



RESOLUTION NO. 2015-075

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 12718 EPPS FIELD ROAD; 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 12718 Epps Field Road 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 with John T. Godley and Mary T. (Jaremko) Godley with respect to property generally known as 12718 Epps Field Road, 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 18th DAY OF AUGUST, 2015.**

ATTEST:

APPROVED:

Angela Kelly, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(KBL:8-7-15:TM 72800)

Exhibit "A"

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 John T. Godley and wife, Mary T. Jaremko Godley (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 redevelopment of housing stock in the City 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 12718 Epps Field Road, 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

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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 Tax 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:

“Annual Incentive(s)” shall mean seven (7) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by the City against the New Residence for the applicable tax year and paid to the City, and the amount of ad valorem taxes assessed by the City against the Residence for the Base Year and paid to the City, as calculated and determined by the City, to be paid to the Property Owner as set forth herein.

“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.

“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.

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“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.

“Expiration Date” shall mean April 1 of the first full calendar year following the 8th anniversary of the Commencement Date.

“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.

“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 2, Block 3, VALLEY VIEW ADDITION NO. 5, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the plat thereof recorded in Volume 18, Page 351, Map 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 the incentive grant paid pursuant to Section 3.1, below, a written request from the Property Owner to be submitted to the City on or before April 1 of each calendar year for the payment of the Annual Incentive 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 and (b) with respect to the Demolition Grant, a written request from the Property Owner submitted to the City requesting payment of the Demolition Grant accompanied by (i) a copy of the written contract(s) between the Property Owner and third parties engaged in the demolition of the Residence, invoices related to the payment of permit fees, utility fees, charges for other goods, materials, and services related to demolition and removal of the Residence from the Land, proof of payment made by the Property Owner (e.g. copies of cancelled checks) for the fees and charges for which the Property Owner seeks reimbursement, and such other information as the City may reasonably request to verify the Property Owner’s right for reimbursement.

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

"Property Owner" shall mean the owner of the Residence.

"Residence" shall mean the existing one family detached dwelling located 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 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. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is \$24,520.00.

Article III Economic Development Incentive

3.1 Payment. Subject to the Property Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of the Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, the City agrees to provide the Annual Incentives to the Property Owner to be paid within thirty (30) days after City receipt of the applicable Payment Request following April 1 of each calendar year, beginning April 1, of the calendar year immediately following the Commencement Date, provided the City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. The Property Owner shall submit a Payment Request to the City on or before April 1 of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by the City in 2015 making 2015 the Base Year and further assume that the City taxes assessed and paid for the Residence (improvements excluding the Land) for 2015 was \$1,000 and that the Approved Project was completed June 1, 2016, then the Commencement Date would be June 1, 2016. Further assume that the City taxes assessed and paid for tax years 2017 is \$2,000. Then the first Annual Incentive would be for the difference in the City taxes assessed the New Residence for tax year 2017 in the amount of \$2,000 and the amount of City taxes assessed for the Base Year (2015) of \$1,000 resulting in an Incentive of \$1,000 that would be paid within thirty (30) days after City receipt of the applicable Payment Request following April 1, 2018 provided the Property Owner submitted a Payment Request on or before April 1, 2018 which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2017 have been paid in full.

3.2 Current Revenue. The Annual Grants 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

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be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. The City agrees to pay the Demolition Grant to the Property Owner not later than thirty (30) days after receipt of a Payment Request for reimbursement for the Demolition Costs, which shall in no case be earlier than thirty (30) days after Commencement of Construction of the New Residence. Notwithstanding the foregoing, the City shall not be required to pay the Demolition Grant if Commencement of Construction of the New Residence has not occurred on or before twelve (12) months after completion of demolition of the Residence. In no case shall the Demolition Grant exceed the lesser of (a) the Demolition Costs or (b) \$5000.00. In reviewing the Payment Request for the Demolition Costs, the City shall be the final determiner as to whether a cost submitted for reimbursement is related to the demolition of the Residence.

Article IV Incentive Conditions

The City's obligation to pay the Annual Grants 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 delays resulting from 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;

Exhibit "A"

- (f) by City, if, subject to delays resulting from events of 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. If the City terminates this Agreement pursuant to Section 5.1(d) because Completion of Construction of the New Residence has not occurred within the time required by Section 4.2, above, the Property Owner shall, upon demand, reimburse the City the amount of the Demolition Grant paid to the Property Owner.

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.

Exhibit "A"

If intended for Property Owner, to:

John T. Godley and Mary T. Jaremko Godley
12718 Epps Field Road
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.
1800 Ross Tower
500 N. Akard
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.

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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 Annual Grants 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 12718 Epps Field Road, 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]

Exhibit "A"

EXECUTED on this _____ day of _____, 2015.

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*
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2015.

Property Owner

John T. Godley

Mary T. Jaremko Godley