



RESOLUTION NO. 2019-002

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 13807 LILLARD LANE; 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 13807 Lillard Lane 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 Thomas Cusick Custom Homes, LLC with respect to property generally known as 13807 Lillard Lane, Farmers Branch, Texas, 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 8TH DAY OF JANUARY 2019.**

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Robert C. Dye, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:12-20-18:TM 105018)

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Exhibit "A"

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

This Residential Demolition/Rebuild Program Incentive Agreement ("Agreement") is made by and between the City of Farmers Branch, Texas ("City"), and Thomas Cusick Custom Homes, LLC, a Texas limited liability company ("Contractor"), acting by and through their respective authorized officers and representatives. City and Contractor and, where appropriate, Property Owner (as defined herein) are collectively referred to herein as "Parties" and separately as "Party."

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock within City's incorporated limits promotes economic development and is essential for City's continued economic growth and vitality; 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 City's incorporated limits, 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 within City's incorporated limits is a major contributing factor to City's growth, 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, City has determined that providing an economic development incentive in accordance with this Agreement will further City's objectives, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's incorporated limits; and

WHEREAS, Contractor is the owner of a one-family detached residential dwelling located at 13807 Lillard Lane, Farmers Branch, Texas (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 Property Owner after completion of construction; and

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WHEREAS, 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 City's 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 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)" means three (3) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by City against the New Residence for the applicable tax year and paid to City, and the amount of ad valorem taxes assessed by City against the Residence for the Base Year and paid to City, as calculated and determined by City, to be paid to Property Owner as set forth herein.

"Approved Project" means the approval of the demolition of the Residence and the construction of the New Residence as an approved project by City as being eligible for the incentives under the Program.

"Base Year" means January 1st of the calendar year immediately preceding the date of approval of the Project.

"City" means the City of Farmers Branch, Texas.

"Commencement Date" means the date fee simple title to the New Residence and the Land are conveyed by Contractor to the Property Owner.

"Commencement of Construction" means 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" means that (i) substantial completion of construction of the New Residence has occurred; and (ii) City has issued a final certificate of occupancy or certificate of inspection for the Approved Project.

"Effective Date" means the date this Agreement bears the signatures of the authorized representatives of all of the Parties.

"Event of Bankruptcy or Insolvency" means insolvency, appointment of receiver for Contractor or 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 Contractor or Property Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Expiration Date" means April 1st of the first full calendar year following the fourth (4th) anniversary of the Commencement Date.

"Impositions" means 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 Property Owner or any property or any business owned by Property Owner within City's incorporated limits.

"Land" means 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 17, in Block 7, of Valwood Park Addition, 27th Installment 2nd Section, an addition to the City of Farmers Branch, Dallas County, Texas, according to the Map thereof recorded in Volume 40, Page 101, of the Map Records of Dallas County, Texas (more commonly known as 13807 Lillard Lane, Farmers Branch, Texas).

"New Residence" means a new one family detached dwelling to be constructed on the Land, as approved by City as an Approved Project, excluding the Land, which has a floor area of not less than 2,750 square feet of air conditioned space and a Taxable Value (not including the Land) of not less than \$280,000.00 as of January 1st of the calendar year following the date of Completion of Construction.

"Payment Request" means (a) with respect to the Annual Incentives paid pursuant to Section 3.1, below, a written request from Property Owner submitted to City on or before April 1st 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 City may reasonably request; (b) with respect to the first installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the first installment of the Demolition Grant accompanied by sufficient evidence that the Residence has been demolished and removed from

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the Land and that the Land is ready for construction of the New Residence; and (c) with respect to the second installment of the Demolition Grant, a written request from Contractor submitted to City requesting payment of the second installment of the Demolition Grant accompanied by a copy of the certificate of occupancy or certificate of final inspection of the New Residence issued by City’s Building Inspections Department.

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

“Property Owner” means 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 who use(s) the New Residence as a residence homestead.

“Residence” means the one family detached dwelling located on the Land as of the Effective Date.

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

“Taxable Value” means 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 1st of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is \$63,530.00.

Article III Economic Development Incentive

3.1 Payment. Subject to Contractor’s and Property Owner’s continued satisfaction of the terms and conditions of this Agreement and the obligation of Property Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, City agrees to provide the Annual Incentives to Property Owner to be paid not later than the thirtieth (30th) day after City receipt of the applicable Payment Request following April 1st of each calendar year, beginning April 1st of the calendar year immediately following the Commencement Date, provided City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. Property Owner shall submit a Payment Request to City on or before April 1st of each calendar year for the applicable Annual Incentive. For example, assume for illustration purposes only that a Project was approved by City in 2018 making 2018 the Base Year. Further assume that (i) City taxes assessed and paid for the Residence (improvements excluding the Land) for 2018 was \$1,000 and (ii) the Approved Project was completed June 1, 2019, then the Commencement Date would be June 1, 2019. Further assume that City taxes assessed and paid for tax year 2020 is \$2,000. Then the first Annual Incentive would be for the difference in City taxes assessed on the New Residence for tax year 2020 in the amount of \$2,000 and the amount of City taxes assessed for the Base Year (2018) of \$1,000 resulting in an Annual Incentive of \$1,000, which would be paid not later than the thirtieth (30) day after City receipt of the applicable Payment Request following April 1, 2021 provided Property Owner submitted a Payment Request on or before April 1, 2021,

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which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2020 have been paid in full.

3.2 Current Revenue. The Annual Incentives made hereunder shall be paid solely from lawfully available funds that have been appropriated by 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 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. City agrees to pay the Demolition Grant to Contractor in the amount of Thirty Thousand and No/100 Dollars (\$30,000.00) in two equal installments of \$15,000.00 each as follows:

- (a) With respect to the first installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than thirty (30) days after completion of demolition of the Residence and removal of all debris from the Land; and
- (b) With respect to the second installment, not later than thirty (30) days after City's receipt of a Payment Request from Contractor, but in no case earlier than the thirtieth (30th) day after Completion of Construction of the New Residence.

City's obligation to pay the Demolition Grant, or any installment thereof, shall terminate if Completion of Construction of the New Residence does not occur on or before the second (2nd) anniversary of the Effective Date.

Article IV Incentive Conditions

City's obligation to pay the Annual Incentives shall be conditioned upon 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. Contractor and, upon assignment of this Agreement, Property Owner, agree to submit to periodic inspections of the Approved Project by 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, Contractor and/or Property Owner shall cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the Effective Date.

4.3 Timely Sale of Land and New Residence. This Agreement and City's obligation to pay the Annual Incentive shall terminate if indefeasible fee simple title to the Land and New

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Residence is not conveyed by Contractor to a Property Owner on or before the second (2nd) 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;
 - (c) If any Impositions owed to 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 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 City;
 - (e) If 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 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;
 - (h) If upon Completion of Construction of the New Residence, the New Residence contains less than 2,750 square feet of air-conditioned space as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;
 - (i) If on January 1 following the date of Completion of Construction of the New Residence, the New Residence has a Taxable Value of less than \$280,000.00 as set forth in the definition of "New Residence" herein and City provides Contractor or Property Owner notice of termination, in which case termination shall be immediate;

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- (j) The failure to convey title to the Land and New Residence to Property Owner within the time provided in Section 4.3, without any requirement for notice from City to Contractor;
- (k) The sale or transfer of title to the Land and/or the Residence without obtaining prior written consent from City for assignment of this Agreement to the new owner;
- (l) 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; or
- (m) The termination of use of the New Residence by Property Owner as Property Owner's residential homestead.

5.2 In the event of termination by City pursuant to 5.1(c), (d), (e), (g), (j), (k), or (m), Property Owner shall immediately repay to 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, (ii) Sections 5.1(f), (h), (i), or (l); or (iii) Section 4.3 and Section 5.1(j), Contractor shall, upon written demand from City, reimburse City the amount of the Demolition Grant, or portion thereof, paid to Contractor as of the date of termination of this Agreement.

Article VI Miscellaneous

6.1 Assignment. This Agreement may not be assigned without the prior written consent of City. Notwithstanding the foregoing, Contractor may assign this Agreement to Property Owner **after Completion of Construction** without the prior consent of City, which assignment shall require Property Owner to assume and acknowledge in writing all duties and obligations of this Agreement and be in the form substantially as set forth in Exhibit "A," attached hereto and incorporated herein by reference ("the Assignment"); provided, however, such assignment without consent shall not become effective until (i) a deed conveying to Property Owner indefeasible fee simple title of the Land and the New Residence is recorded in the Real Property Records of Dallas County, Texas, (ii) City is provided a copy of the recorded deed and the name, address, and phone number of Property Owner where notices may be sent pursuant to Section 6.6, and (iii) City is provided a copy of the Assignment signed by Contractor and the Property Owner.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the heirs, successors and assigns of the Parties, 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 Contractor, 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.

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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 Contractor, to:

Thomas Cusick Custom Homes, LLC
Attn: Thomas Owen Cusick,
Managing Member
13901 Midway Road, Suite 102-274
Dallas, Texas 75244

If intended for City, to:

City of Farmers Branch, Texas
Attn: City Manager
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.

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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 Property Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Property Owner shall repay the amount of the Annual Grants and any other funds received by Property Owner from City as of the date of such violation within one hundred twenty (120) days after the date Property Owner is notified by City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. Property Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Property Owner or by a person with whom the Company contracts.

6.15 Future Incentives. Contractor acknowledges and agrees that the Residence and the New Residence, as the case may be, at 13807 Lillard Lane, Farmers Branch, Texas, will not be eligible for any other or further residential or other incentive offer now or hereafter by City.

[Signature Page to Follow]

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EXECUTED on this _____ day of _____, 2019.


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 _____, 2019.

Contractor

Thomas Cusick Custom Homes, LLC

By: _____
Thomas Owen Cusick,
Managing Member

EXHIBIT "A"

ASSIGNMENT OF AGREEMENT

This Assignment of City of Farmers Branch Demolition/Rebuild Incentive Agreement ("Assignment") is entered by and between Thomas Cusick Custom Homes, LLC, a Texas limited liability company ("Assignor"), and _____ ([if more than one] collectively, "Assignee").

RECITALS

WHEREAS, on or about _____, 2019, Assignor entered into that certain *Residential Demolition/Rebuild Program Incentive Agreement* ("Agreement") with the City of Farmers Branch, Texas ("the City"), relating to certain property described in said Agreement; and

WHEREAS, the Agreement between the City and Assignor was made pursuant to an economic development program ("the Program") established by the City pursuant to Chapter 380 of the Texas Local Government Code, as amended; and

WHEREAS, if pursuant to an agreement with the City entered pursuant to the Program a contractor demolishes the existing single family detached dwelling on the land identified in the agreement, constructs a new single family detached dwelling on the same land, and sells the new residence to one or more parties who will be owner occupants of the new residence, all in compliance with agreed deadlines, the rules and policies of the Program allow the Contractor to assign the Agreement to the purchasers of the dwelling; and

WHEREAS, Assignor, acting as a Contractor pursuant to the Agreement, has performed the demolition and rebuild activities with respect to the single family detached dwelling located on the Property, has caused Completion of Construction of the New Residence (as defined in the Agreement) and has sold the Property, inclusive of all improvements, to Assignee, all within the time required by the Agreement; and

WHEREAS, Assignor desires to assign the Agreement to Assignee, and Assignee desires to accept such assignment;

NOW, THEREFORE, for and in exchange of **TEN AND/NO 100 DOLLARS (\$10.00)** and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby sells, assigns, and transfers to Assignee all of Assignor's right, title and interest in and to said Agreement.
2. Assignee accepts the Assignment of the Agreement by Assignor and agrees to assume and perform all obligations and liabilities to be performed by Assignor as set forth in the Agreement to the same extent as if Assignee had originally been named as Property Owner in the Agreement.
3. Assignor agrees that any payment of Incentive due under the terms of the Agreement shall be rightfully paid to Assignee, and Assignor claims no right to any payment or portion of payment due from the Agreement as of the Effective Date.

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4. Assignee understands, acknowledges, and agrees that the Agreement cannot be further assigned upon sale of the Property to another party.
5. Assignor warrants and represents that as of the Effective Date, the Agreement is in full force and effect, and that no event has occurred under the Agreement that would constitute a default such as to provide a basis for the City to terminate the Agreement.
6. This Assignment shall be effective on the date it bears the signatures of Assignor and Assignee as evidenced by signatures below ("the Effective Date").
7. Unless assigned a different meaning in this Assignment, the capitalized words and phrases of this Assignment shall have the same meaning set forth in the Agreement.

SIGNED AND AGREED this _____ day of _____, 201__.

ASSIGNOR:

THOMAS CUSICK CUSTOM HOMES, LLC

Thomas Owen Cusick, Managing Member

SIGNED AND AGREED this _____ day of _____, 201__.

ASSIGNEE:

Printed Name: _____

Printed Name: _____