date of execution hereof (the “Effective Date”) and shall 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 the approval of the demolition of the Residence and the construction of the New Residence as an approved project by the City as being eligible for the incentives under the Program.

“Base Year” shall mean January 1 of the calendar year immediately preceding the date of approval of the Project.

“City” shall mean the City of Farmers Branch, Texas.

“Closing Costs” shall mean loan origination fees, points, title company escrow fees, cost of tax certificates, courier charges, document recording fees, document preparation fees, appraisal fees, costs of survey, and mortgagee title policy premium purchased for the benefit of the permanent financing lender, to be paid by Property Owner at the time of closing on the permanent financing of the New Residence. “Closing Costs” shall not include payment of homeowner’s insurance premium for the first year, payment of funds into any escrow required by the permanent financing lender for deposit of estimated installments for payment of homeowner’s insurance or ad valorem taxed, down payment of principal on the permanent financing, commissions payable to any real estate agent or broker, or property taxes owed on the Property which are required to be paid at Closing.

“Commencement Date” shall mean the date the City issues a certificate of occupancy or certificate of completion for the New Residence.

“Commencement of Construction” shall mean that (i) the 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 that (i) substantial completion of construction of the New Residence has occurred; and (ii) the City has issued a final certificate of occupancy of certificate of inspection for 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.

“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 ten (10) times the amount of increase in real property taxes for the Property for the first tax year following the date of Completion of Construction of the New Residence as the result of the increase in the Taxable Value of the New Residence compared to the Taxable Value of the Residence during the Base Year.

“Land” shall mean the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which property is described as Lot 5, Block G, Brookhaven Hills West, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the Map or Plat thereof recorded in Volume 296, Page 1079, Plat Records, Dallas County, Texas.

“New Residence” shall mean a new one family detached dwelling to be constructed on the Land, as approved by the City as an Approved Project, excluding the Land.

“Payment Request” shall mean (a) with respect to Optional Early Installment described in Section 3.2, below, a written request to be to the City submitted not later than ten (10) days prior to closing on the permanent financing of the New Residence accompanied by the proposed purchaser’s settlement statement showing the date of closing and the amount of purchaser’s closing costs to be paid at closing; and (b) in the case of the Incentive, a written request from the Property Owner to be submitted to the City on or before April 1 of the first calendar year following the first calendar year after Completion of Construction of the New Residence

accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as the City may reasonably request.

“Project” shall mean the demolition of the Residence and the construction of the New Residence on the Land.

“Property” shall mean the Land and the Residence or New Residence, as the case may be.

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

“Residence” shall mean the existing one family detached dwelling located on the Land at the time of approval of the Approved Project by the City.

“Residential Demolition/Rebuild Program” shall mean the City of Farmers Branch Residential Demolition/Rebuild Incentive Property Incentive Program adopted by Resolution of the City Council, as amended.

“Taxable Value” shall mean the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1 of a given year.

Article III Economic Development Incentive

3.1 Payment.

(a) 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 5.2, hereof, the City agrees to provide the Incentive to the Property Owner to be paid in a single lump-sum payment on or after April 1 following the first full calendar year following the date of Completion of Construction of the New Residence. The City agrees to pay the Incentive not later than thirty (30) days after receipt of the completed Payment Request, but in no case prior to April 1 of following the first full calendar year following the date of Completion of Construction of the New Residence.

(b) Solely for purposes of illustrating Section 3.1(a), above, assume the assessed value for the Residence is \$200,000 (i.e. not including the value of the Land) for tax year 2014 (the Base Year Taxable Value), the Approved Project is approved by the City in 2014 (i.e. the Base Year), and demolition commences in 2014. Assuming further Completion of Construction of the Approved Project occurs on May 15, 2015, the first full calendar year after Completion of Construction will be Tax Year 2016. If the value of the New Residence (i.e. not including the value of the Land) for Tax Year 2016 is \$300,000, the Incentive will be calculated based on \$100,000 (the difference in Taxable Value between the Residence in the Base Year and the New Residence for the first full calendar year after Completion of Construction). Assume further the City’s property tax rate for Tax Year 2015 (the tax year in which Completion of Construction

occurred) was \$0.6241 per \$100 of assessed value, the amount of the Incentive will be \$6241.00 ($\$100,000/\$100 \times \$0.6241 \times 10 = \6241.00). Except as provided in Section 3.2, below, the Incentive will be payable in a single lump sum after receipt of a Payment Request by the City from the Property Owner after December 31, 2016, and before April 1, 2017.

3.2 Optional Early Installment.

(a) Upon written request delivered to the City not later than ten (10) days prior to closing on the permanent financing for the New Residence, the Property Owner may request payment of a portion of the Incentive (“the Optional Early Installment”) in an amount not to exceed the lesser of (i) one-half (1/2) of the estimated Incentive (as estimated pursuant to this Section 3.2(a)) and (ii) the total Closing Costs shown on the purchaser’s settlement statement delivered with the Payment Request. For purpose of determining the amount of the Optional Early Installment, the calculation shall be based on (i) the difference in the Taxable Value of the Residence in the Base Year and the estimated value of the New Residence shown on the building permit(s) application(s) submitted to the City and (ii) the City’s ad valorem tax rate for the year of Completion of Construction. If the Property Owner elects to receive the Optional Early Installment, the balance of the Incentive will be paid on the date in which the Incentive would have been paid under Section 3.1 had the Property Owner not elected to receive the Optional Early Installment.

(b) Notwithstanding Section 3.1, above, if the Property Owner elects to receive the Optional Early Installment, the total of the Incentive to be paid by the City shall not exceed the lesser of (i) the Incentive as calculated pursuant to Section 3.1, above, and (ii) the Incentive as calculated pursuant to Section 3.2(a), above based on the value of the New Residence set forth in the building permit(s) for the New Residence submitted to the City.

(c) If the Property Owner elects to receive the Optional Early Installment and the amount of the Closing Costs is less than one-half (1/2) of the estimated Incentive as calculated pursuant to Section 3.2(a), the Property Owner shall remain entitled to the full amount of the Incentive as determined by Section 3.2(b), above, with the balance of the Incentive to be paid at the time provided in Section 3.2(a), above.

(d) Solely for purposes of illustrating Section 3.2(a), above, assume the assessed value for the Residence is \$200,000 (i.e. not including the value of the Land) for tax year 2014 (the Base Year Taxable Value), the Approved Project is approved by the City in 2014 (i.e. the Base Year), and demolition commences in 2014. Assuming further Completion of Construction of the Approved Project occurs on May 15, 2015, the first full calendar year after Completion of Construction will be Tax Year 2016. Assume also the Property Owner desires to close on the permanent financing on June 1, 2015. Assume also that the value of the New Residence placed on the application for building permit for the New Residence submitted to the City was \$300,000. Finally, assume the City’s property tax rate for Tax Year 2015 (the tax year in which Completion of Construction occurred) is \$0.6241 per \$100 of assessed value. Based on the foregoing assumptions:

(1) The estimated Incentive as calculated pursuant to Section 3.2(a) will be \$6241.00 ($[\$300,000 - \$200,000]/\$100 \times \0.6421×10);

(2) The Optional Early Installment payment will be the lesser of:

(i) \$3210.50 ($\$6421.00 \times .5$); and

(ii) the total of the Closing Costs to be paid by the Property Owner at the time of closing on the permanent financing loan for the New Residence.

(e) To complete the illustration under Section 3.1(d):

(1) If the Taxable Value for the New Residence (i.e. not including the value of the Land) for Tax Year 2016 (the first full calendar year following Completion of Construction) is \$300,000 (i.e. the same as the value estimate set forth in the building permit(s) application(s)), the total incentive due will be \$6421.00 and the balance of the Incentive to be paid to the Property Owner will be the amount of \$6421.00 less the amount of the Optional Early Installment, said balance being paid on the date set forth in Section 3.1(a);

(2) If the Taxable Value for the New Residence (i.e. not including the value of the Land) for Tax Year 2016 (the first full calendar year following Completion of Construction) is \$275,000 (i.e. less than the \$300,000 value estimate set forth in the building permit(s) application(s)), the total Incentive due will be \$4680.75 ($[\$275,000 - \$200,000]/\$100 \times \0.6241×10), and the balance of the Incentive to be paid to the Property Owner will be the amount of \$4680.75 less the amount of the Optional Early Installment, said balance being paid on the date set forth in Section 3.1(a); and

(3) If the Taxable Value for the New Residence (i.e. not including the value of the Land) for Tax Year 2016 (the first full calendar year following Completion of Construction) is \$400,000, based on Section 3.2(b), above, the Incentive will be based on the \$300,000 value estimate set forth in the building permit(s) application(s) and the total Incentive due will be \$6241.00 ($[\$300,000 - \$200,000]/\$100 \times \0.6241×10), and the balance of the Incentive to be paid to the Property Owner will be the amount of \$6421.00 less the amount of the Optional Early Installment, said balance being paid on the date set forth in Section 3.1(a).

3.3 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 IV 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.

4.1 Inspections. The Property Owner agrees to submit to periodic inspections of the Approved Project by the City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. The Property Owner, shall subject to Events of Force Majeure, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the date of City approval of the Approved Project.

Article V Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

- (a) mutual agreement of the parties;
- (b) the Expiration Date;
- (c) by the City, 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 City, if the Property Owner suffers an Event of Bankruptcy or Insolvency;
- (f) by City, if, subject to Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land;
- (g) by 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
- (h) the sale or transfer of the Residence.

5.2 In the event of termination by the City pursuant to 5.1(c), (d), (e), (g), or (h), the Property Owner shall immediately repay to the City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement.

**Article VI
Miscellaneous**

6.1 Assignment. This Agreement may not be assigned without the prior written consent of the City. This Agreement shall automatically terminate upon any subsequent sale or transfer of the ownership of the Residence.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto.

6.3 Limitation on Liability. It is understood and agreed between the parties that the Property Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 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.

6.5 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.

6.6 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:

On the Effective Date:

Todd W. Warren
14316 Southern Pines
Farmers Branch, Texas 75234

After Completion of Construction:

Todd W. Warren
14302 Juniper Cove
Farmers Branch, Texas 75234

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard, Suite 1800

Dallas, Texas 75201

6.7 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.

6.8 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 Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

6.10 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.

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

6.12 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.

6.13 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.

6.14 Employment of Undocumented Workers. During the term of this Agreement the Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Property Owner shall repay the amount of the Incentive and any other funds received by the Property Owner from the City as of the date of such violation within 120 days after the date the Property Owner is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. The Property Owner agrees that the residence at 14302 Juniper Court, Farmers Branch, Texas 75234, will not be eligible for any other or further residential or other incentive offer now or hereafter by the City.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2014.


City of Farmers Branch, Texas

By: _____
Gary D. Greer, City Manager

Attest:

By: _____
Angela Kelly, City Secretary

Approved As To Form:

By: 
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2014.

Property Owner

By: _____
Todd W. Warren

By: _____
Sonya Gay Warren