ACTION FORM
BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING:	6/25/2013	**DATE SUBMITTED:**	06/10/2013
DEPARTMENT OF ORIGIN:	Community Development Services	**SUBMITTED BY:**	Eric Barton

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**	**STRATEGIC INITIATIVE:**
☐ **BCD**	☐ **PUBLIC HEARING**	☐ **1ST READING**	☐ **PUBLIC SAFETY**
☐ **SPECIAL**	☒ **CONSENT**	☐ **2ND READING**	☒ **SERVICE**
☒ **REGULAR**	☐ **STATUTORY**		☐ **ECONOMIC DEVELOP.**
☐ **WORKSHOP**	☐ **REGULAR**		☐ **INFRASTRUCTURE**
			☐ **QUALITY OF LIFE**

AGENDA ITEM DESCRIPTION: Consider approval and execution of a Tri-Party Agreement for demolition of a substandard burned structure located at 1100 California Street, and reconstruction of a new single family residential dwelling at the households' alternate site of 1113 Florida Street, CD project RFB #13-036, with the homeowner household and project contractor, Earnest Bean d/b/a. Bean Construction in the amount of $144,200.00 and a Note with the homeowner household in the amount of $145,648.00.

SUMMARY STATEMENT: This project, RFB #13-036, is a part of the City of Bryan; Community Development Services Department – Housing Assistance Rehabilitation/Reconstruction Program, which is funded through the U.S. Department of Housing and Urban Development (HUD)-sponsored Community Development Block Grant Program (CDBG). The purpose of this program is to assist low income property owner-occupants with rehabilitating and/or reconstructing their homes by eliminating housing code violations and acute maintenance issues that affect health, safety, sustainability, energy efficiency, and accessibility for the elderly.

Through this program the City helps to provide decent, safe and sanitary housing, promotes a viable, sustainable housing stock, preserves property values, and reduces blighting influences. The program's primary focus is to make necessary repairs and improvements to homes that, following rehabilitation, will contribute to long term, structurally sound housing, rather than to repair houses that will remain unsustainable following the infusion of program funds.

This program and funding budget was approved at the July 13, 2012, City Council meeting for the 2012 annual Consolidated Action Plan, which also was approved by HUD. Applicants are selected based upon the date that the application and all supporting documentation are received, contingent upon household income eligibility (80% or less of the Area Median Income), and sufficient income to repay the loan based upon qualifying ratios of 33% of income for the housing payment (Principal, Interest, Taxes, and Insurance), and 43% of income for the housing payment plus all consumer debt. Eligible applicants must be current on property taxes (or legally deferred), have no city liens, have a maximum of $20,000 in liquid assets, participate in pre-construction housing counseling, and exhibit acceptable credit. If the household income is insufficient to repay the loan, the loan may be guaranteed by a family member with acceptable credit.

The Community Development Services Department has qualified the large family (10 members) homeowner household at 1100 California Street as eligible recipients of housing assistance through the Rehabilitation/Reconstruction Program. The households' dwelling at 1100 California was burned in a fire on July 19, 2012, making it uninhabitable, and Community Development will develop the new dwelling on a more suitable lot owned by the household at 1113 Florida. There is an existing mortgage loan balance of $29,100 remaining on the 1100 California property, but if this project is approved by City Council, the household will utilize $22,829 of fire insurance claim proceeds and $6,271 of their savings to retire the existing mortgage loan balance. The cost of

this project will be $145,648.00, which includes the construction bid amount of $144,200.00 and $1,448.00 for project-related soft costs (title work, survey, and building plans) for which the homeowner is responsible. Funding assistance will be made through a thirty (30) year, two percent (2%) interest repayment note for $110,648.00 in combination with a fifteen (15) year, zero interest, and deferred, forgivable note in the amount of $35,000.00.

The existing household dwelling has been deemed infeasible to rehabilitate because of the lot size and corner location, the structure's burned state of deterioration, small structure size (1,008 square feet) in relation to square footage necessary for a large (10 member) household, as well as the poor quality of the original construction. Major factors contributing to the cost of the project are the demolition and site work of the original dwelling at 1100 California and development of the new home at 1113 Florida. The replacement dwelling will be a five-bedroom; two and a half bath home, approximately 1,685 square feet, and will include energy efficiency features and sustainable design.

This project bid request (RFB #13-036) was made on 03/19/2013 and bids were received on 04/09/2013, with four (4) bidders responding. The lowest responsive bidder has been qualified as an approved contractor by Community Development Services housing staff, and has successfully performed work for previous Community Development projects.

STAFF ANALYSIS AND RECOMMENDATION:

A. PROS: If approved, this eligible homeowner household will receive financial assistance to perform necessary demolition and reconstruction activities, which will provide a decent, safe and sanitary dwelling for a large (10 member) household, contribute to the preservation of property values in the neighborhood, prevent blighting influences, and sustain the City of Bryan affordable housing stock. $110,648.00 of CDBG assistance will be repaid to the City with two percent (2%) interest by the homeowner, and will be available for future projects and program funding.

B. CONS: CDBG funding for these type housing assistance projects are unavailable for alternative uses. If not approved, the homeowner household must either find alternate means to finance the rehabilitation or replacement of the existing home or allow the home to continue to deteriorate in its current burned condition, contributing to neighborhood blighting conditions.

Community Development Services Department staff recommends the approval and execution of the Tri-Party Agreement for demolition of a substandard burned structure located at 1100 California Street, and reconstruction of a new single family residential dwelling at the households' alternate site of 1113 Florida Street, project RFB #13-036, with the homeowner household and project contractor, Bean Construction, in the amount of $144,200.00, and approval of a Note with the homeowner household in the amount of $145,648.00. This project includes providing sustainable design for a large (10 member) household. The original home was constructed in the mid-1990s and is infeasible to repair. The existing home exhibits poor quality construction, beginning of structural failure due to burning from accidental house fire and rain water infiltration from roof, and failing mechanical systems. Funds for this activity have been approved through the City's FY 2013 budget process, the City's five-year Consolidated Plan and the 2012 Consolidated Action Plan.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the agreement for demolition and reconstruction; or
2. Deny approval of the agreement and redirect staff.

ATTACHMENTS:

1. Bid Tabulation Form
2. Tri-Party Agreement
3. Real Estate Promissory Note
4. Deed of Trust
5. Location Map
6. Location Photo

FUNDING SOURCE: 2012-2013 Community Development Block Grant Program funding as approved in the FY 2013 Community Development Services Budget. Major factors contributing to the cost of the project are the demolition and site work of the original dwelling at 1100 California and development of the new home at 1113 Florida. The family will retain ownership of the 1100 California property.
APPROVALS: Alsie Bond, 6/12/2013; Joey Dunn, 6-14-13; Hugh R. Walker, 06/17/2013
APPROVED FOR SUBMITTAL: CITY MANAGER
APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis Hampton, 6/18/13

Revised 04/2013

City of Bryan

City of Bryan - Purchasing Department
BID TAB FOR RFB# 13-036
Demolition at 1100 California and Reconstruction at 1113 Florida
4/9/13 @ 2:00 pm

All bids submitted are reflected on this bid tab sheet. However, the listing of a bid should not be construed as any indication that the City accepts such bid as responsive. The City will notify the successful bidder upon award of contract.		Job Distributing, Inc.	TDT, Inc.	Embrace Brazos Valley, Inc.	Bean Const.
# of Copies (1 complete original)		N	Y	Y	Y
Acknowledged Addendum #1 (Y/N)		Y	Y	Y	Y
Acknowledged Addendum #2 (Y/N)		Y	Y	Y	Y
Method of Payment - Discounts (Y/N)		0%	0%	1% 10days/EFT	1% 10days
Felony Conviction Notification (Y/N)		Y	Y	Y	Y
Client References (Y/N)		Y	Y	Y	Y
Federally Required Certifications (Y/N)		Y	Y	Y	Y
Section 3 Business Certification (Y/N)		N	Y	Y	Y
Certification of Bid (Y/N)		Y	Y	Y	Y
ITEM NO.	DESCRIPTION AND BASE BID PRICE for Demolition at 1100 California St.				
1	Includes all labor, materials, services and equipment required to complete said Work shown on the Drawing and in the Specifications/Scope of Work.	$141,648.00	$16,300.00	$10,000.00	$5,800.00
ITEM NO.	DESCRIPTION AND BASE BID PRICE for Reconstruction at 1113 Florida St.				
2	Includes all labor, materials, services and equipment required to complete said Work shown on the Drawing and in the Specifications/Scope of Work.	$6,500.00	$157,053.00	$142,800.00	$138,400.00
	Total Price:	$148,148.00*	$173,353.00	$152,800.00	$144,200.00

Number of days from receipt of Notice to Proceed to completion of Project RFB# 13-036=60 consecutive calendar days [not to exceed two (2) months for each Item].

Alt.	Alternate Bid for Stainless Steel Appliances:	Job Distributing, Inc.	TDT, Inc.	Embrace BV, Inc.	Bean Construction
1	Refrigerator	$180.00	$134.00	$120.00	$1,500.00
	Stove/Oven Combination	$210.00	$50.00	$100.00	$1,150.00
	Vent-a-Hood (sized to Stove)	$30.00	$20.00	$60.00	$300.00
	Total Alternate 1 Bid Price:	$420.00	$204.00	$280.00	$2,950.00

Witnessed By: Eric Burtin and Art Ranch

Opened By: Susan Chandler

* Bid had incorrect amount of $149, 240.00

Tri-Party Agreement
RFB #13-036

This Agreement is made and entered into among **Travis B. and Rosalyn B. Williams** of Brazos County, Texas, ("Owner(s)"), the **City of Bryan, Texas,** ("City"), and **Earnest Bean d.b.a. Bean Construction** of Brazos County, Texas, ("Contractor"). This Agreement covers specified demolition work at the site described as:

1100 California Street
Bryan, Texas 77803

Being all that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas and being all of Lot Sixteen (16), the northwest 16 feet of Lot Fifteen (15) and the southeast 31' of Lot Seventeen (17), GRELEN ADDITION, an addition to the City of Bryan, Texas, according to plat recorded in Volume 85 Page 256 Deed Records of Brazos County, Texas.

And specified reconstruction work at the site described as:

1113 Florida Street
Bryan, Texas 77803

0.81145-Acre Tract, S.F. Austin League No.9, Abstract 62, Bryan, Brazos County, Texas and being the aggregate of Parts of Lots G, H, and of a 20'-wide Alley as according to the plat recorded in Volume 113, page 578, Deed Records, Brazos County, Texas, and also a portion of the Remainder of the unplatted land located between said Brogdon Subdivision and Paholek Addition, an addition to The City of Bryan, Texas, according to the plat recorded in Volume 119, page 635, in Volume 3642, Page 66, Official Records, Brazos County, Texas.

ARTICLE 1
DEFINITIONS

1.1 Adjusted Contract Sum – means the consideration to be paid to Contractor, in the amount of **$144,200.00** which may be adjusted in the future by change order.

1.2 City – means the City of Bryan, acting through the City Council, City Manager, and/or the City's Community Development Service's Construction Project Specialist, under whose supervision this Agreement, including the plans and specifications, were prepared, and who will inspect and issue instructions.

1.3 Close Out – means the Contractor's completion of all the requirements to receive retainage, including but not limited to finishing any punch list items, providing affidavits of all bills paid, providing releases of materialmen's liens, and any other documentation required by the City.

1.4 Commencement Date – means the deadline for the Contractor to pull a building permit and commence the Work of this Agreement, which shall be ten days following the date of the Notice to Proceed.

1.5 Contract Time – means the amount of time allotted for the substantial completion of the Work, which shall be **120** days starting from when a Notice to Proceed is issued by the City, unless adjusted by a Change Order.

1.6 Contractor – means the individual or entity listed above, as well as its employees, agents, or representatives authorized to participate in the work that is the subject of this Agreement.

1.7 Day(s) – means calendar days unless explicitly stated otherwise.

1.8 Forgivable loan – means the portion of the allocation for the construction of this dwelling that does not need to be repaid, totaling **$35,000.00**.

1.9 Owner – means the undersigned record owners of the Property that is the subject of this Agreement. However, from time to time, throughout the course of this Agreement, the City may assert the rights of, or act on behalf of, the Owner(s).

1.10 Parties – means the Owner, City, and Contractor collectively.

1.11 Payable loan – means the portion of the allocation for the construction of this dwelling that must be repaid by the Owner, in accordance with the terms of a separate instrument, which amounts to **$110,648.00**, at **two percent (2%)** interest over the course of **30** years.

1.12 Substantial completion – means that the Certificate of Occupancy has been issued for the dwelling and it has been made suitable for its intended use, but still may require minor miscellaneous work and adjustments.

1.13 Work – means the construction and related services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work also includes labor, materials, equipment, and services to be provided by subcontractors.

ARTICLE 2
CONTRACT DOCUMENTS

2.1 The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplemental, and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. All of these documents are attached to this Agreement, and shall be considered a part of this Agreement for all intents and purposes as if set forth verbatim herein. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended result. In case of conflict, the order of precedence for contract documents shall be: 1) this Agreement; 2) the plans

and specifications; 3) the Notice to Proceed, and, 4) Community Development Services' General Specifications.

2.2 Execution of this Agreement by the Contractor is a representation that the Contractor has visited the site and become familiar with the local codes and conditions under which the Work is to be performed. Contractor further represents that the Work can be completed within the Contract Time, as may be amended by change order.

ARTICLE 3
DATE OF COMMENCEMENT, TIME, & COMPLETION

3.1 The Parties agree that Work may only commence when the City provides Contractor with a Notice to Proceed, which will state the Date of the Notice to Proceed, the Date of Commencement, and the Deadline for Substantial Completion (which is calculated based on the Contract Time). The deadline for Substantial Completion as specified on the Notice to Proceed is binding, unless the Contract Time is modified by a duly executed Change Order.

3.2 The Contract Time may be extended by change order if Contractor experiences delays that could not have been reasonably anticipated prior to the execution of the original Notice to Proceed. Causes for such delays must be directly related to the Work and include, but are not limited to: 1) weather conditions, fire, or other act of God; 2) conditions on the property; and 3) failures by subcontractors or materialmen. In order to be eligible for a change order, the Contractor must notify the City of the cause for the delay when applying for a progress payment. The Contractor must inform the City of the date, the nature of the delay, the Work to be performed that day, and if necessary provide an explanation for why other portions of the Work could not be performed.

3.3 The City will not unreasonably withhold approval change order extending the deadline for completion of the Work, but may refuse to allow a change order if 1) the weather was not abnormal for the season and should have been anticipated; 2) weather was not directly related to the delay (i.e. other portions of the Work could have been done indoors); 3) delays caused by subcontractors or materialmen were reasonably avoidable; 4) the delay was not timely claimed by the Contractor; or 5) the City determines for another specific reason that the delay was unjustifiable.

3.4 Time limits contained in the Contract Documents, including the Notice to Proceed (to be prepared at a later date), are of the essence of this Agreement.

ARTICLE 4
CONSIDERATION, PROGRESS PAYMENTS, & RETAINAGE

4.1 Consideration –

4.1.1 The City will allocate funds for the Owner sufficient to pay for all costs related the construction of this dwelling, including but not limited to the Adjusted Contract Sum, filing fees, title search costs, and survey fees. The Owner will execute documents

granting City rights to secure repayment of a portion of that amount and to ensure compliance with the requirements of federal law. If the City assesses liquidated damages against the Contractor in accordance with this Agreement, the Adjusted Contract Sum will be modified by the City, and principal of the Payable Loan shall be reduced accordingly.

4.1.2 On the basis of the above allocation, the City will pay the Contractor in current funds for the Contractor's performance of this Agreement, the Adjusted Contract Sum in six installments: five progress payments and a final payment of retainage.

4.2 Progress Payments –

4.2.1 Progress payments of eighteen percent (18%) of the adjusted contract sum (twenty percent less retainage) will be paid upon substantial completion of each of the phases of the work, which are roughly equal to twenty percent of the total project. Portions of the work may be completed in a different order than that set forth in this schedule, provided that the City determines that Contractor has completed substantially the same amount of work and the progress has progressed proportionally. The City may require that Contractor complete additional items in order to achieve the required parity. The draw schedule for progress payments is based on completion of the phases of the work as follows:

a. 20% complete = demolition, plumbing below grade rough-in and connection to taps, and foundation pour.

b. 40% complete = plumbing top-out, framed walls and ceiling joists, exterior sheathing, rafters, decking, shingles installed, cornice / exterior trim installed and primed, windows and doors installed, tubs installed.

c. 60% complete = HVAC rough, electrical rough, insulation installed, sheetrock, TB&F / textured, exterior siding / brick installed, interior trim installed.

d. 80% complete = cabinetry complete, interior and exterior paint, vinyl floors laid, electrical fixtures installed, door and cabinetry hardware installed.

e. 100% complete = appliances set, plumbing fixtures installed, carpet installed, driveway, stoops, and sidewalks poured and finished, condensing unit installed, clean up.

4.2.2 To receive a progress payment, Contractor must submit an application for payment to the City listing the items completed, the percentage draw requested, as well as signed Waivers of Mechanics Lien for each subcontractor who completed their work during the portion of the project for which payment is sought. If the appropriate documentation has been received and City determines that the relevant portion of the project is substantially complete, City will prepare the appropriate documents, obtain the appropriate signatures, and submit the documents to the City of Bryan Finance Division. If the City has assessed

liquidated damages against the Contractor for failure to substantially complete the work on time, such damages will be withheld from the final progress payment.

4.2.3 In the interest of ensuring that the project does not fall behind, the City will set interim deadlines in the Notice to Proceed for each phase of the Project listed in the above schedule. Other provisions of this agreement notwithstanding, failure to meet an interim deadline is not, by itself, a material breach of this Agreement; and liquidated damages may not be assessed for failure to meet an interim deadline.

4.3 Retainage –

4.3.1 Ten percent (10%) of each payment will be held as a retainage, for a final payment equaling ten percent (10%) of the adjusted contract sum. Contractor is entitled to retainage only after Close Out has been completed by the Contractor. Contractor agrees to complete the Close Out within thirty days following substantial completion of the work.

4.3.2 To complete Close Out, Contractor must submit the following: 1) Application for Payment; 2) Waiver of Mechanics Lien for each trade and material supplier for the project; 3) an Affidavit of All Bills Paid; 4) the Punch List with signatures from the Parties; and 5) any other documentation reasonably required by the City. If the City has assessed liquidated damages against Contractor for failure to complete the Close Out within thirty days, such damages shall be withheld from the final payment (retainage).

4.3.3 After receiving application and supporting documentation, and verifying that all required work has been completed, City will prepare the appropriate documents, obtain the appropriate signatures, and submit the documents to the City of Bryan Finance Division, and Contractor can expect payment of progress payments and retainage within thirty days from the date of City's submission.

4.4 Liquidated Damages –

4.4.1 If Contractor fails to Substantially Complete the Work by the deadline for Substantial Completion in the Notice to Proceed, or as amended by change order, the City will assess Contractor $100 a day for every day until the Certificate of Occupancy is issued and the Work is substantially complete.

4.4.2 If the Contractor fails to complete the Close Out within thirty days following the date the Work is substantially complete, the City will assess Contractor $100 a day for every day until Close Out is complete.

4.4.3 These sums represent liquidated damages, as actual damages would be impossible to determine when this Agreement is signed.

ARTICLE 5
OWNER'S OBLIGATIONS

5.1 Owner shall utilize its fire insurance claim proceeds and any additional liquid assets to retire the existing mortgage loan balance at 1100 California Street, prior to being authorized to commence with this contract work.

5.2 Owner shall obtain fire (flood where mandatory) insurance coverage for the appraised value of the structure after construction and maintain said insurance coverage for the duration of the Lien Statement, with the City of Bryan listed as Loss Payee.

5.3 Upon receipt of the Certificate of Occupancy and taking possession of the Property, Owner shall perform (or caused to be performed) proper maintenance, repair, and general upkeep of the Property (including any structures thereon) and will comply-with all City Ordinances and Code requirements related to same.

5.4 In consideration of the loan funding for the construction of the Owner's property as described above, the Owner hereby releases and discharges the City of Bryan, its agents, employees or servants from liability for any and all damages to the Owner's property, real or personal, or personal injuries resulting from work related to such improvements which may arise as a result of action on the part of the Contractor or independent contractor who provides these services.

ARTICLE 6
CONTRACTOR'S OBLIGATIONS

6.1 The Contractor agrees to obtain the necessary building permit(s) and begin the Work within ten days of the date of the Notice to Proceed, and to substantially complete the Work within the Contract Time.

6.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless Contract Documents give other specific instructions concerning these matters.

6.3 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless otherwise provided in the Contract Documents, the Contractor shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure the building permit and other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work.

6.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out this Agreement. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor assumes the responsibility to maintain sanitary conditions for the entire duration of project. The Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

6.5 The Contractor warrants to the City and Owner that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse or modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required or requested by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.6 The Contractor shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the City if the Drawings and Specifications are observed by the Contractor to be at variance therewith, before bids are submitted.

6.7 The Contractor shall review, approve, and submit to the City, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents.

6.8 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work the Contractor shall remove from and about the Project, waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. **All waste, demolition materials and construction debris shall be properly disposed of in the <u>Brazos Valley Solid Waste Management Agency (BVSWMA) Landfill</u> or other certified Class I landfill site as approved in writing by the City.** A Construction Waste Manifest for each truck or trailer load, signed by the landfill operator must be presented to the City before the payment of the final draw.

6.9 The Contractor shall provide the City access to the work in preparation and progress wherever located. This includes keys to all locked doors at Work site.

6.10 To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Owner, the City, and agents of the City from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly

employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

ARTICLE 7
CITY'S OBLIGATIONS

7.1 The City shall monitor the progress and quality of the Work, from time to time, during the course of the Work and at any time at the request of the Owner.

7.2 Based on the City observations and evaluations of the Contractor's Applications for Payment, the City will review and certify the substantial completion of the work and the amounts due the Contractor and will issue Certificates for Payment in such amounts upon successful review of the Application for Payment.

7.3 The City will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor or in situations where the City deems applicable. The City will make initial decisions on all claims, disputes or other matters in question between the Owner and Contractor, but will not be liable for results of any interpretations or decisions rendered in good faith. The Owner Representative's decisions in matters relating to aesthetic effect will be final.

7.4 The City has authority to reject Work which does not conform to the Contract Documents. If the Contractor fails to correct rejected Work or persistently fails to carry out the Work in accordance with the Contract Documents, the City, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

7.5 The City will review, approve, or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

ARTICLE 8
SUBCONTRACTS

8.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the execution of the contract documents, shall furnish in writing to the City the names of the Subcontractors, their Federal Identification Number and the Dollar Amount for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the City has made reasonable and timely objection, based upon the Subcontractor or Subcontractor's business being listed in the Lists of Parties Excluded From Federal Procurement or Non-procurement Programs Manual, debarment as a Contractor from the State list of debarred contractors, or being rejected from the City of Bryan's list of Qualified Contractors for any reason.

8.2 Contracts between the Contractor and Subcontractors shall: (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the City.

ARTICLE 9
CHANGES IN WORK

9.1 Subject to the restrictions of the City's purchasing policy, state law, and federal regulations, the parties may alter the Work of this Agreement, which includes of additions, deletions, and modifications of the Work as defined by the Contract Documents, as well as adjusting the Contract Sum and Contract Time accordingly by written Change Order signed by the Parties and adopted in accordance with the procedure outlined below. The starting price of any contract required by law to be publicly bid may not be increased by more than 25%.

9.1.1 After determining the nature of the change, the City will ask Contractor for a bid for the Change Order, including a price and an estimate on how much additional time, if any, will be necessary.

9.1.2 Within ten calendar days, the Contractor must submit a bid for the Change Order stating any additional time needed and an itemized price sheet including:

i. Cost of materials, equipment, and labor (direct costs)
ii. Cost of Overhead - Not to exceed five percent of the total direct costs.
iii. Profit - Not to exceed ten percent of the total direct costs.

9.1.3 Upon receipt of the bid for the Change Order, the City will approve or deny the Change Order bid in writing, in accordance with the City's purchasing policy and state law, as they may be amended. Change Orders must be signed by authorized representatives of all three Parties.

9.2 Work not directly interfering with, or directly held up by, the proposed change shall continue. Otherwise, no work shall be performed until written approval is received by the Contractor from the City. The parties understand and fully agree that at no time prior to written approval of acceptance is the City obligated to approve a change. Contractor also assumes the responsibility of any work performed prior to receipt of written approval of said Change Order, including cost of work, labor, etc., and may be held responsible for any damages including cost to correct damages done to project by Contractor performing work that was performed without an approved Change Order or Construction Change Directive. Any approved Change Orders shall be attached to, and for all intents and purposes, become a part of this Agreement.

ARTICLE 10
CORRECTION OF WORK

10.1 The Contractor shall correct Work rejected by the City within seven calendar days from receipt of written notice from City, or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed,

or completed, and shall correct any Work found not to be in accordance with the requirements of the Contract Documents within a period of one year from the date of Substantial Completion of this Agreement or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor.

10.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents. Establishment of the one-year time period above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

ARTICLE 11
PROTECTION OF PERSONS & PROPERTY

11.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

a) employees on the Work and other persons who may be affected thereby;
b) the Work and materials and equipment to be incorporated therein; and
c) other property at the site or adjacent thereto.

11.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss.

11.3 The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except for damage or loss attributable to acts or omissions of the City, its employees, or agents.

ARTICLE 12
INSURANCE & BONDS

12.1 The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under Workers' Compensation Acts and other Employee Benefit Acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the Work itself, to property which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for no less than limits of liability specified by the City in the Contract Documents or

required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under this Agreement. Certificates of such insurance shall be filed with the City prior to the commencement of the Work. Only insurance carriers licensed to do business in the State of Texas with an A.M. Best Rating of "A" will be accepted.

12.2 The City of Bryan insurance requirements are as follows:

a) Statutory Worker's Compensation Insurance, with Employers' Liability Insurance in the amount of $500,000. In the event any work is sublet, the Contractor shall require the Subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the Subcontractor. Waiver of subrogation is required.

b) Commercial General Liability Insurance with a $1,000,000 Combined Single Limit. The policy shall be on the Standard ISO version occurrence form, and shall include coverage for acts of independent Contractors, and shall name the City of Bryan as an additional insured. **No "claims made" policies are acceptable without prior approval by the City Attorney.**

c) Automobile Public Liability Insurance with a $1,000,000 Combined Single Limit on all self-propelled vehicles used in connection with the contract, whether owned, non-owned or hired.

d) Owner's Protective Liability with a $1,000,000 Combined Single Limit, naming the City of Bryan as an additional insured. **Required on contracts of $50,000 or more.**

12.3 The Certificates of Insurance furnished to the City shall contain a provision that coverage under such policies shall not be canceled or materially changed until at least 30 days prior written notice has been given the City of Bryan.

12.4 In accordance with Texas Government Code section 2253.021, if the Contract Sum exceeds $50,000, a payment bond must be obtained; and if the Contract Sum exceeds $100,000, a performance bond must also be obtained. The terms of such bonds shall be governed in accordance with Texas law and the requirements of the bonding company.

ARTICLE 13
BREACH & WAIVER

13.1 The following is a non-exclusive list of conditions that constitute a breach of this Agreement by Contractor:

a) defective work not being remedied;
b) claims filed by third parties;
c) failure of the Contractor to make payments to subcontractors or suppliers for Work in place for labor, materials, or equipment;
d) evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
e) failure to begin the Work and/or obtain building permit by the Commencement Date;
f) evidence that the Work will not be completed within the Contract Time and the retainage will not be adequate to cover the actual or liquidated damages for the anticipated delay;

g) persistent failure to meet interim deadlines; or
h) persistent failure to carry out the Work in accordance with the Contract Documents.

13.2 It is a breach of this Agreement if the City fails to timely pay Contractor (i.e. within 30 days following a request for payment) if the request for payment is in order and the relevant work is substantially and satisfactorily complete.

13.3 The making of final payment shall constitute a waiver of claims by the City except those arising from:

a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
b) failure of the Work to comply with the requirements of the Contract Documents; and
c) terms of special warranties required by the Contract Documents.

13.4 Acceptance of final payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 14
REMEDIES FOR BREACH

14.1 If the City breaches this Agreement, the Contractor must give the City written notice of the alleged breach and thirty days to cure. If City fails to cure the breach, Contractor may terminate this Agreement and recover from the City payment for Work in place.

14.2 If the Contractor breaches this Agreement, the City must give the Contractor written notice of the alleged breach and thirty days to cure. If the Contractor fails to cure the breach, City may deduct the cost thereof, including compensation for the City's services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. Alternatively, at the City's option, and upon certification by the City that sufficient cause exists to justify such action, the City may terminate this Agreement and take possession of the site and of all materials from the Contractor, and may finish the Work by whatever method the City deems expedient and necessary. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the Contractor shall pay the difference to the City.

14.3 In addition to any other remedies available under this Agreement, or at law, the City retains the right to remove the Contractor from the List of Qualified Contractors for the following reasons:

a) Breach of Contract.
b) Failure on the part of the Contractor to follow the conditions of this Agreement.
c) Failure to act in good faith.
d) Failure to meet deadlines and complete work promptly.
e) Poor workmanship as determined by City.
f) Frequent omissions in construction practices, whether corrected or not.
g) Failure to comply with all federal, state, and local regulations.
h) Any other breach of this Agreement the City deems applicable.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 All written notices required by this Agreement shall be sent by Certified Mail Return Receipt Requested or personally delivered to the addresses below:

City

Community Development Services
Attn: **Eric Barton**
405 W. 28th St.
Bryan, Texas 77803
(979) 209-5185

Owner

Travis and Rosalyn Williams
1113 Florida Street
Bryan, TX 77803
(979) 402-7261

Contractor

Bean Construction
ATTN: Earnest Bean
4252 Ashley Lane
College Station, TX 77845
(979) 777-6443

15.2 The Contract shall be governed by the laws and ordinances of the City of Bryan and HUD guidelines where applicable.

15.3 Should any litigation ensue over the terms and conditions of this Agreement, the laws of the State of Texas shall apply. The venue of any lawsuit filed over the terms and conditions of this Agreement shall be Brazos County, Texas. The prevailing party to any such suit is entitled to attorney's fees and costs in accordance with Texas law.

15.4 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement 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.

15.5 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.

15.6 City's failure to take action to enforce this Agreement in the event of Developer'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 City from taking action to enforce this Agreement on subsequent occasions.

Signed and executed by the Contractor, Owner and City this _____ day of _____, 2013 at Bryan, Brazos County, Texas. This Agreement shall become effective immediately upon its execution.

CITY OF BRYAN

By:_____
Jason P. Bienski, Mayor

ATTEST

_____
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

_____
Travis B. Williams, Owner

_____
Rosalyn B. Williams, Owner

_____
Earnest Bean, Owner
Bean Construction

STATE OF TEXAS §
§ **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for Brazos County, Texas, on this day personally appeared Travis B. Williams, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2013.

_____
Notary Public in and for
The State of Texas

My commission expires:_____

STATE OF TEXAS §
§ **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for Brazos County, Texas, on this day personally appeared Rosalyn B. Williams, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2013.

_____
Notary Public in and for
The State of Texas
My commission expires:_____

STATE OF TEXAS §
§ **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for Brazos County, Texas, on this day personally appeared Earnest Bean, Owner of Bean Construction, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2013.

_____
Notary Public in and for
The State of Texas
My commission expires:_____

REAL ESTATE PROMISSORY NOTE

DATE: **_____, 2013**

BORROWER(S): **Travis B. Williams**
Rosalyn B. Williams
1113 Florida Street
Bryan, Texas 77803

LENDER: CITY OF BRYAN, TEXAS
Community Development Services Department
405 W. 28th Street
Bryan, Texas 77803

PRINCIPAL AMOUNT: **ONE HUNDRED FORTY FIVE THOUSAND SIX HUNDRED FORTY-EIGHT AND 00/100 DOLLARS ($145,648.00)**

ANNUAL INTEREST RATE: 2% per annum for $110,648.00 repayment loan for a period of Thirty (30) years; 0% per annum for $35,000.00 deferred, forgivable loan for a period of Fifteen (15) years.

PROPERTY: 0.81145-Acre Tract, S.F. Austin League No.9, Abstract 62, Bryan, Brazos County, Texas and being the aggregate of Parts of Lots G, H, and of a 20'-wide Alley as according to the plat recorded in Volume 113, page 578, Deed Records, Brazos County, Texas, and also a portion of the Remainder of the unplatted land located between said Brogdon Subdivision and Paholek Addition, an addition to The City of Bryan, Texas, according to the plat recorded in Volume 119, page 635, in Volume 3642, Page 66, Official Records, Brazos County, Texas, also known as 1113 Florida St.

I. PURPOSE

A. This Note implements requirements applicable to assistance furnished by the City of Bryan, Community Development Services Department (Lender) to **Travis B. and Rosalyn B. Williams**, (Borrowers) under a Housing Rehabilitation Assistance Program (Program) to help eligible individuals and families. Lender, using CDBG Program funds furnished by the United States Department of Housing and Urban Development (**HUD**), is carrying out this Program, as authorized by 42 USC 12703.

B. The Lender has assisted the Borrower in improving the Property for use as the Borrowers' principal residence. The Lender or any authorized party who takes this Note by assignment and is entitled to receive amounts due under this Note is called the Note Holder.

II. BORROWERS PROMISE TO PAY

A. Obligation to Repay Principal **($110,648.00**).

1) In return for the reconstruction assistance that is part and parcel of the purchase money for the property and its improvements, the undersigned Borrower has received pursuant to the

Program for the rehabilitation/ reconstruction of the Property, Borrower hereby promises to pay the principal amount of ONE HUNDRED TEN THOUSAND SIX HUNDRED FORTY-EIGHT AND 00/100 DOLLARS ($110,648.00) ("Principal") to the order of Lender. Payment of Principal and interest under this Note will be made in equal monthly payments for the period specified.

2) In the event of a breach of this note by Borrower, Borrower agrees that interest shall accrue from the date of the event of default until paid, at the rate of ten percent (10%) per annum.

3) Principal and interest on the **$110,804.00** in the amount of **$408.30** shall be payable in **360** monthly installments beginning on the **5th day of January, 2014**. A like installment shall be payable on or before the same day of each succeeding month until the note has been paid. Payment of any installment of principal owing on this Note may be made prior to the maturity date thereof without penalty.

4) In the event of a change in the scope of the work requiring a change order, the Principal may be amended accordingly, provided that Borrower, Co-Borrower, and Lender agree in writing. In such a case, if the change order is for less than $25,000 and is equivalent to less than twenty-five percent of the original Principal amount, Lender delegates approval authority for such a change order to the City Manager, or his or her designee, as allowed by state law and city ordinances.

B. Forgivable Subsidy **($35,000.00)**

1) The **THIRTY-FIVE THOUSAND AND NO ONE HUNDREDTHS DOLLARS ($35,000.00)** remainder of this note is in the form of a zero interest, deferred, forgivable loan with a term of Fifteen (15) years ("Subsidy"). The Subsidy shall not accrue interest for so long as the Borrower has maintained the Property as his/her primary residence, complied with all terms and conditions of this Note, and complied with all the terms and conditions of the Deed of Trust of even date herewith. If on the 1st day of the sixteenth year following the date of issuance of a Certificate of Occupancy by the City of Bryan Building Services the Borrower has maintained the property, identified above, as his primary residence and has complied with all terms and conditions of this Note and the Deed of Trust of even date herewith, this portion of the Note shall be deemed satisfied.

III. AFFORDABILITY PERIOD

A. In accordance with the terms of the Program, during the fifteen year affordability period ("Affordability Period") the Borrower must continue to make the Property his or her primary residence, and the property may not be sold, transferred, or assigned by Borrower without first obtaining Lender's written permission. The terms of this Note may be assigned in the event of a change in ownership of the property that results from the death, divorce, legal separation, or legal incapacity of Borrower, provided that the new owner of the Property meets the requirements of the Program.

B. If the Property is sold, transferred, or assigned to a new owner that does not meet the requirements of the Program, the Borrower is in breach of the terms of this Note. In addition to

other remedies at law and otherwise set forth herein, the Forgivable Subsidy shall become due and payable, along with any outstanding Principal and interest.

C. During the Affordability Period, this Note may not be prepaid, except at Lender's option. In the event of prepayment, the Note Holder will use all prepayments to reduce the amount of Principal that Borrower owes under this Note.

D. Borrower acknowledges and understands that the Forgivable Subsidy is being provided in accordance with the Program requirements, and is only forgivable for so long as those requirements are being met. In the event that Borrower is in default under this note, and the Subsidy becomes due and payable, all sums due shall accrue interest at the rate of 10% per annum until paid.

IV. RELEASE AND SATISFACTION

A. If the Borrower meets all the requirements of the promise to pay, including the payment of Principal and interest as well as fulfilling the requirements for the Subsidy, Borrower shall be entitled to release and satisfaction of this Note.

B. If Borrower sells the Property in accordance with Section III, and meets all the requirements related to repayment of the Principal and interest, as well as repayment of the Subsidy, Borrower shall be entitled to release and satisfaction of this Note.

C. Lender will release the Deed of Trust upon payment of a reasonable fee, as determined by Lender, to recoup the cost of preparing and recording the release of the Deed of Trust.

V. DEFAULT

A. Events of Default. Any of the following events shall constitute a Default under this Note:

1) If the Borrower rents or leases (Including an oral lease) the Property, to any person or entity during the Affordability Period, except that the Borrower may rent limited space, such as a room or basement, in a single-unit Property, to the extent permitted by the law of the jurisdiction, provided that the Borrower continues to occupy the unit as his or her Principal Residence.

2) If the Borrower fails to occupy Property as principal residence. If all Borrowers are continuously absent from the Property for a period of more than thirty days, or move substantially all their personal possessions out of the Property, without the written consent of the Lender, Borrowers shall be deemed not to be occupying the Property as their Principal Residence.

3) Any default under the Deed of Trust.

4) Any willful misstatement of, or failure to disclose, a material fact by Borrower relating to his or her eligibility for assistance with respect to the Property under the Lenders' Program is a Default under this Paragraph. Recovery against the Borrower responsible for the fraud or misrepresentation is not limited to the proceeds of fraud or sale of the Property but may

include personal judgment and execution thereon to the full extent authorized by law.

5) If the Borrower is convicted of a felony (including a state jail felony) arising out of conduct that occurred during the Affordability Period. If the Borrower allows a person to use the Property as a residence during the Affordability Period, and that person is convicted of a felony arising out of conduct that took place while the person was using the Property as a residence.

6) If the Borrower is cited for violations of City Ordinances relating to the Property (e.g. Building Code, Nuisances, Health and Safety, etc.) three or more times within a twelve month span during the Affordability Period.

B. Notice of Default and Amount Due. If Borrower is in Default, the Lender may send Borrower a written Notice of Default stating the reason Borrower is in Default and demanding immediate payment of the following:

1) The full amount of Subsidy and Principal then due on this Note, including interest from the date of the Notice of Default until paid.

2) All of the Note Holders' costs and expenses reimbursable under Paragraph 5.D. This Notice shall be sent to Borrower at the above address, certified mail, return receipt requested.

C. Right of Foreclosure. In the event of any default of the Borrower, Note Holder has the right of foreclosure against this property and its improvements, according to the terms of the Deed of Trust of executed of even date.

D. Payment of Note Holders' Costs and Expenses. If the Note Holder has provided Borrower with a Notice of Default, the Note Holder has the right to be repaid from the proceeds of foreclosure for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include for example, reasonable attorney fees.

E. No Waiver by Note Holder. Even if, at any time when Borrower is in Default, the Note Holder does not require Borrower to pay immediately in full under Paragraph 5.B., the Note Holder will still have the right to do so if Borrower is in Default for the same reason, or for another reason, at any later time.

VI. GIVING OF NOTICES

Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by certified mail, return receipt requested to Borrower at the Property Address above, or at a different address if Borrower gives the Note Holder a written notice of a different address.

VII. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed from the proceeds of a Sale of the Property. Any person who is a guarantor, surety or endorser of this Note is also obligated to the same extent. Any person who takes over these obligations including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in

this Note. The Note Holder may enforce its rights under this Note against each person individually or against all signers, successors, guarantors, sureties, or endorsers together.

VIII. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of Presentment and Notice of dishonor. **Presentment** means the right to require that the Note Holder formally demand payment of amounts due. **Notice of dishonor** means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

IX. COMPLIANCE WITH ENVIRONMENTAL LAWS

Borrower agrees to comply with all applicable environmental laws and authorities.

X. MAINTENANCE OF PROPERTY

The Property must be maintained to meet all applicable City codes, including community appearance standards and code enforcement ordinances.

XI. GOVERNING LAW

The law of the State of Texas shall govern this Note and the Deed of Trust. Venue shall lie with a court of competent jurisdiction in Brazos County, Texas.

LENDER--CITY OF BRYAN

_____
Jason P. Bienski, Mayor

ATTEST

_____
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

_____
Janis K. Hampton, City Attorney

BORROWER

_____
Travis B. Williams

BORROWER

_____
Rosalyn B. Williams

STATE OF TEXAS §
§ **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the _____ day of_____ _____ _____, 2013, by **Travis B. Williams** as BORROWER for the reconstruction of the property described herein.

_____
Notary Public, State of Texas

This instrument was acknowledged before me on the _____ day of_____ _____ _____, 2013, by **Rosalyn B. Williams** as BORROWER for the reconstruction of the property described herein.

_____
Notary Public, State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

DEED OF TRUST

DATE: _____,2013

GRANTOR(s): **Travis B. Williams**
Rosalyn B. Williams
1113 Florida Street
Bryan, Texas 77803

TRUSTEE: Mayor of the City of Bryan
Or His or Her Designee
Post Office Box 1000
Bryan, Texas 77805

BENEFICIARY: City of Bryan
Community Development Services Department
405 W. 28th Street
Bryan, Texas 77803

NOTE DATE: _____, 2013

PRINCIPAL AMOUNT: ONE HUNDRED FORTY-FIVE THOUSAND SIX HUNDRED FORTY-EIGHT AND 00/100 DOLLARS ($145,648.00) which amount includes a THIRTY-FIVE THOUSAND AND 00/100 DOLLARS forgivable subsidy

BORROWER(s): **Travis B. Williams**
Rosalyn B. Williams

LENDER: City of Bryan, Texas

FINAL MATURITY DATE: As provided in the note.

PROPERTY: 0.81145-Acre Tract, S.F. Austin League No.9, Abstract 62, Bryan, Brazos County, Texas and being the aggregate of Parts of Lots G, H, and of a 20'-wide Alley as according to the plat recorded in Volume 113, page 578, Deed Records, Brazos County, Texas, and also a portion of the Remainder of the unplatted land located between said Brogdon Subdivision and Paholek Addition, an addition to The City of Bryan, Texas, according to the plat recorded in Volume 119, page 635, in

Volume 3642, Page 66, Official Records, Brazos County, Texas, also known as 1113 Florida St.

A. PURPOSE:

1. This Deed of Trust implements requirements applicable to assistance furnished by the City of Bryan, Community Development Services Department GRANTOR, under a Housing Rehabilitation Assistance Program (Program) to help eligible individuals and families. Beneficiary, using CDBG Program funds furnished by the United States Department of Housing and Urban Development (**HUD**), is carrying out this Program, as authorized by 42 USC 12703.

2. The Beneficiary has assisted the Grantor in improving the Property for use as the Grantor's principal residence.

B. CONVEYANCE, WARRANTY, & EXCEPTIONS:

3. For value received and to secure payment of the above referenced note, Grantor grants, sells, and conveys the property to Trustee in trust for the benefit of the Beneficiary. Grantor warrants and agrees to defend the title to the property. This Deed of Trust is executed to secure the Note executed on this same date for the same above mentioned property for the construction funding for the property listed above. If Grantor performs all the covenants and pays the Note according to its items, this Deed of Trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

4. This conveyance is subject to all valid and subsisting easements, restrictions, rights-of-way, conditions, exceptions, reservations, and covenants of record of whatever nature, if any, and also the zoning laws and other restrictions, regulations, ordinances and statutes of municipal or other government authorities applicable to and enforceable against the described premises.

C. GRANTOR'S OBLIGATIONS:

Grantor agrees to fulfill the obligations listed below.

5. Keep the property in good repair and condition, and in compliance with all city codes.

6. Pay all taxes and assessments on the property when due, and furnish to Beneficiary, on request, satisfactory evidence of same.

7. Obtain and at all times maintain, in a form acceptable to Beneficiary, an insurance policy that:

    a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
    b. contains an 80% coinsurance clause;
    c. provides fire and extended coverage, including windstorm coverage;
    d. protects Beneficiary with a standard mortgage clause;
    e. provides flood insurance (if the Property is in a flood hazard area); and
    f. contains such other terms, conditions, and coverage as Beneficiary may reasonably require.

8. Deliver copies of the insurance policy, and subsequent renewals, to Beneficiary within ten (10) business days of execution.

9. Comply with all provisions of the Note.

10. If the property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

D. BENEFICIARY'S RIGHTS:

11. Beneficiary, acting through the City Council, may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.

12. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.

13. If Grantor fails to perform any of Grantors obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorneys fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this Deed of Trust.

14. In addition to any other remedies provided in this document or by law, if Grantor defaults on the note or fails to perform any of Grantors obligations, Beneficiary may:

    a. provide notice of intent to accelerate the note, including the forgivable subsidy, along with the notice of default;
    b. declare the subsidy, unpaid principal balance, and earned interest on the Note immediately due;
    c. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
    d. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

E. TRUSTEE'S DUTIES:

If requested by Beneficiary to foreclose for payment of the note, Trustee shall:

15. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;

16. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to other exceptions to conveyance and warranty; and

17. From the proceeds of the sale, pay, in this order:

    a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
    b. the full amount of subsidy, principal, interest, attorney's fees, other costs collection or foreclosure, and other charges due and unpaid to Beneficiary;
    c. any amounts required by law to be paid before payment to Grantor; and
    d. any balance to Grantor.

F. TRANSFER, RESALE, & RECOUPMENT:

18. **TRANSFER OF THE PROPERTY**: Except where otherwise required or permitted by the Beneficiary in connection with a transfer on death, divorce, legal separation, or legal incapacity of a Grantor, the Property may not be transferred or sold during the affordability period, except where agreed to by Beneficiary in writing. This prohibition applies to any sale, transfer, or conveyance of all or part of the Property, or of any interest therein (including a beneficial interest).

19. **PROCEEDS OF SALE**: In the event of a proposed sale or transfer of all or any part of the Property or an interest in it (including a beneficial interest) by the Grantor, the Property will be sold subject to this Deed of Trust unless the proceeds of the sale are used to repay all amounts due on the Note. The Beneficiary may agree to a sale of all or a part of the Property, subject to this Deed of Trust, if the purchaser executes a new promissory note payable to the Beneficiary.

G. MISCELLANEOUS:

20. **RECITALS**: Recitals in any Trustees deed conveying the property will be presumed to be true.

21. **FORECLOSURE PROCEEDING**: Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

22. **SUPERIORITY**: This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.

23. **APPLICATION**: If any portion of the note cannot be lawfully secured by this Deed of Trust, payments shall be applied first to discharge that portion.

24. **ASSIGNMENT**: Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorneys' fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.

25. **GOVERNING LAW**: This Deed of Trust and the Note implement requirements applicable to the City of Bryan Community Development Housing Rehabilitation/ Reconstruction Assistance Program (the Program) using CDBG and/or HOME Program funding furnished by the United States Department of Housing and Urban Development (**HUD**) and shall be construed in accordance therewith. To the extent not inconsistent therewith, the laws of the State of Texas and the local jurisdiction in which the Property is located shall govern these documents.

26. **SUBORDINATION**: **NONE**, except at Beneficiary's sole option.

27. **CONTEXT**: When the context requires, singular nouns and pronouns include the plural.

28. **INCLUSION**: The term, **Note,** includes all sums secured by this deed of trust.

29. **BORROWER**: If Grantor and Borrower are not the same person, the term **Grantor** shall include Borrower.

30. **REPRESENTATIONS**: Grantor represents that this Deed of Trust and the note are given for the following purposes:

The note, dated**_____, 2013**, represents **ONE HUNDRED FORTY-FIVE THOUSAND SIX HUNDRED FORTY-EIGHT AND 00/100 DOLLARS ($145,648.00)** in cash that Beneficiary advanced to Grantor under the City of Bryan's Housing Reconstruction Assistance Program for the purpose of demolishing the existing property improvements and reconstructing the property and its improvements for use as Grantor's principal residence in accordance with the Note and this Deed of Trust.

If Grantor fails to pay any part of principal or interest on the property when it becomes payable or is in default, the debt secured by this Deed of Trust shall become payable at the option of Beneficiary.

EXECUTED this _____day of _____**, 2013**.

_____ _____

Travis B. Williams – Grantor Rosalyn B. Williams, Grantor

STATE OF TEXAS §
§ **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

Travis B. Williams acknowledged this instrument before me on the _____day of _____, 2013**.**

_____
Notary Public, State of Texas

Rosalyn B. Williams acknowledged this instrument before me on the _____day of _____, 2013**.**

_____
Notary Public, State of Texas

After Recording, Return To:

Community Development Services Department
City of Bryan
405 W. 28th Street
Bryan, Texas 77803

1100 California (Burned Structure)
1113 Florida Redevelopment Site

1100 CALIFORNIA (BURNED INTERIOR)