

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: April 28, 2015		DATE SUBMITTED: April 8, 2015	
DEPARTMENT OF ORIGIN: Community Development Services		SUBMITTED BY: Art Roach	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider approval of a resolution approving the sale of 402 W. 18 th St. to an eligible low/moderate income buyer in the amount of \$120,000 and authorizing the Mayor to execute a real estate sales contract, special warranty deed, and any other documents necessary to facilitate the closing.			
SUMMARY STATEMENT: 402 W. 18 th Street was developed by the City of Bryan and made available as part of a new, 4-unit affordable housing homeownership development by the Community Development Services Department. An offer in the amount of \$120,000 has been received from Amanda Gardner, who has been determined to be an eligible applicant under the City's Community Development Block Grant (CDBG) housing assistance program. Upon the City Council's approval of this conveyance, it is anticipated the buyer's lender will complete the mortgage loan underwriting within approximately 30 days, and the closing will follow shortly thereafter. The contract closing date is June 2, 2015.			
<p>The property at 402 W. 18th was acquired using Community Development Block Grant funds in 2009, was re-platted in 2012, and developed utilizing special project General Funds for construction and related hard costs in the amount of \$97,902. An additional \$2,946 in related project soft costs is anticipated to be incurred by the closing date, for a total General Funds expense of approximately \$100,848. The purchase price will achieve recovery of the full cost of the City's General Fund investment, as well as all of the CDBG cost of acquisition. Homebuyer assistance funds will be sourced through federal CDBG funds in the amount of the buyer's closing costs, and non-federal Homebuyer Mortgage Assistance Program (HMAP) funds for any lender-required buyer equity participation. To receive homebuyer assistance, buyers must contribute a minimum of \$1,000 toward the purchase and complete a homebuyer counseling course.</p>			
STAFF ANALYSIS AND RECOMMENDATION: Community Development Services staff recommends approval of the resolution and the contract to accomplish the conveyance. This sale will increase property tax revenues to the City by the conversion to private ownership, and will help to stabilize property values and deter blighting influences in the neighborhood by increasing owner occupancy. Also, the sale will recover the City's entire construction investment as well as the entire cost of the CDBG acquisition.			
If not approved, there will be continuing costs for utilities, lawn care, and marketing costs until the property can be successfully sold.			
OPTIONS (In Suggested Order of Staff Preference): (Options other than the recommended option or denial, may result in consideration at a future City Council meeting)			
1. Approve resolution and Real Estate Contract			

2. Do not approve resolution and Real Estate Contract
3. Modify Real Estate Contract and direct staff to re-submit to Buyer for consideration

ATTACHMENTS:

1. Resolution approving the sale
2. Real Estate Sales Contract
3. Location map and site photo

FUNDING SOURCE: A combination of Community Development Block Grant (CDBG) and City of Bryan General Funds were used to acquire the property and build the home. Proceeds from the sale of the property will be funneled back into the Community Development Department's housing programs. Funding for Homebuyer Assistance to accomplish the conveyance is also available in the FY 2015 Community Development Services CDBG Program.

APPROVALS: Joey Dunn, 4-10-15; Hugh R. Walker, 04/14/2015

APPROVED FOR SUBMITTAL: Kean Register, 4/20/2015

APPROVED FOR SUBMITTAL: Janis K. Hampton, 4/21/2015

Revised 05/2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BRYAN, TEXAS APPROVING A SALE OF A CITY OWNED PROPERTY LOCATED AT 402 W. 18TH STREET TO AMANDA GARDNER, AUTHORIZING THE MAYOR TO EXECUTE THE REAL ESTATE SALES CONTRACT, SPECIAL WARRANTY DEED, AND ANY OTHER DOCUMENTS NECESSARY TO FACILITATE CLOSING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan, Texas (“City” or “Seller”) is a home-rule municipal corporation duly incorporated and chartered under the Constitution and laws of Texas; and

WHEREAS, the City has previously acquired (by means other than condemnation) and developed certain real property which has been platted as Lot 4R, Block 167, Bryan Original Town Site, City of Bryan, Brazos County, Texas, according to the re-plat recorded in Volume 11055, Page 99 of the Official Records of Brazos County, Texas, also known as 402 W. 18th Street, Bryan, Texas, (“Property”); and

WHEREAS, the City has the objective of providing for the development and preservation of low-to-moderate-income housing for citizens of the City; and

WHEREAS, Amanda Gardner, (“Buyer”), has been determined to be a qualified applicant under the terms of the City’s Homebuyer Assistance Program, and is eligible to benefit from the purchase of the property; and

WHEREAS, the Buyer has submitted an appropriate offer and supporting documentation; and

WHEREAS, the City has determined that transfer of the Property to the Buyer will facilitate owner occupancy by a low-to-moderate-income household and thereby serves a valid public purpose; and

WHEREAS, the City has determined that the Buyer is qualified to receive real property conveyance(s) pursuant to Local Government Code §272.001(g); and §373.005(8); and

WHEREAS, the City has determined that it is appropriate to convey title of the Property to the Buyer;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

SECTION 1

The City Council of the City of Bryan, Texas, hereby determines that the City is authorized to convey property to Amanda Gardner, for occupancy as low to moderate income housing.

SECTION 2

The City Council hereby approves the sale of the Property to Amanda Gardner.

SECTION 3

The Mayor is hereby authorized to execute the Real Estate Sales Contract as well as a Special Warranty Deed and other documents necessary to facilitate the closing.

SECTION 4

That this Resolution shall become effective immediately upon adoption.

APPROVED AND ADOPTED at a Regular City Council Meeting, this 28th day of April, 2015.

ATTEST:

CITY OF BRYAN

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

STATE OF TEXAS §

COUNTY OF BRAZOS §

REAL ESTATE SALES CONTRACT

THIS REAL ESTATE SALES CONTRACT is made by and between the City of Bryan, Texas (“Seller”) a Texas home-rule municipal corporation, and Amanda M. Gardner (“Buyer”), a single person, currently residing in Grimes County, Texas.

I. PURCHASE & SALE

1.1 Seller agrees to sell and convey in fee simple by special warranty deed with vendor’s lien, and Buyer agrees to purchase and pay for, the tract of land known as 402 W. 18th Street, Bryan, Brazos County, Texas, more particularly described as Lot 4R, Block 167, Bryan Original Town Site, City of Bryan, Brazos County, Texas (“Property”), according to the re-plat recorded in Volume 11055, Page 99 of the Official Records of Brazos County Texas, together with all and singular the rights and appurtenances pertaining to the Property, including the improvements and fixtures situated thereon, for the consideration and subject to the terms, provisions, and conditions set forth herein.

1.2 Within ten (10) calendar days of the execution of this Contract, Seller shall request a commitment for title insurance from a title company selected by Seller for Buyer’s review together with copies of all instruments referred to in the commitment. Buyer shall have a period of ten (10) business days from the date the commitment and related documents are provided by the title company to review and raise any objections (“Title Review Period”). Any reviewable matter to which Buyer does not object within the Title Review Period shall be deemed to be accepted by Buyer. Seller is selling the Property “as is” and it is Buyer’s responsibility to cure, or attempt to cure, any reviewable matter prior to closing. Seller will assist the Buyer, as necessary, in curing any reviewable matter. Costs associated with same are to be considered part of the closing costs of this transaction.

1.3 Seller will not provide a survey. Seller is a tax-exempt entity and no taxes are owed on the Property for which pro-ration is necessary. The sale of the Property shall be made by special warranty deed with vendor’s lien on a form acceptable to Seller and Buyer’s lender.

II. PURCHASE PRICE

2.1 The purchase price for said Property shall be the sum of One Hundred Twenty Thousand and 00/100 dollars (\$120,000.00). The One Thousand dollar (\$1,000.00) in earnest money, which has already been tendered to the Seller, shall be credited towards the price to be paid for the Property. The balance is to be paid by the lender and/or Buyer at closing.

III. REPRESENTATIONS & WARRANTIES OF SELLER

3.1 Seller has the full right, power, and authority to enter into and perform its obligations under this Contract pursuant to action taken by the City Council authorizing execution of same.

3.2 Seller has no actual knowledge of any parties in possession of any portion of the Property, either as lessees, tenants at sufferance, trespassers, or other persons. Additionally, Seller has no actual knowledge of any action by adjacent landowners, of any natural or artificial conditions upon the Property, or of any significant adverse fact or condition relating to the Property which has not been disclosed in writing to the Buyer which would prevent, limit, impede, or render more costly Buyer’s contemplated use

of the Property. This warranty notwithstanding, the Property is being sold as is with all faults and defects, whether known or otherwise.

3.3 Seller has no actual knowledge of any pending or threatened condemnation or similar proceedings affecting the Property, or any part thereof by any governmental entity.

3.4 Seller is not a "foreign person" within the meaning of the Internal Revenue Code of 1986 as amended.

3.5 Seller has no actual knowledge of any unpaid charges, debts, liabilities, claims, or obligations arising from any construction, occupancy, ownership, use, or operation of the Property which could give rise to any liens or encumbrances against the Property not currently of record.

IV. REPRESENTATIONS & WARRANTIES OF BUYER

4.1 Buyer has the full right, power, and authority to purchase the Property as provided in this Contract and to carry out the obligations contained herein.

V. CLOSING

5.1 The closing shall be held on or before June 2, 2015 at a title company selected by Seller.

5.2 At the closing, Seller shall:

- a. Deliver to Buyer a duly executed and acknowledged special warranty deed with vendor's lien prepared by Seller conveying good and indefeasible title in the Property, free and clear of any and all liens and encumbrances (except for reviewable matters waived by Buyer and recorded easements).
- b. Deliver possession of the Property to Buyer.
- c. Deliver a title policy insuring indefeasible title in Buyer's favor in the full amount of the purchase price, insuring Buyer's fee simple interest in the Property.
- d. Pay all closing costs, not to exceed \$14,000, using Down Payment Assistance funds allocated for this sale.

5.3 At closing the Buyer shall:

- a. Pay the balance of the purchase price (paid by the lender and/or Buyer's funds).
- b. Execute a third party, first lien promissory note and deed of trust in favor of Buyer's lender.
- c. Execute a second lien promissory note and deed of trust in favor of the Seller for the amount of the closing costs, not to exceed \$14,000, as stated on the settlement statement.

5.4 Closing costs to be paid for by Seller out of Down Payment Assistance CDBG funds include (not to exceed \$14,000):

- a. Buyer's Title Services and Lender's Title Insurance;
- b. Lender's Fees;
- c. Appraisal Fee;
- d. Survey Fee;
- e. Flood Certificate;
- f. Tax Certificate;

- g. Up-Front Mortgage Insurance Premium, if any;
 - h. Buyer's First Year Homeowner Insurance Policy;
 - i. Homeowner Insurance Escrow;
 - j. State of Texas Policy Guarantee Fee;
 - k. Costs to obtain, deliver, and record all documents related to the sale including the deed, promissory notes, deeds of trust, and any releases, waivers, or other documents clearing clouds on title (as allowed by law);
 - l. Buyer's Residential Service Contract Fee;
 - m. A commission (if necessary) of up to 3% of the sale price in Paragraph 2.1 to Buyer's real estate agent; and
 - n. Any additional premium for the survey boundary deletion in the title policy, if required by lender.
- 5.5 Closing costs to be paid from the Sellers proceeds include:
- a. Seller's Title Services and Owner's Policy of Title Insurance.

VI. SPECIAL CONDITIONS

- 6.1 Both parties agree that the sale of this Property is subject to Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and title 24 Code of Federal Regulations Part 92, the City of Bryan Down Payment Assistance program guidelines.
- 6.2 EXCEPT FOR THE REPRESENTATION CONTAINED IN THIS CONTRACT BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING THE PROPERTY, AND AGREES TO THE MAXIMUM EXTENT PERMITTED BY LAW THAT THE PROPERTY IS CONVEYED "AS IS" AND WITH ALL FAULTS. SELLER EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND CONCERNING THE PROPERTY.
- 6.3 BUYER ACKNOWLEDGES THAT ACCEPTANCE OF THIS CONTRACT IS AN AFFIRMATION THAT BUYER HAS MADE ALL INSPECTIONS NECESSARY TO DETERMINE ITS VALUE AND HAS DETERMINED THAT ITS CONDITION IS SUFFICIENT FOR BUYER'S NEEDS.

VII. BREACH BY SELLER

- 7.1 In the event that Seller fails to fully and timely perform any of its obligations under this Contract, except in the case of default by Buyer, the Buyer may demand repayment of its earnest money. Buyer may not seek specific performance and accepts return of earnest money as the sole remedy for breach.

VIII. BREACH BY BUYER

- 8.1 In the event that Buyer fails to consummate the purchase of the Property or fully and timely perform any of its obligations under this Contract, except in the case of default by Seller, the Seller may retain the earnest money. Seller may not file suit for specific performance and accepts retention of earnest money as the sole remedy for breach.

IX. MISCELLANEOUS

- 9.1 Severability. If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective while this Contract is in effect, such provision shall be automatically deleted from this Contract and the legality, validity and enforceability of the remaining provisions of this Contract shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Contract a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- 9.2 Texas law to apply. This Contract shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the Seller of Bryan, Texas. Venue for any litigation arising under this Contract shall be in a court of appropriate jurisdiction in Brazos County, Texas.
- 9.3 Sole Contract. This Contract constitutes the sole and only agreement of the Parties hereto respecting the subject matter covered by this Contract, and supersedes any prior understandings or written or oral Contracts between the parties.
- 9.4 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- 9.5 Rights and Remedies Cumulative. The rights and remedies provided by this Contract are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 9.6 No Waiver. Seller's failure to take action to enforce this Contract in the event of Buyer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent Seller from taking action to enforce this Contract on subsequent occasions.
- 9.7 Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

[signature page to follow]

Executed and effective upon acceptance by the City Council of the City of Bryan, Texas, and signed by the Mayor of same on this ____ day of _____, 2015.

BUYER:

SELLER:

CITY OF BRYAN

Amanda M. Gardner, Buyer

Jason P. Bienski, Mayor

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me by Amanda M. Gardner, a person known to me, on the ____ day of _____, 2015.

Notary Public in and for the State of Texas

402 W. 18 St. Location Map



402 W. 18th St. Site Photo

