



## **RESOLUTION NO. 2016-085**

### **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 12951 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 12951 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 Todd Bonneau Homes, LLC with respect to property generally known as 12951 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 20TH DAY OF SEPTEMBER, 2016.**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Amy Piukana, City Secretary

\_\_\_\_\_  
Bob Phelps, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney  
(kbl:9-13-16:TM 79092)

**Resolution No. 2016-085**

**Exhibit "A"**

<b>STATE OF TEXAS</b>	§	
	§	<b>RESIDENTIAL DEMOLITION/REBUILD PROGRAM</b>
	§	<b>INCENTIVE AGREEMENT</b>
<b>COUNTY OF DALLAS</b>	§	

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas (the "City"), and Todd Bonneau Homes, LLC, a Texas limited liability company ("Contractor"), 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 the 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**, Contractor is the owner of a one-family detached residential dwelling located at 12951 Epps Field Road, Farmers Branch, Texas 75234 (hereinafter defined as the "Residence"); and

**WHEREAS**, Contractor intends to demolish the Residence and construct a new one-family detached residential dwelling thereafter (hereinafter defined as the "New Residence") to be purchased by the Property Owner after completion of construction; and



**Resolution No. 2016-085**

**Exhibit "A"**

**WHEREAS**, the Contractor 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 fee simple title to the New Residence and the Land are conveyed by the Contractor to the Property.

"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.

**Resolution No. 2016-085**

**Exhibit "A"**

"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 Contractor or 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 Contractor or 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 8<sup>th</sup> 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 10, of VALLEY VIEW ADDITION, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the Map thereof recorded in Volume 13, Page 369, of the Map Records of 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 Contractor submitted to the City requesting payment of the Demolition Grant accompanied by (i) a copy of the written contract(s) between the Contractor 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 Contractor (e.g. copies of cancelled checks) for the fees and charges for which the Contractor seeks reimbursement, and such other information as the City may reasonably request to verify the Contractor's right for reimbursement.



## **Resolution No. 2016-085**

### **Exhibit "A"**

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

"Property Owner" shall mean the first person or people to whom Contractor conveys fee simple title of the New Residence after Completion of Construction of the New Residence and uses the New Residence as a residence homestead.

"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 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 \$41,070.00.

### **Article III**

#### **Economic Development Incentive**

3.1 Payment. Subject to the Contractor's and 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 2016 making 2016 the Base Year and further assume that the City taxes assessed and paid for the Residence (improvements excluding the Land) for 2016 was \$1,000 and that the Approved Project was completed June 1, 2017, then the Commencement Date would be June 1, 2017. Further assume that the City taxes assessed and paid for tax years 2018 is \$2,000. Then the first Annual Incentive would be for the difference in the City taxes assessed the New Residence for tax year 2018 in the amount of \$2,000 and the amount of City taxes assessed for the Base Year (2016) 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, 2019, provided the Property Owner submitted a Payment Request on or before April 1, 2019, which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2018 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

## **Resolution No. 2016-085**

### **Exhibit "A"**

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.

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. Subject to delays resulting from events of Force Majeure, the Contractor and/or the Property Owner shall, 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.

4.3 Timely Sale of Land and New Residence. This Agreement and the City's obligation to pay the Annual Incentive shall terminate if indefeasible fee simple title to the Land and New Residence is not conveyed by Contractor to a Property Owner on or before the second (2<sup>nd</sup>) anniversary of the Completion of Construction of the New Residence.

### **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;



**Resolution No. 2016-085**

**Exhibit "A"**

- (c) If any Impositions owed to the City or the State of Texas by Contractor or Property Owner shall become delinquent (provided, however, Contractor and Property Owner, as the case may be, retain the right to timely and properly protest and contest any such Impositions) and City provides the Contractor or Property Owner notice of termination, in which case termination shall be immediate;
- (d) In the event Contractor and/or 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 provided by the City;
- (e) If the Contractor and /or Property Owner suffers an Event of Bankruptcy or Insolvency;
- (f) If, subject to delays resulting from an event 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 and City provides the Contractor or Property Owner notice of termination, in which case termination shall be immediate;
- (g) 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, in which case termination shall be immediate upon the effective date of said law or the date the judgment becomes non-appealable; or
- (h) The failure to convey title to the Land and New Residence to the Property Owner within the time provided in Section 4.3, without any requirement for notice from the City to the Contractor;
- (i) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from the City for assignment of this Agreement to the new owner;
- (j) The sale or transfer of title to the Land to a third party after the demolition of the Residence but before Commencement of Construction of the New Residence; and
- (k) The termination of use of the New Residence by the Property Owner as the Property Owner's residential homestead.

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 this Agreement is terminated pursuant to (i) Section 5.1(d) for breach of Section 4.2 or (ii) Section 4.3 and Section 5.1(h), the Contractor shall, upon demand, reimburse the City the amount of the Demolition Grant paid to the Contractor.



**Resolution No. 2016-085**

**Exhibit "A"**

**Article VI**

**Miscellaneous**

6.1 Assignment. This Agreement may not be assigned without the prior written consent of the City. Notwithstanding the foregoing, the Contractor may assign this Agreement to the Property Owner without the prior consent of the City, which assignment shall require the Property Owner to assume and acknowledge in writing all duties and obligations of this Agreement; provided, however, such assignment without consent shall not become effective until (i) a deed conveying to the Property Owner indefeasible fee simple title of the Land and the New Residence is recorded in the Real Property Records of Dallas County, Texas, and (ii) the City is provided a copy of the recorded deed and the name, address, and phone number of the Property Owner where notices may be sent pursuant to Section 6.6.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the heirs, successors and assigns of the parties hereto, including, but not limited to, successors in title to the Land.

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:

Todd Bonneau Homes, LLC  
Attn: Todd O. Bonneau, Manager  
2815 Valley View Lane, Suite 112  
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

**Resolution No. 2016-085**  
**Exhibit "A"**

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 Annual Grants and any other funds received by the Property Owner from the City as of the date of such violation within one hundred twenty (120) days after the date the Property Owner is notified by the City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. The Property Owner is not liable for a violation of this



**Resolution No. 2016-085**

**Exhibit "A"**

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 Contractor acknowledges and agrees that the Residence and the New Residence, as the case may be, at 12951 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]*

**Resolution No. 2016-085**  
**Exhibit "A"**

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.


**City of Farmers Branch, Texas**

By: \_\_\_\_\_  
Charles S. Cox, City Manager

**Attest:**

By: \_\_\_\_\_  
Amy Piukana, City Secretary

**Approved As To Form:**

By:   
Peter G. Smith, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Property Owner**

**Todd Bonneau Homes, LLC**

By: \_\_\_\_\_  
Todd O. Bonneau, Manager