



## **TEMPLE CITY COUNCIL**

**MUNICIPAL BUILDING**

**2 NORTH MAIN STREET**

**TEMPLE, TX**

**NOTICE OF MEETING**

**THURSDAY, MAY 1, 2008**

**4:00 P.M.**

**3<sup>RD</sup> FLOOR CONFERENCE ROOM**

### **WORKSHOP AGENDA**

1. Receive a presentation regarding the Reinvestment Zone Aviation Campus and Airport Planning Project report prepared by Leslie Sagar & Associates.
2. Discuss proposed amendments to the City's sign ordinance.
3. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, May 1, 2008 as follows:

**5:00 P.M.**  
**CITY COUNCIL CHAMBERS – 2<sup>ND</sup> FLOOR**

**TEMPLE CITY COUNCIL**

**REGULAR MEETING AGENDA**

**I. CALL TO ORDER**

1. Invocation
2. Pledge of Allegiance

**II. PROCLAMATIONS & SPECIAL RECOGNITIONS**

3. [Presentation of Proclamations:](#)
  - (A) Youth Week May 5 – 9, 2008
  - (B) Save a Life Day May 10, 2008
  - (C) Recognize Keep Temple Beautiful for receiving the Governor's Community Achievement Sustained Excellence Award from Keep Texas Beautiful
4. Recognize Mary Ann Garrett as the recipient of the [2008 Hometown Hero Award](#) and Diana Acosta as the recipient of the Rising Hero Student of 2008 presented by Time Warner Cable, Baylor University Athletics and Fox Sports.

**III. PRESENTATIONS FROM ADVISORY BOARDS & STAFF**

5. Receive a presentation regarding the City's emergency outdoor warning sirens.

**IV. PUBLIC COMMENTS**

Citizens who desire to address the Council on any matter may sign up to do so prior to this meeting. Public comments will be received during this portion of the meeting. Please limit comments to 3 minutes. No discussion or final action will be taken by the City Council.

**V. CONSENT AGENDA**

All items listed under this section, Consent Agenda, are considered to be routine by the City Council and may be enacted by one motion. If discussion is desired by the Council, any item may be removed from the Consent Agenda at the request of any Councilmember and will be considered separately.

6. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:

**Minutes:**

- (A) [January 10, 2008 Special Called Meeting](#)
- (B) [January 11, 2008 Special Called Meeting](#)
- (C) [April 17, 2008 Special Called Meeting and Regular Meeting](#)

**Contracts, Leases & Bids:**

- (D) [2008-5378-R](#): Consider adopting a resolution authorizing the purchase of eight (8) treadmills and three (3) spin bikes from Marathon Fitness of Sugar Land in the amount of \$42,866.
- (E) [2008-5379-R](#): Consider adopting a resolution authorizing a construction contract with JHL Construction of Gatesville for park improvements in Jackson Neighborhood Park in the amount of \$155,705 and authorizing an amendment to the Fiscal Year 2007-2008 Community Development Block Grant (CDBG) Action Plan.
- (F) [2008-5380-R](#): Consider adopting a resolution authorizing a construction contract with Global Mobile Recovery (GMR) of Carrollton for the replacement of twelve (12) air conditioning units at the Public Services Building in the amount of \$67,347.88 and declare an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations for this project.
- (G) [2008-5381-R](#): Consider adopting a resolution authorizing a construction contract with JNA Painting Company, Inc. of Baltimore, Maryland for the exterior painting of the Public Services Building in the amount of \$59,700 and declare an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations for this project.
- (H) [2008-5382-R](#): Consider adopting a resolution authorizing a construction contract with Wheeler Coating Asphalt, LP of Belton for the FY 07-08 Overlay Program based on a unit price of \$59.85 a ton for overlay and \$80.00 per ton for speed humps.
- (I) [2008-5383-R](#): Consider adopting a resolution authorizing a construction contract with Big Tex Paving of Johnson City for the FY 2008 Seal Coat Program based upon unit price of \$1.76 per square yard.
- (J) [2008-5384-R](#): Consider adopting a resolution authorizing Change Order #4 to the Loop 363 Utility Relocation Phase 2 construction contract with Bell Contractors, Inc., for items related to final connections and quantity reconciliations to the project as required in the deduct amount of \$91,654.93.
- (K) [2008-5385-R](#): Consider adopting a resolution authorizing a purchase agreement with Triple S Petroleum of Austin for the purchase of on-site fuel for Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport in the estimated annual amount of \$40,000.

- (L) [2008-5386-R](#): Consider adopting a resolution authorizing a professional services agreement with Carollo Engineers of Austin for engineering services required to rehabilitate the mixed media filters at the Conventional Water Treatment Plant (including modifications to the filter backwash process and instrumentation system) and structural repairs to Lagoon #4, in an amount not to exceed \$264,671 and declaring an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations designated for this project.
- (M) [2008-5387-R](#): Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick, and Associates of Temple for engineering services required to perform preliminary engineering of the South Temple Pump Station and Ground Storage Tank Project, in an amount not to exceed \$119,730.
- (N) [2008-5388-R](#): Consider adopting a resolution authorizing the City Manager to execute a Lease of Land for Track Construction of Track (CL), a new Industrial Track Agreement (ITA) and a Contractor's Right of Entry Agreement with BNSF Railway in the total amount of \$374,585, and declaring an official intent to reimburse certain expenditures made prior to the issuance of obligations for this project.

#### **Ordinances - Second and Final Reading**

- (O) 1. [2008-4215](#): SECOND READING – Z-FY-08-19-A: Consider adopting an ordinance authorizing an amendment to the West Temple Comprehensive Plan to reflect commercial uses on approximately 4.63 acres of land commonly known as Outblock 561-M, City addition located on the west side of North General Bruce Drive, north of Saulsbury park.
- 2. [2008-4216](#): SECOND READING – Z-FY-08-19-B: Consider adopting an ordinance authorizing a zoning change from Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park.

#### **Misc:**

- (P) [2008-5389-R](#): P-FY-08-15: Consider adopting a resolution approving the residential replat of Ingram Estates Subdivision, a 6.97 acre, two lot residential subdivision, located north of Sparta Road, at the southeast corner of Water Works Road at Denman's Loop, west of West Cliffe Park, in Temple's Western ETJ, subject to the applicant's requested exceptions to Subdivision Regulations Section 33-94(a) requiring rural streets to be edged with 12-inch wide ribbon curbs and Section 33-102(d)(2) requiring payment \$225 in park fees per dwelling unit.
- (Q) [2008-5390-R](#): P-FY-08-26: Consider adopting a resolution approving the amended preliminary plat of Windmill Farms Phase III, located on the along the west side of SH 317 adjacent to the city limit line, subject to the developer's requested exceptions to Subdivision Regulations Section 33-93(c) requiring extension of stub out streets to adjoining properties and Section 33-93(h)(1) requiring that cul-de-sacs be a maximum of 500 feet in length.

- (R) [2008-5391-R](#): P-FY-08-27: Consider adopting a resolution approving the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple City limits.
- (S) [2008-5392-R](#): P-FY-08-29: Consider adopting a resolution approving the Final Plat of Airport Park at Central Pointe, Phase 1, nine (9) commercial lots on 63.8± acres west of Old Howard Road, on both sides of Central Pointe Parkway, subject to the applicant's requested exception to the Subdivision Regulations Sections 33-93(h) (1) requiring that cul-de-sacs be a maximum of 500 feet in length.
- (T) [2008-5393-R](#): Consider adopting a resolution allowing for a 5% local preference on all formal bids over \$25,000 where applicable by law.
- (U) [2008-5394-R](#): Consider adopting a resolution authorizing the transfer of the Business Rail Car to the Arizona Railroad Museum in Chandler, Arizona.
- (V) [2008-5395-R](#): Consider adopting a resolution authorizing funding from the Child Safety Fees for the 2008 Junior Fire Cadet Program in the amount of \$12,970.
- (W) [2008-5396-R](#): Consider adopting a resolution authorizing certain City employees to conduct investment transactions, transfer funds, and represent the City in other financial transactions.
- (X) [2008-5397-R](#): Consider adopting a resolution authorizing budget amendments for fiscal year 2007-2008.

## **VI. REGULAR AGENDA**

### **ORDINANCES**

- 7. [2008-4217](#): FIRST READING – PUBLIC HEARING – Consider adopting an ordinance amending the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2008-2022 to include redesignation of projects within the Project Plan, bond proceeds, and future year bond payments.
- 8. (A) [2008-4218](#): FIRST READING – PUBLIC HEARING – Consider adopting an ordinance designating the South 1<sup>st</sup> Street corridor (from Adams Avenue to Loop 363) as Tax Abatement Reinvestment Zone Number Thirteen for Commercial/Industrial/ Residential Tax Abatement and authorizing a number of other economic development incentives for property redevelopment.  
  
(B) [2008-4219](#): FIRST READING – PUBLIC HEARING – Consider adopting an ordinance establishing the City's Economic Development Policy, setting out a program for promoting economic development within the City by reestablishing criteria and guidelines for tax abatement, authorizing loans and grants of public money and providing personnel and services of the municipality, to promote local economic development and to stimulate business and commercial activity.
- 9. (A) [2008-4220](#): Z-FY-08-20-A – FIRST READING – PUBLIC HEARING – Consider adopting an ordinance amending the West Temple Comprehensive Plan to reflect commercial uses on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One.

(B) [2008-4221](#): Z-FY-08-20-B – FIRST READING – PUBLIC HEARING – Consider adopting an ordinance authorizing a zoning change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One.

## **RESOLUTIONS**

10. [2008-5398-R](#): Consider adopting a resolution confirming the appointment of the Assistant City Attorney.

## **BOARD APPOINTMENTS**

11. [2008-5399-R](#): Consider adopting a resolution appointing four at-large members to the Temple Medical Education District Coordinating Group.

## **DISCUSSION ITEMS**

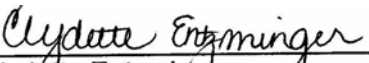
12. Discuss the City's policy regarding conflicts of interest.

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***The City Council reserves the right to discuss any items in executive (closed) session whenever permitted by the Texas Open Meetings Act.***

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I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 5:40 PM, on April 25, 2008.

  
Clydette Entzminger  
City Secretary

I certify that this Notice of Meeting Agenda was removed by me from the outside bulletin board in front of the City Municipal Building on \_\_\_\_\_ day of \_\_\_\_\_ 2008. \_\_\_\_\_



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #3(A)-(C)  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

William A. Jones, III, Mayor

### **ITEM DESCRIPTION:** Presentation of Proclamation:

- (A) Youth Week May 5 – 9, 2008
- (B) Save a Life Day May 10, 2008
- (C) Recognize Keep Temple Beautiful for receiving the Governor's Community Achievement Sustained Excellence Award from Keep Texas Beautiful

### **STAFF RECOMMENDATION:** Present proclamations as presented in item description.

### **ITEM SUMMARY:**

- (A) This proclamation was requested by, and will be received by, Willie Capps on behalf of the Elks Lodge #138.
- (B) This proclamation was requested by, and will be received by, Pat and Rob Smith.
- (C) This proclamation will recognize Keep Temple Beautiful for recently receiving the Sustained Excellence Award. In 2006 KTB won the Governor's Community Achievement Award (\$130,000 for use on 1<sup>st</sup> Street). KTB is not eligible to win, or even place, for this award until 2009. There is, however, a Sustained Excellence Award that is given for high scores each year. For 2007 out of a possible 100 points KTB scored 98.67 (a full point higher than the winning 2006 score).

### **FISCAL IMPACT:** None

### **ATTACHMENTS:** None



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08

Item #4

Regular Agenda

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**DEPT./DIVISION SUBMISSION & REVIEW:**

William A. Jones, III, Mayor

**ITEM DESCRIPTION:** Recognize Mary Ann Garrett as the recipient of the 2008 Hometown Hero Award and Diana Acosta as the recipient of the Rising Hero Student of 2008 presented by Time Warner Cable, Baylor University Athletics and Fox Sports.

**STAFF RECOMMENDATION:** Present recognitions as presented in item description.

**ITEM SUMMARY:** This item was requested to recognize Mary Ann Garrett of Temple as the recipient of the 2008 Hometown Hero Award, presented by Time Warner Cable, Baylor University Athletics and Fox Sports. Ms. Garrett was nominated by Barbara Welsh for her outstanding service in the Central Texas community. Time Warner will also be recognizing Diana Acosta, a Temple High School senior, as the Rising Hero Student of 2008.

**FISCAL IMPACT:** None

**ATTACHMENTS:** None





## COUNCIL AGENDA ITEM MEMORANDUM

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04/17/08  
Item #6(A)-(C)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Clydette Entzminger, City Secretary

### **ITEM DESCRIPTION:** Approve Minutes:

- (A) January 10, 2008 Special Called Meeting
- (B) January 11, 2008 Special Called Meeting
- (C) April 17, 2008 Special Called Meeting & Regular Meeting

**STAFF RECOMMENDATION:** Approve minutes as presented in item description.

**ITEM SUMMARY:** Copies of minutes are enclosed for Council review.

**FISCAL IMPACT:** N/A

### **ATTACHMENTS:**

January 10, 2008 Special Called Meeting  
January 11, 2008 Special Called Meeting  
April 17, 2008 Special Called Meeting & Regular Meeting

## **SPECIAL MEETING OF THE TEMPLE CITY COUNCIL**

**JANUARY 10, 2008**

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, January 10, 2008 at 5:00 pm in the Mayborn Convention & Civic Center, 3303 North 3rd Street.

**Present:**

Councilmember Tony Jeter  
Councilmember Russell Schneider  
Mayor William A. Jones, III  
Mayor Pro Tem Patsy Luna

Councilmember Russell Schneider voiced the Invocation. Mayor Pro Tem Patsy Luna led the Pledge of Allegiance.

**1. FIRST READING - PUBLIC HEARING - Receive public comments and consider adopting ordinances authorizing the annexation of the following areas of land into the Temple City limits:**

**2008-4189: Area A: Approximately 0.9 square miles located west of the current City limits along a line generally following FM 2305 and extending to Temple Lake Park**

**2008-4190: Area B: Approximately 1 square mile located west of the current City limits in the proximity of SH 317 north of FM 2305 and south of SH 36**

**2008-4191: Area C: Approximately 5.4 square miles located northwest of the current City limits in the proximity of SH 36 toward Lake Belton and north and west of Draughon-Miller Regional Airport**

**2008-4192: Area D: Approximately 2.6 square miles located north of the current City limits in the proximity of an area east of the BNSF rail line and north of Moore's Mill Road and west of I-35**

Mayor Jones began with a review of the process to be followed for this meeting. He explained this is the last opportunity for public comment regarding the four study areas being considered for annexation.

David Blackburn, City Manager, reviewed the annexation process that has occurred to date. He discussed the areas that are being recommended for exclusion from the annexation process in each of the areas under consideration. Mr. Blackburn also presented the reasons the Staff is recommending annexation of the properties in the four study areas.

Tim Dolan, Planning Director, reviewed the municipal services plan and the services to be provided by the City of Temple, as well as the effective date. He also reviewed the capital

improvements portion of the municipal services plan.

Jonathan Graham, City Attorney, reviewed the legal aspect of the annexation process, including notification and municipal service plan requirements. He also discussed the development agreement process for those qualifying property owners with agricultural, timber or wildlife management lands. Mr. Graham also responded to comments made by Mr. Carl Grisham during a previous public hearing about whether the City's commitments had been completed with respect to an annexation in 1999. Mr. Graham explained the City did fall short of that commitment during the timeframe set out in the ordinance but the project, with a much larger scope than was originally anticipated, will be complete in April 2008.

Mayor Jones declared the public hearing to be open regarding all four ordinances being considered.

Comments received regarding Area A:

Mr. Edward Dawkins, 12714 FM 2305, stated he was told if anyone tied into the water line he installed he would get money back. He had to go down FM 2305 to put in the water line and hand trench to his property. He asked how he can believe anything the City says.

Mayor Jones replied the staff will research this issue and get an answer for Mr. Dawkins.

Mr. Dawkins stated there is currently a burn ban. If they are annexed, will they have to get approval from the Fire Marshal to burn tomorrow?

Mr. Graham replied yes.

Mr. Dawkins asked who will maintain their road, Birdsong Drive.

Mayor Jones stated it is not a County road so it would have to be dedicated to the City before the City would maintain it. He noted the road is not built to City standards.

Mr. Blackburn stated the City will maintain the waterline in the easement area.

Mr. Dawkins asked whose waterline this is since he paid for it and put it in. He also asked if a building is already under construction will a building permit be required.

Mayor Jones replied no, not if construction is underway.

Comments received regarding Area B: None

Comments received regarding Area C:

Barbara Marsh, 5080 Airport Trail, asked how long the City has been planning this annexation.

Mr. Blackburn replied the Council authorized the study of these areas on November 1. Staff began looking at these areas months prior to that.

Ms. Marsh stated Mr. Dolan knew weeks before the property owner notices were mailed that annexation would occur. Channel 6 had a news story about a fire station being built on her property after she was told by the Planning staff there was nothing to worry about and there were no plans for annexation. Now she finds out the City is planning to build fire station #8 on top of her home. She felt that Mr. Dolan lied to her. Ms. Marsh stated she also asked about possible annexations a year ago. She asked if there is a plan to build fire station #8 at Airport Trail.

Mr. Blackburn stated only a small group of staff knew any of the details of the annexation. There has been no recommendation made to the Council yet about the location of fire station #8 or any of the other stations.

Mr. Dolan replied he told Ms. Marsh there were no plans to build the fire station because he didn't know any details about the station.

Mayor Jones stated the only document he is aware of is the Fire and EMS study underway. That document might show possible locations for future fire stations but these are not exact locations. There will be a very extensive study before exact locations are determined.

John Hille, 14855 Highway 317, stated he lives north of area C but is on the border. He is here to support his neighbors and is leary of the City. What is the benefit of this annexation? The property owners will only receive the burden of taxes since there are no services being offered. He felt the City would annex his property in 2-5 years.

Mayor Jones noted there will be no change in school district boundaries due to annexation.

Omar Crisp, 8260 Cedar Creek Road, stated there are more cows being annexed in areas C and D than people. The Council is making decisions that will impact their property. He stated he has 42 acres and it will now cost more to develop that property. Why annex the property if it is already in the ETJ? Why go through with the annexation when there is so much covered under development agreements?

Mayor Jones stated the development agreements can be extended up to 45 years. The City is looking for development control for growth purposes. We need to protect development and our Airport for any future expansions.

Mr. Crisp stated there is not even adequate water in this area. He asked if the City can buy the Pendleton Water Supply and expand the capacity in this area.

Comments received regarding Area D:

Royce Oliver, 2391 FM 1237, stated he received an e-mail response to his question regarding livestock but he wanted a clarification.

Mr. Graham stated that regulations will not apply in the areas covered by development agreements but houses inside the City limits will be next houses with animals.

Howard Lesikar asked for an explanation of the colors on the maps.

Mr. Blackburn stated the green areas represent properties that qualify for development agreements; tan colored areas are available for annexation; light blue areas are in the current City limits; dark blue represents City ETJ; and purple is Morgan's Point ETJ.

Mr. Lesikar asked the logic for taking some of these two acre tracts into the City. He stated he also has a problem with having to obtain a burn permit. Mr. Lesikar asked that the City leave his property out until the 12 year term of the development agreements is up.

Other comments received regarding all areas:

Edward Dawkins asked if he will have to get rid of his excess dogs and cats if annexed. What about keeping chickens?

Mr. Graham replied chickens can be kept with the required 150' separation.

Ms. Marsh asked if she can have farm and show animals.

Mr. Graham replied yes, with the 150' separation.

Keith Eausnacht, 2810 FM 935, stated he is not in the area to be annexed but he is close. This annexation plan has come together within the last 60 days. Is there any connection between the annexation and Toyota who won't pay taxes for 5 years?

Mayor Jones stated Toyota has not asked for tax abatement yet. The City has only given them land. A return on investment study was done and the City will be getting more than it is giving to Toyota. The reason for annexation is to protect the City's assets.

Frank Lawson, 5035 Jubilee Springs (Area C), stated he has property at Moffat Road and SH 36. He didn't execute the development agreement because he might want to develop his property in the future and he doesn't want to be locked in for 12 years.

Mr. Graham explained the intent of the development agreement and what options are available to Mr. Lawson.

Ms. Marsh (Area C) asked if she has to get a permit to work on a house that was moved onto her property.

Mr. Graham replied she will have to get a permit but he stated he would meet with her to discuss her particular situation.

Charles Grisham (Areas C and D) stated he has a major concern with the fire department response time to the Whitehall area.

Frank Lawson asked why the City would annex the isolated parcels where there are so many development agreements. He felt like he misunderstood this process.

Mayor Jones stated the reason is to control development. The City has to offer development

agreements to those areas that are eligible. The maps will look much different following this annexation process.

Councilmember Jeter asked Mr. Lawson to visit with the City Attorney regarding his development agreement.

There being no further comments, Mayor Jones closed the public hearing.

Mr. Graham stated he would need Council direction to allow execution of development agreements since the deadline has passed.

Councilmember Schneider stated he has a problem with changing the deadline tonight because others that aren't here won't have the opportunity to reconsider.

Motion by Councilmember Tony Jeter to adopt all four ordinances, with the understanding modifications regarding development agreements can be made on second reading, scheduled for January 11, 2008, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

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William A. Jones, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary

# **SPECIAL MEETING OF THE TEMPLE CITY COUNCIL**

**JANUARY 11, 2008**

The City Council of the City of Temple, Texas conducted a Special Meeting on Friday, January 11, 2008 at 8:00 a.m. in the City Council Chambers, 2nd Floor, Municipal Building, 2 North Main Street.

**Present:**

Councilmember Tony Jeter  
Mayor Pro Tem Patsy E. Luna  
Councilmember Russell Schneider  
Mayor William A. Jones, III

Mayor Jones voiced the Invocation. Councilmember Jeter led the Pledge of Allegiance.

**1. SECOND READING – Consider adopting ordinances authorizing the annexation of the following areas of land into the Temple City limits:**

**2008-4189:** Area A: Approximately 0.9 square miles located west of the current City limits along a line generally following FM 2305 and extending to Temple Lake Park

**2008-4190:** Area B: Approximately 1 square mile located west of the current City limits in the proximity of SH 317 north of FM 2305 and south of SH 36

**2008-4191:** Area C: Approximately 5.4 square miles located northwest of the current City limits in the proximity of SH 36 toward Lake Belton and north and west of Draughton-Miller Regional Airport

**2008-4192:** Area D: Approximately 2.6 square miles located north of the current City limits in the proximity of an area east of the BNSF rail line and north of Moore's Mill Road and west of I-35

Mayor Jones stated this is the second and final reading of the ordinances authorizing the annexation of four areas of land into the Temple City limits.

Jonathan Graham, City Attorney, recommended the City Council enter into executive session at this time for consultation with the City Attorney due to the questions that have arisen about whether the deadline for the submission of the development agreements will be extended.

Mayor Jones announced the City Council would enter into executive session for consultation with the City Attorney.

At approximately 8:26 a.m., Mayor Jones reconvened the regular session.

Mr. Graham recommended the four annexation ordinances be adopted and that the timeframe

for filing the development agreements by qualified property owners be extended to 5:00 p.m. Monday, January 14, 2008. The effective date of the annexation ordinances will be January 14, 2008, 5:00 p.m., as well.

Motion by Mayor Pro Tem Patsy E. Luna to adopt all four ordinances, on second and final reading, authorizing the annexation of four areas of land into the Temple City limits, and extending the deadline for execution of development agreements until 5:00 p.m. January 14, 2008, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

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William A. Jones, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary



## TEMPLE CITY COUNCIL

**APRIL 17, 2008**

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, April 17, 2008 at 4:00pm in the 3rd Floor Conference Room, Municipal Building, 2 North Main Street.

Present:

Councilmember Marty Janczak  
Councilmember Tony Jeter  
Mayor Pro Tem Patsy E. Luna  
Councilmember Russell Schneider  
Mayor William A. Jones, III

**1. Discuss the City's travel and training policies and related procurement policies.**

Traci Barnard, Director of Finance, reviewed the City's travel, training and related procurement card policies. These include Administrative Directive #4 - Travel Policy, Administrative Directive #12 - Local Reimbursement Procedures for Mayor & City Councilmembers, Administrative Directive #22 - Business Meals, and the Procurement Card Program Policies & Procedures. Mrs. Barnard also reviewed the procedures used by Staff for processing travel related expenditures.

Mayor Jones asked how Council oversight of these expenditures should be handled in the future. He suggested a quarterly review of these items in open session so the Council can provide oversight for each other. The staff should only assist Council in completing the necessary forms and not be charged with oversight responsibility.

Councilmember Schneider suggested having another Councilmember, or two, sign off on a Councilmember's requested expenditures.

Councilmember Jeter agreed with having two Councilmembers approve an expenditure. He also suggested posting all Council expenditures on the web page for everyone to see. Councilmember Jeter also agreed that staff should not have to question or be accountable for a Councilmember's expenses. There should be the same level of accountability as in a personal business and he favored reviews of these expenses more frequently than quarterly.

Councilmember Janczak stated he felt the policies were well written but agreed with a mechanism to publicly review.

Jonathan Graham, City Attorney, recommended a policy be adopted by the City Council authorizing their expenditures to be approved by two Councilmembers in accordance with the current policies or as they may be amended in the future.

Mrs. Barnard concluded the presentation with a discussion of business meetings and

meals and examples of what qualifies under the City's policies.

**2. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, April 17, 2008.**

There was no discussion of this item.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, April 17, 2008 at 5:00 PM in the Council Chambers, Municipal Building, 2nd Floor, 2 North Main Street.

**Present:**

Councilmember Marty Janczak  
Councilmember Tony Jeter  
Mayor Pro Tem Patsy E. Luna  
Councilmember Russell Schneider  
Mayor William A. Jones, III

**I. CALL TO ORDER**

**1. Invocation**

Teri Snyder, Director of Child Development, Immanuel Baptist Church, voiced the Invocation.

**2. Pledge of Allegiance**

Lisa Sebek, Solid Waste Superintendent, led the Pledge of Allegiance.

**II. PROCLAMATIONS & SPECIAL RECOGNITIONS**

**3. Presentation of Proclamations:**

**(A) Week of the Young Child April 13-19, 2008**

Mayor Jones presented this proclamation to Teri Snyder, Director of Child Development, Immanuel Baptist Church.

**(B) Community Clean up April 26, 2008**

Mayor Jones presented this proclamation to Nicole Torralva, Assistant Director of Public Works, and Lisa Sebek, Solid Waste Superintendent. Ms. Torralva provided information about the upcoming community clean up event.

**4. Recognition of HEB for their support and sponsorship of various City events.**

Ken Cicora, Director of Parks and Leisure Services, recognized HEB for their support

of several major Parks and Leisure Services events during this past year.

### **III. PUBLIC COMMENTS**

Milton Hensley, 301 Mitchell Drive, addressed the Council regarding the upcoming bond election for public safety improvements. He stated Central Fire Station is in dire need of improvements. He asked where the new station will be located. In order to make a sound decision, the voters need to know where it will be located.

Heath Robinson, 4005 Wagon Trail, addressed the Council regarding the masonry ordinance amendments. He stated he is the owner of a business in the community that erects metal buildings. Mr. Robinson explained his objection to the proposed ordinance because he is a business owner and this ordinance will affect small businesses in Temple in the way they make and spend money. The majority of people have been opposed to the ordinance but it continues to be considered. The City erected a metal building on 31st street recently, which is a strategic corridor. Mr. Robinson discussed the costs associated with the change this ordinance would bring, and he estimated an approximate 30% increase in the cost of construction. This ordinance is also contrary to the City's strategic vision and Mr. Robinson questioned whether the ordinance will achieve what it is intended to do.

Mayor Jones thanked those involved with the Bloomin' Temple Festival this past weekend.

This was a very successful event for the City. Mayor Jones also recognized Sharon Rostovich, Airport Manager. The Draughon-Miller Central Texas Regional Airport received the Airport of the Year Award from the Texas Department of Transportation, Aviation Division, and Mayor Jones congratulated Mrs. Rostovich.

### **IV. CONSENT AGENDA**

- 5. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:**

**(A) April 3, 2008 Special Called Meeting and Regular Meeting**

**(B) 2008-5368-R: Consider adopting a resolution authorizing a one year renewal to the professional services agreement with City-County Benefits Services (C-CBS) for employee benefits consulting services at an annual cost of \$26,460.**

**(C) 2008-5369-R: Consider adopting a resolution authorizing a ten (10) year lease with WilsonArt International, Inc., for the rental of a hangar for the purpose of aircraft storage at the Draughon-Miller Central Texas Regional Airport.**

**(D) 2008-5370-R: Consider adopting a resolution authorizing a lease with RDM Commerce (McLane Group), permitting the Lessee to lease a 230 X 170 foot tract of land and construct a 180 X 100 foot private aircraft hangar at the Draughon-Miller Central Texas Regional Airport.**

**(E) 2008-5371-R: Consider adopting a resolution authorizing a contract with Webuildfun, Inc. of Allen, for the design and construction of a Spray Park and Playground at Miller Community Park in the amount of \$325,000 and declaring an official intent to reimburse this expenditure made prior to the issuance of tax-exempt obligations for this project.**

**(F) 2008-5372-R: Consider adopting a resolution authorizing a construction contract with T. Morales Company, Electric & Controls Ltd. of Florence for the Water Treatment Plant Emergency Generator Project in the amount of \$1,328,800.**

**(G) 2008-5373-R: Consider adopting a resolution authorizing a construction contract with Alpha Constructors, Inc. of Temple for construction services required for Phases II and III of the City of Temple Community Development Block Grant (CDBG) Martin Luther King, Jr. (MLK) Drive Sidewalk and Lighting Improvements Project in the amount of \$167,715.50.**

**(H) 2008-5374-R: Consider adopting a resolution authorizing a construction services agreement with Southwestern Bell Telephone Company for relocation of buried cable necessary to expand west Temple water and wastewater utilities north of FM 2305 in an amount not to exceed \$25,350.41.**

**(I) 1. 2008-4214: SECOND READING - Z-FY-08-17-A: Consider adopting an ordinance authorizing an amendment to the FM 2271 Corridor Plan to reflect retail uses on approximately 10.13 acres of land commonly known as Outblocks 2765-A and B, City Addition, located on the east side of FM 2271, south of the FM 2271 and FM 2305 intersection.**

**2. 2008-4215: SECOND READING - Z-FY-08-17-B: Consider adopting an ordinance authorizing a zoning change from Agricultural District to Planned Development (General Retail) District on approximately 10.131 acres of land, commonly known as Outblocks 2765-A and B, City Addition, located on the east side of FM 2271, just south of the FM 2271 and FM 2305 intersection.**

**(J) 2008-5375-R: Consider adopting a resolution authorizing a grant application for the Bureau of Justice Assistance Bulletproof Vest Partnership Program of 2008 for the purchase of ballistic vests and replacements for the Police Department in the amount of \$22,025.**

**(K) 2008-5376-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2007-2008.**

Motion by Councilmember Marty Janczak to adopt resolution approving Consent Agenda, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

## **VII. REGULAR AGENDA**

### **ORDINANCES**

- 6. 2008-4196: SECOND READING - PUBLIC HEARING - Z-FY-08-14: Consider adopting an ordinance amending Section 13 of the City of Temple Zoning Ordinance to add standards regarding masonry building exteriors.**

Tim Dolan, Planning Director, presented this item to the City Council, beginning with a summary of the previous actions on this item. He explained the process followed by the committee to review this ordinance and develop the recommendations brought forward to the Planning and Zoning Commission and now to the City Council. Mr. Dolan compared the ordinance adopted by Council on first reading with that being recommended by the committee. He addressed the exemptions, locations, material standards, coverage, building articulation, and the special permit for the appeal process. The Planning and Zoning Commission recommended approval of the ordinance developed by the committee by a vote of 5-3.

Jonathan Graham, City Attorney, explained the two ordinances being presented for consideration by the Council and what options the Council has for action.

Mayor Jones declared the public hearing open with regard to agenda item 6 and asked if anyone wished to address this item.

Susan Luck, Chair of the Planning and Zoning Commission, stated this ordinance was presented to the Commission after the initial consideration by the Council, which is a bit different than usual procedure. She explained the process by which stakeholder input was solicited in formulating the recommendation to the Commission. There were still some concerns expressed at the Commission meeting but overall the Planning and Zoning Commission recommendation reflects what they felt was best for the community.

Councilmember Janczak expressed his concern for the lack of consensus reflected in the vote of the Planning and Zoning Commission.

Mrs. Luck stated they felt the stakeholder group had not addressed private business parks and some wanted to address this issue. The committee felt they had opportunity to include this topic for discussion at any time but did not. What is brought forward was the consensus of the Commission even though concerns still exist.

Troy Glasson, TABA, addressed the Council as a stakeholder in this process.

He expressed his appreciation for being included in the process. TABA has taken a neutral position on this ordinance. Some members think it is a necessary step and others adamantly oppose any regulation. This has been a difficult process with lots of discussion, he stated, and steps have been taken in the right direction as far as TABA is concerned. Taking existing businesses and expansions out of the proposed ordinance was a significant improvement, as well as expansion in the materials list. He added that no one is completely satisfied with the recommended ordinance.

Councilmember Schneider asked if there was anything the Council could address that would gain their approval.

Mr. Glasson replied that he would hesitate to bring a particular issue forward at this time because the stakeholders have done so much work to reach this consensus. The 70% impact is significant. The height requirement and the business parks are areas they would like to see revised.

Councilmember Schneider stated this ordinance seems very complex. Is there any concern with that?

Mr. Glasson stated the ordinance is complex because they brought so many issues to the table and tried to address many different situations. A compromise was reached. TABA did oppose the original ordinance presented to the Planning and Zoning Commission which would have made the masonry requirements City-wide.

Thomas Baird, 707 West Thompson, Chair of Keep Temple Beautiful and chairman of the stakeholder group, addressed the Council. There was a lot of compromise by all involved. By the end of the process, no one was totally happy with the proposed ordinance but they agreed to live with the proposal developed, recognizing a balance of competing interests. Mr. Baird stated he felt this was a good, well thought out ordinance that will be great start for the community.

Wes Coughran, owner of Big Chew-Chews on FM 2305, addressed the Council. He stated this ordinance will affect him. He asked the Council to look at his metal building as he felt it does not detract from the look of the City.

Ken Higdon, Temple Chamber of Commerce, addressed the Council as a stakeholder in this process. The Chamber Board still has some concerns about how this ordinance will affect small business owners. There are not many areas in the City that a metal building can be constructed. They are concerned about what this will do to business in Temple. Their concerns remain the same - taking care of their membership, the majority of which are small businesses.

Gene Engbrock, 1512 East Central, expressed his concern regarding the proposed ordinance. Small builders cannot afford these masonry requirements. Not much has happened on the east side but it will have to

eventually. This changes foundation requirements and other specifications, not just the exterior of the building. The ordinance will affect the people that keep the City going. It is the wrong move at this time for Temple.

Rodney Deyoe asked if glass exterior is considered to be masonry.

Mr. Dolan replied that windows and doors are exempt from the calculation.

Mr. Deyoe stated this metal building ordinance has prevented another automobile dealership from purchasing next to the Ringler property, pending outcome of this decision. This project would be several million dollars.

Councilmember Jeter noted this ordinance would still provide opportunities for exceptions.

Mr. Deyoe stated it is just another hurdle for businesses to have to deal with. This makes them move on to their second choice.

There being no further comments, Mayor Jones closed the public hearing.

Councilmember Schneider addressed the complexity of the ordinance again. There are going to be businesses that do not want to climb these hurdles and deal with the appeal process. He asked if there was a way to simplify the requirements.

Mayor Jones stated the staff should have some administrative ability to grant exceptions.

Councilmember Schneider stated he is personally opposed to the ordinance but he would vote what his constituents want. Homebuilders are still neutral and that concerns him. He would be okay with starting in a small area and then building on that with review in a year. He acknowledged the work of the stakeholders that has been done on this ordinance.

Councilmember Janczak asked Mr. Deyoe what cost a company would incur to build in Temple.

Mr. Deyoe replied it costs between \$20,000 and \$50,000 for engineering and various other studies. Small business people are not going to be satisfied with a subjective review by City staff. He would rather have the review performed by the Zoning Board of Adjustment. Mr. Deyoe added this will also cause an increase in the rental rates for leased facilities, as well as cost of new construction.

Mayor Jones asked if staff will give a preliminary ruling to those indicating they want to build a metal building.

Councilmember Jeter stated these people will come directly to Council for

direction. This happens all the time.

Mr. Dolan explained the ordinance is predicated by receipt of a building permit. It could be modified to allow a sketch or concept plan to be considered.

Kim Foutz, Assistant City Manager, stated stakeholder input was very deliberate about what staff and Council should consider during their review. Her opinion is that sketches could be provided for an initial decision by staff.

Councilmember Schneider asked if a full set of elevations would be required.

Mr. Dolan replied yes, that is common to provide them to calculate percentages.

Mayor Pro Tem Luna asked if the proposed ordinance will affect existing buildings.

Mr. Dolan replied no.

Motion by Councilmember Tony Jeter to adopt ordinance on second and final reading, as recommended by the Planning and Zoning Commission, seconded by Mayor Pro Tem Patsy E. Luna.

Motion by Councilmember Russell Schneider to amend the original motion limiting the application of the ordinance to the specific corridors identified in the original ordinance, including a sunset provision in one year, seconded by Councilmember Marty Janczak.

Councilmember Marty Janczak, and Councilmember Russell Schneider voted aye. The other members voted nay. The motion failed.

Mayor Jones called for the vote on the original motion to adopt the ordinance as recommended by the Planning and Zoning Commission.

Councilmember Marty Janczak and Councilmember Russell Schneider voted nay. The other Councilmembers voted aye. The motion passed.

7. **(A) 2008-4215: FIRST READING - PUBLIC HEARING - Z-FY-08-19-A: Consider adopting an ordinance authorizing an amendment to the West Temple Comprehensive Plan to reflect commercial uses on approximately 4.63 acres of land commonly known as Outblock 561-M, City addition located on the west side of North General Bruce Drive, north of Saulsbury park.**

- (B) 2008-4216: FIRST READING - PUBLIC HEARING - Z-FY-08-19-B: Consider adopting an ordinance authorizing a zoning change from**



**Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park.**

Brian Mabry, Senior Planner, presented items 7(A) and (B) to the City Council. He showed the thoroughfare plan for the area in this request. He also showed the existing utilities. The Planning and Zoning Commission recommended approval of the future land use map amendment by a vote of 8 - 0.

Regarding item (B), Mr. Mabry stated the applicant is requesting commercial zoning district to accommodate the existing use on the property, which is contractor storage and equipment yard use. He showed an aerial of the property which was annexed in 1990 as agricultural. Photos of existing structures on the property were also shown, as well as the zoning map of the area. Mr. Mabry presented the purpose of the commercial zoning district and the permitted and prohibited uses. There are no lot area width or depth requirements. Six notices were mailed to property owners with none being received in support or opposition of the requested rezoning. The Planning and Zoning Commission voted 8-0 in support of the requested rezoning.

Mayor Jones asked if the use could continue if the rezoning is not approved.

Mr. Mabry replied yes, as long as the use is not discontinued it would not be allowed. Mr. Graham explained some reasons for having the correct zoning in place on the property.

Mayor Jones declared the public hearing open with regard to agenda items 7(A) and (B) and asked if anyone wished to address these items.

Rodney Deyoe stated this tract has water and sewer already. Tract 2, located to the west, is currently under contract for purchase. This tract is not in the platting process. The only reason for this rezoning request is to get the zoning into compliance to avoid future issues. Another small tract also needs to be rezoned when metes and bounds of that tract are determined.

There being no further comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinances presented in items 7 (A) and (B), with second reading set for May 1, 2008, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

## **BOARD APPOINTMENTS**

- 8. 2008-5377-R: Consider adopting a resolution appointing members to the**

**following City Boards:**

**(A) Community Services Advisory Board - one member to fill an unexpired term through September 1, 2009; and**

It was recommended that Nancie Etzel be appointed to this board to fill the unexpired term.

**(B) Temple Public Safety Advisory Board - one member to fill an unexpired term through September 1, 2009**

It was recommended that Matthew Wilder be appointed to this board to fill the unexpired term.

Motion by Councilmember Tony Jeter to adopt resolution appointing board members as recommended in items 8 (A) and (B), seconded by Councilmember Marty Janczak.

Motion passed unanimously.

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William A. Jones, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(D)  
Consent Agenda  
Page 1 of 1

### **DEPT. /DIVISION SUBMISSION & REVIEW:**

Ken Cicora, Parks and Leisure Services Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing the purchase of eight (8) treadmills and three (3) spin bikes from Marathon Fitness of Sugar Land in the amount of \$42,866.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** Included in the Recreation Department's FY 2008 budget is \$45,000 for fitness equipment at the Summit. As shown on the attached bid tabulation, on April 8, 2008, two bids were received for the purchase of eight (8) treadmills and two bids were received for the purchase of three (3) spin bikes.

The bid was stated to be awarded to the company providing the "best value" to the City. This means that factors other than price can be used in evaluation of the bids, including quality and performance of the bidder's product, reputation of the bidder and his services, and the qualifications of the bidder's service technicians.

A committee of three City staff evaluated the bids and is recommending award of the purchase to Marathon Fitness of Sugar Land, Texas. Of the two treadmill bids received, the committee concluded that Marathon Fitness' Precor brand of treadmills, which have a dry lube system, was preferred over the Matrix brand bid by Fitness in Motion. Of the two spin bike bids received, the committee concluded that the only bidder who complied with the spec and bid requirements was Marathon Fitness, and their price was reasonable.

The City of Temple has done business with Marathon Fitness in the past and has found them to be a reputable and responsible vendor.

**FISCAL IMPACT:** Funding in the amount of \$45,000 is designated for this purchase in the Recreation Department's operating budget account 110-3200-551-2220.

### **ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

Tabulation of Bids Received  
on April 8, 2008 at 3:30 p.m.  
Fitness Equipment

|                              |     | Bidders                     |             |                                    |              |                                       |              |
|------------------------------|-----|-----------------------------|-------------|------------------------------------|--------------|---------------------------------------|--------------|
|                              |     | MF Athletic<br>Cranston, RI |             | Fitness in Motion<br>Austin, Texas |              | Marathon Fitness<br>Sugar Land, Texas |              |
| Description/(Previous Price) | Qty | Unit Price                  | Total Price | Unit Price                         | Total Price  | Unit Price                            | Total Price  |
| Treadmills                   | 8   | No Bid                      |             | \$ 5,448.00                        | \$ 43,584.00 | \$ 4,927.00                           | \$ 39,416.00 |
| Spin Bikes                   | 3   | \$ 1,075.00                 | \$ 3,225.00 | No Bid                             |              | \$ 1,150.00                           | \$ 3,450.00  |
| <b>TOTAL BID</b>             |     | <b>\$ 3,225.00</b>          |             | <b>\$ 43,584.00</b>                |              | <b>\$ 42,866.00</b>                   |              |
| Delivery                     |     | Yes                         |             | Yes                                |              | Yes                                   |              |
| Exceptions                   |     | No                          |             | No                                 |              | no                                    |              |
| CIQ Form                     |     | No                          |             | Yes                                |              | Yes                                   |              |
| Credit Check Authorization   |     | Yes                         |             | Yes                                |              | Yes                                   |              |

I hereby certify that this is a correct and true tabulation of all bids received.

*Belinda Mattke*

*4/8/2008*

**Note: Highlighted bid is recommended**

Belinda Mattke, Director of Purchasing

Date

**for Council approval**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE PURCHASE OF 8 TREADMILLS AND 3 SPIN BIKES FROM MARATHON FITNESS OF SUGAR LAND, TEXAS, IN THE AMOUNT OF \$42,866; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 8, 2008, the City received 3 bids for purchasing 8 treadmills and 3 spin bikes for the Summit Recreation Center;

**Whereas**, the Staff recommends accepting the bid (\$42,866) received from Marathon Fitness of Sugar Land, Texas;

**Whereas**, funds are available for this purchase in Account No. 110-3200-551-2220; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the purchase of 8 treadmills and 3 spin bikes, for a cost not to exceed \$42,866, from Marathon Fitness of Sugar Land, Texas.

**Part 2:** The City Council authorizes the City Manager, or his designee, to execute any documents, after approval as to form by the City Attorney, that are necessary for this purchase.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(E)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Ken Cicora, Director of Parks and Leisure Services

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a construction contract with JHL Construction of Gatesville for park improvements in Jackson Neighborhood Park in the amount of \$155,705 and authorizing an amendment to the Fiscal Year 2007-2008 Community Development Block Grant (CDBG) Action Plan.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** In this year's Capital Improvement Program, is a Community Development Block Grant Parks and Leisure Services project for improvements to Jackson Park. This project includes a new hiking trail, approximately ½ mile long, which will connect to the existing stone bridges and other park amenities, a replacement playground for one that was installed in the 1980's, replacement of a picnic pavilion for one that was installed in the 1960's, park benches and landscaping.

On April 8, 2008 the City received 7 bids for this project from construction firms from Temple, Gatesville, Georgetown, and Hutto. JHL of Gatesville submitted the low bid in the amount of \$155,705.

**FISCAL IMPACT:** Funding for this project was designated in the Fiscal Year 2007-2008 Community Development Block Grant Action Plan in the amount of \$150,000. Currently, funding for this project is available in account 260-6100-571-65-16, Project #100325 in the amount of \$149,304. A budget amendment is attached for your approval adding \$6,401 to account 260-6100-571-65-16, Project #100325 and thereby amending the Fiscal Year 2007-2008 CDBG Action Plan for the additional \$6,401. Funding for the amendment is available from program income received since the Action Plan was adopted.

### **ATTACHMENTS:**

[Budget Amendment](#)  
[Bid Tab](#)  
[Resolution](#)

FY 2008**BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.

Adjustments should be rounded to the nearest \$1.

+

-

| ACCOUNT NUMBER     | PROJECT # | ACCOUNT DESCRIPTION              | INCREASE |  | DECREASE |  |
|--------------------|-----------|----------------------------------|----------|--|----------|--|
| 260-6100-571-65-16 | 100325    | Park Improvements - Jackson Park | \$ 6,401 |  |          |  |
| 260-6100-571-65-32 |           | Contingency                      |          |  | 6,401    |  |
|                    |           |                                  |          |  |          |  |
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|                    |           |                                  |          |  |          |  |
|                    |           |                                  |          |  |          |  |
| <b>TOTAL.....</b>  |           |                                  | \$ 6,401 |  | \$ 6,401 |  |

**EXPLANATION OF ADJUSTMENT REQUEST-** Include justification for increases AND reason why funds in decreased account are available.

Amend the FY 2008 annual action plan for Jackson Park. The project costs are more than budgeted.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒ Yes☐ No

DATE OF COUNCIL MEETING

5/1/2008

WITH AGENDA ITEM?

☒ Yes☐ No

Department Head/Division Director

Date

☐ Approved  
☐ Disapproved

Finance

Date

☐ Approved  
☐ Disapproved

City Manager

Date

☐ Approved  
☐ Disapproved

Tabulation of Bids Received  
on April 8, 2008 at 2:00 p.m.  
Jackson Park Renovations and Trail Addition

|                                    | Bidders                       |                                   |                              |                                   |
|------------------------------------|-------------------------------|-----------------------------------|------------------------------|-----------------------------------|
|                                    | JL Construction<br>Gatesville | Westar Construction<br>Georgetown | Alpha Constructors<br>Temple | Chaney-Cox Construction<br>Temple |
| <b>Description</b>                 |                               |                                   |                              |                                   |
| Total Bid                          | \$193,357.60                  | \$172,260.00                      | \$192,673.40                 | \$176,650.00                      |
| Bid Bond (Required at Bid Opening) | 5%                            | 5%                                | 5%                           | 5%                                |

|                                 |     |     |     |     |
|---------------------------------|-----|-----|-----|-----|
| CIQ Form                        | Yes | Yes | Yes | Yes |
| Bond Affidavit                  | Yes | Yes | Yes | Yes |
| Insurance Affidavit             | Yes | Yes | Yes | Yes |
| Credit Check Authorization Form | Yes | Yes | Yes | Yes |

|                                    | Bidders                        |                                   |                                  |  |
|------------------------------------|--------------------------------|-----------------------------------|----------------------------------|--|
|                                    | JHL Construction<br>Gatesville | KC Construction Co.<br>Georgetown | Patin Construction LLC.<br>Hutto |  |
| <b>Description</b>                 |                                |                                   |                                  |  |
| Total Bid                          | \$155,705.00                   | \$194,929.42                      | \$215,000.00                     |  |
| Bid Bond (Required at Bid Opening) | 5%                             | 5%-not on our form                | 5%                               |  |

|                                 |     |     |     |  |
|---------------------------------|-----|-----|-----|--|
| CIQ Form                        | Yes | Yes | Yes |  |
| Bond Affidavit                  | Yes | Yes | Yes |  |
| Insurance Affidavit             | Yes | Yes | Yes |  |
| Credit Check Authorization Form | Yes | Yes | Yes |  |

I hereby certify that this is a correct and true tabulation of all bids received.

***Belinda Mattke, Director of Purchasing***      ***8-Apr-08***

Belinda Mattke, Director of Purchasing

Date

*Note: Highlighted bid is recommended  
for Council approval.*



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONSTRUCTION CONTRACT WITH JHL CONSTRUCTION OF GATESVILLE, TEXAS, FOR PARK IMPROVEMENTS IN JACKSON NEIGHBORHOOD PARK, IN THE AMOUNT OF \$155,705; AUTHORIZING AN AMENDMENT TO THE FY2007-2008 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ACTION PLAN; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 8, 2008, the City received 7 bids for park improvements in Jackson Neighborhood Park;

**Whereas**, the Staff recommends accepting the bid (\$155,705) received from JHL Construction of Gatesville, Texas, for this project;

**Whereas**, funds are available for this project but an amendment to the FY2007-2008 budget needs to be approved to transfer the funds to the appropriate expenditure account; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a contract, for an amount not to exceed \$155,705, between the City of Temple and JHL Construction of Gatesville, Texas, after approval as to form by the City Attorney, for park improvements in Jackson Neighborhood Park.

**Part 2:** The City Council authorizes an amendment to the Fiscal Year 2007-2008 Community Development Block Grant (CDBG) Action Plan for this project.

**Part 3:** The City Council approves an amendment to the Fiscal Year 2007-2008 budget, substantially in the form of the copy attached as Exhibit A, for this project.

**Part 4:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(F)  
Consent Agenda  
Page 1 of 2

### **DEPT. /DIVISION SUBMISSION & REVIEW:**

Ken Cicora, Parks and Leisure Services Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a construction contract with Global Mobile Recovery (GMR) of Carrollton for the replacement of twelve (12) air conditioning units at the Public Services Building in the amount of \$67,347.88 and declare an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations for this project.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** Included in the adopted FY 2008 Capital Improvement Program is funding to replace air conditioning units at the Public Services Building located at 102 East Central Avenue (i.e. the old Sears Building). As shown on the attached bid tabulation, on April 8, 2008, three bidders submitted bids related to this project with Global Mobile Recovery Heating and Air-Conditioning Contractors submitting the low bid for the project. Only two of the three bidders were deemed 'responsive' based on submission of the required bonding and insurance forms.

GMR will be replacing the units with 13-seer Trane brand units. The bid specified that the units shall be manufactured by Carrier, Lennox, Trane, York or approved equal. A lower bid was received from GMR for Rheem units in the amount of \$62,986.51; however, per staff review of the Rheem units, they are not deemed of approved equal to Carrier, Lennox, Trane, or York manufactured units.

There are 14 air conditioning units installed in the Public Services Building, two of which have been replaced in recent years due to unit failure. Typically staff has found the useful life of air conditioning units to be 12-15 years. The 12 units being replaced are 16-20 years old. Subsequent to bidding this project for 12 units, one of the 12 units included in the bid project failed. Accordingly, staff elected to have this unit replaced by Temple Heat & Air under the City's annual contract. As a result, after award of this contract for \$62,986.51, a change order will be negotiated reducing the units down from 12 units to 11 units.

Staff has not done business with GMR in the past. Accordingly, references were consulted in which favorable responses were received to deem GMR a responsible vendor.

**FISCAL IMPACT:** Funding in the amount of \$120,000 is designated in the proposed 2008 Certificate of Obligation bond issue, account 361-2400-519-6807, project #100160, for the HVAC replacement of the old Sears Building. These bonds will be issued early summer 2008. This agenda item also declares an official intent to reimburse the cost of this contract with the proposed bonds.

**ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

Tabulation of Bids Received  
on April 8, 2008 at 3:00 p.m.  
A/C Unit Replacement at the Old Sears Building

| Description                        | Bidders                             |  |                             |
|------------------------------------|-------------------------------------|--|-----------------------------|
|                                    | CityWide Mechanical, Inc.<br>Dallas | GMR Heating & Air<br>Flower Mount          | Temple Heat & Air<br>Temple |
| Bid Price for 13 Seer Units        | \$85,000.00                         | \$62,986.51 (Rheem)<br>\$67,347.88 (Trane) | \$68,823.70 (American Std)  |
| Bid Price for 14 Seer Units        | No Bid                              | No Bid                                     | No Bid                      |
| Completion within 30 days          | Yes                                 | Yes  | Yes                         |
| Exceptions                         | Yes                                 | None                                       | Yes                         |
| Bid Bond (Required at bid opening) | 5% not acceptable form              | 5%   | Cashiers Check              |
| CIQ Form                           | No                                  | Yes  | No                          |
| Bond Affidavit                     | None                                | Yes  | No                          |
| Insurance Affidavit                | Insurance Certificate               | Yes  | No                          |
| Credit Check Authorization Form    | Yes                                 | Yes  | Yes                         |

I hereby certify that this is a correct and true tabulation of all bids received.

*Belinda Mattke*

*8-Apr-08*

Belinda Mattke, Director of Purchasing

Date

*Note: Highlighted bid is recommended  
for Council approval.*

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH GLOBAL MOBILE RECOVERY (GMR) OF CARROLTON, TEXAS, FOR THE REPLACEMENT OF 12 AIR CONDITIONING UNITS AT THE PUBLIC SERVICES BUILDING, IN THE AMOUNT OF \$67,347.88; DECLARING AN OFFICIAL INTENT TO REIMBURSE THIS EXPENDITURE PRIOR TO THE ISSUANCE OF TAX-EXEMPT OBLIGATIONS FOR THIS PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 8, 2008, the City received 3 bids for the replacement of air conditioning units at the Public Services Building;

**Whereas**, the Staff recommends accepting the bid (\$62,986.51) received from Global Mobile Recovery (GMR) of Carrollton, Texas;

**Whereas**, funds are available in Account No. 361-2400-519-6807, project #100160;

**Whereas**, the City of Temple anticipates the issuance of one or more series of obligations, the interest on which will be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended, in order to finance all or a portion of this project;

**Whereas**, certain expenditures relating to the Project will be paid prior to the issuance of the Obligations;

**Whereas**, the City hereby certifies that such expenditures have not been made prior to the date of passage of this Resolution;

**Whereas**, upon issuance of the Obligations, the City desires to reimburse these prior expenditures with proceeds of the Obligations;

**Whereas**, Section 1.150-2 of the Treasury Regulations provides that an expenditure on the Project may not be reimbursed from Obligation proceeds unless,

along with other requirements, the City declares official intent to reimburse the expenditure prior to the date that the expenditure to be reimbursed was paid; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a construction contract, not to exceed \$62,986.51, with Global Mobile Recovery (GMR) of Carrollton, Texas, after approval as to form by the City Attorney, for the replacement of 12 air conditioning units in the Public Services Building.

**Part 2:** The findings, determinations and certifications contained in the preamble hereof are incorporated herein for all purposes.

**Part 3:** This Resolution is a declaration of official intent under Section 1.150.2 of the Treasury Regulations by the City that it reasonably expects to reimburse the expenditures described in Part 4 with proceeds of debt to be incurred by the City, such debt to be issued on or before eighteen (18) months after the date of (i) the date the first expenditure is paid; or (ii) the date on which the property is placed in service, but in no event three years after the first expenditure is paid.

**Part 4:** The following is a general functional description of the Project for which the expenditures to be reimbursed are paid and a statement of the maximum principal amount of debt expected to be issued for the purpose of paying the costs of the Project.

**Project Description**

**Debt To Be Issued**

Air conditioning units  
at the Public Services Building

\$67,347.88

**Part 5:** The expenditures described in Part 4 is a capital expenditure under general Federal income tax principles or a cost of issuance.

**Part 6:** Except for the proceeds of the Obligations, no funds are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the City or by any member of the same controlled group to pay for the expenditures described in Part 4.

**Part 7:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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Item #6(G)  
Consent Agenda  
Page 1 of 1

### **DEPT. /DIVISION SUBMISSION & REVIEW:**

Ken Cicora, Parks and Leisure Services Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a construction contract with JNA Painting Company, Inc. of Baltimore, Maryland for the exterior painting of the Public Services Building in the amount of \$59,700 and declare an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations for this project.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** Included in the adopted FY 2008 Capital Improvements Program is funding to perform exterior improvements to the Public Services Building located at 102 East Central Avenue (i.e. the old Sears Building). As shown on the attached bid tabulation, on April 8, 2008, three bids were received for the exterior painting of the Public Services Building, but only one of the three bids was deemed 'responsive' based on submission of the required bonding and insurance forms and compliance with the bid specifications.

JNA Painting will be performing the following to the exterior of the Public Services Building:

- Power wash and clean all wall surfaces.
- Repair holes and wall damage where needed, including the replacement of rotted wood as needed.
- Apply two coats of Luxom primer sealer and two coats of Sherman Williams industrial latex enamel.

The City has done business with JNA in the past and found them to be a reputable and responsible vendor. Their most recent projects were the painting of the interior of the Wilson Recreation Center and the front fascia of the Mayborn Convention Center. Staff was pleased with the quality of work and cooperation with the staff.

**FISCAL IMPACT:** Funding in the amount of \$70,000 is designated in the proposed 2008 Certificate of Obligation bond issue in account 361-2400-519-6807, project # 100157 for the exterior improvements to the Public Services Building. These bonds will be issued early summer 2008. This agenda item also declares an official intent to reimburse the cost of this contract with the proposed bonds.

### **ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

Tabulation of Bids Received  
April 8, 2008 @ 2:30 p.m.  
Painting of Old Sears Building

|  | Bidders                           |  |  |
|--|-----------------------------------|--|--|
|  | Complete Finishes<br>Pflugerville | Ralston Painting Contractors<br>Rogers | JNA Painting & Contracting<br>Company, Inc.<br>Baltimore |
| Description                                      |                                   |  |  |
| Total Price for Painting the Old Sears Building  | \$11,950.00                       | \$25,250.00                            | \$59,700.00  |
| Price per Linear Foot for Wood Replacement       | \$4.00                            | Negotiate                              | \$2.00   |
| Price per Square Footage for Plywood Replacement | \$3.00                            | No Bid                                 | \$1.00   |
| Completion 30 days                               | Yes                               | Yes                                    | Yes  |
| Bid Bond (Required at bid opening)               | None                              | None                                   | 5%   |
| Exceptions                                       | Yes                               | Yes-1 coat of primer vs 2              | None   |
| CIQ Form   | Yes                               | No                                     | Yes  |
| Bond Affidavit                                   | No                                | No                                     | Yes  |
| Insurance Affidavit                              | Yes                               | No                                     | Yes  |
| Credit Check Authorization Form                  | Yes                               | No                                     | Yes  |

I hereby certify that this is a correct and true tabulation of all bids received.

*Belinda Mattke*

Belinda Mattke, Director of Purchasing

*8-Apr-08*

Date

*Note: Highlighted bid is recommended  
for Council approval.*

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH JNA PAINTING AND CONTRACTING COMPANY, INC., OF BALTIMORE, MARYLAND, FOR PAINTING THE EXTERIOR OF THE PUBLIC SERVICES BUILDING, IN THE AMOUNT OF \$59,700; DECLARING AN OFFICIAL INTENT TO REIMBURSE THIS EXPENDITURE PRIOR TO THE ISSUANCE OF TAX-EXEMPT OBLIGATIONS FOR THIS PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 8, 2008, the City received 3 bids for painting the exterior of the Public Services Building;

**Whereas**, the Staff recommends accepting the bid (\$59,700) received from JNA Painting & Contracting Company, Inc., of Baltimore, Maryland;

**Whereas**, funds are available in Account No. 361-2400-519-6807, project #100157;

**Whereas**, the City of Temple anticipates the issuance of one or more series of obligations, the interest on which will be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended, in order to finance all or a portion of this project;

**Whereas**, certain expenditures relating to the Project will be paid prior to the issuance of the Obligations;

**Whereas**, the City hereby certifies that such expenditures have not been made prior to the date of passage of this Resolution;

**Whereas**, upon issuance of the Obligations, the City desires to reimburse these prior expenditures with proceeds of the Obligations;

**Whereas**, Section 1.150-2 of the Treasury Regulations provides that an expenditure on the Project may not be reimbursed from Obligation proceeds unless,

along with other requirements, the City declares official intent to reimburse the expenditure prior to the date that the expenditure to be reimbursed was paid; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a contract, not to exceed \$59,700, with JNA Painting & Contracting Company, Inc., of Baltimore, Maryland, after approval as to form by the City Attorney, for painting the exterior of the Public Services Building.

**Part 2:** The findings, determinations and certifications contained in the preamble hereof are incorporated herein for all purposes.

**Part 3:** This Resolution is a declaration of official intent under Section 1.150.2 of the Treasury Regulations by the City that it reasonably expects to reimburse the expenditures described in Part 4 with proceeds of debt to be incurred by the City, such debt to be issued on or before eighteen (18) months after the date of (i) the date the first expenditure is paid; or (ii) the date on which the property is placed in service, but in no event three years after the first expenditure is paid.

**Part 4:** The following is a general functional description of the Project for which the expenditures to be reimbursed are paid and a statement of the maximum principal amount of debt expected to be issued for the purpose of paying the costs of the Project.

**Project Description**

**Debt To Be Issued**

Painting the exterior of  
the Public Services Building

\$59,700

**Part 5:** The expenditures described in Part 4 is a capital expenditure under general Federal income tax principles or a cost of issuance.

**Part 6:** Except for the proceeds of the Obligations, no funds are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the City or by any member of the same controlled group to pay for the expenditures described in Part 4.

**Part 7:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydetta Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(H)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce Butscher P.E., Director of Public Works  
Michael Newman P.E., Assistant Director of Public Works/City Engineer

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a construction contract with Wheeler Coating Asphalt, LP of Belton for the FY 07-08 Overlay Program based on a unit price of \$59.85 a ton for overlay and \$80.00 per ton for speed humps.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** On March 18, 2008, the City received three (3) bids for asphalt overlaying of streets and the installation of speed humps in the City. The bids are shown on the attached tabulation.

The low bidder was Wheeler Coating Asphalt, LP of Belton, Texas. The City has done business with Wheeler Coating Asphalt, LP in the past and finds them to be a responsible bidder.

**FISCAL IMPACT:** Budgeted amount: \$500,000 in account 110-3400-531-2323  
Unit price award amount: \$59.85 per ton for overlay  
\$80.00 per ton for speed humps

(Estimated annual expenditure of \$500,000; if additional funds are identified for overlaying during the contract period, then the contract would increase accordingly.)

### **ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

**Tabulation of Bids Received  
on March 18, 2008 at 2:00 p.m.  
Overlay Program**

|                      |            | <b>BIDDERS</b>                            |                    |                                   |                    |  |                    |
|----------------------|------------|---|--------------------|-----------------------------------|--------------------|--|--------------------|
|                      |            | <b>Wheeler Coating Asphalt<br/>Belton</b> |                    | <b>Advanced Paving<br/>Dallas</b> |                    | <b>Austin Bridge &amp; Road<br/>Austin</b> |                    |
| <b>Description</b>   | <b>Qty</b> | <b>Unit Price</b>                         | <b>Total Price</b> | <b>Unit Price</b>                 | <b>Total Price</b> | <b>Unit Price</b>                          | <b>Total Price</b> |
| Overlay per ton      | 9,434      | \$59.85                                   | \$564,624.90       | \$73.95                           | \$697,644.30       | \$70.50                                    | \$665,097.00       |
| Speed Humps          | 260        | \$80.00                                   | \$20,800.00        | \$155.00                          | \$40,300.00        | \$225.00                                   | \$58,500.00        |
| Total Bid Price      |            | \$585,424.90                              |                    | \$737,944.30                      |                    | \$723,597.00                               |                    |
| Bid Bond?            |            | 5%  |                    | 5%                                |                    | 5%   |                    |
| Insurance Affidavit? |            | Yes                                       |                    | Yes                               |                    | Yes  |                    |
| Bond Affidavit?      |            | Yes                                       |                    | Yes                               |                    | Yes  |                    |
| CIQ Form?            |            | Yes                                       |                    | Yes                               |                    | Yes  |                    |
| Credit Check?        |            | Yes                                       |                    | Yes                               |                    | Yes  |                    |
| Addendum             |            | Yes                                       |                    | Yes                               |                    | Yes  |                    |

I hereby certify that this is a correct and true tabulation of all bids received.

*Note: Highlighted bid is recommended  
for Council approval.*

**Belinda Mattke**

Belinda Battke, Director of Purchasing

**18-Mar-08**

Date

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT WITH WHEELER COATING ASPHALT, LP, OF BELTON, TEXAS, FOR THE CONSTRUCTION OF THE FY2007-08 OVERLAY PROGRAM BASED ON A UNIT PRICE OF \$59.85 A TON FOR OVERLAY AND \$80.00 PER TON FOR SPEED HUMPS; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on March 18, 2008, the City received 3 bids for asphalt overlaying of streets and installation of speed humps in the City;

**Whereas**, Staff recommends accepting the bid from Wheeler Coating Asphalt, LP, of Belton, Texas, based on a unit price of \$59.85 per ton for overlay and \$80.00 per ton for speed humps;

**Whereas**, funds are available in Account No. 110-3400-531-2323 for this project; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a contract between the City of Temple and Wheeler Coating Asphalt, LP, of Belton, Texas, after approval as to form by the City Attorney, for the construction of the FY2007-08 Overlay Program based on a unit price of \$59.85 a ton for overlay and \$80.00 per ton for speed humps.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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Item #6(I)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce Butscher P.E., Director of Public Works  
Michael Newman P.E., Assistant Director of Public Works/City Engineer

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a construction contract with Big Tex Paving of Johnson City for the FY 2008 Seal Coat Program based upon unit price of \$1.76 per square yard.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** On March 18, 2008, the City received four (4) bids for the construction of the FY 2007 Seal Coat Program. The Bid Tabulation is attached.

The low bidder was Big Tex Paving of Johnson City, Texas. The City has not done business with Big Tex Paving in the past. Therefore, references were checked and the City finds them to be a responsible bidder.

**FISCAL IMPACT:** Budgeted amount: \$120,000 in account 110-3400-531-2322  
Unit price award amount \$1.76 per square yard.

(Estimated annual expenditure of \$120,000; if additional funds are identified for seal coating during the contract period, then the contract would increase accordingly.)

### **ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

**Tabulation of Bids Received  
on March 18, 2008 at 2:00 p.m.  
Seal Coat**

|                      |            | <b>Bidders</b>                    |                    |                                |                    |                                |                    |                                      |                    |
|----------------------|------------|-----------------------------------|--------------------|--------------------------------|--------------------|--------------------------------|--------------------|--------------------------------------|--------------------|
|                      |            | Wheeler Coating Asphalt<br>Belton |                    | Austin Bridge & Road<br>Austin |                    | Big Tex Paving<br>Johnson City |                    | Ploch Construction<br>New Braunsfels |                    |
| <b>Description</b>   | <b>Qty</b> | <b>Unit Price</b>                 | <b>Total Price</b> | <b>Unit Price</b>              | <b>Total Price</b> | <b>Unit Price</b>              | <b>Total Price</b> | <b>Unit Price</b>                    | <b>Total Price</b> |
| Seal Coat            | 72,479     | \$1.91                            | \$138,434.89       | \$2.72                         | \$197,142.88       | \$1.76                         | \$127,563.04       | \$1.78                               | \$129,012.62       |
| Bid Bond?            |            | 5%                                |                    | 5%                             |                    | 5%                             |                    | 5%                                   |                    |
| Insurance Affidavit? |            | Yes                               |                    | Yes                            |                    | No                             |                    | Yes                                  |                    |
| Bond Affidavit?      |            | Yes                               |                    | Yes                            |                    | Yes                            |                    | Yes                                  |                    |
| Credit Check?        |            | Yes                               |                    | Yes                            |                    | No                             |                    | Yes                                  |                    |
| COI Form?            |            | Yes                               |                    | Yes                            |                    | Yes                            |                    | Yes                                  |                    |

I hereby certify that this is a correct and true tabulation of all bids received.

*Note: Highlighted bid is recommended  
for Council approval.*

**Belinda Mattke**  
Belinda Mattke, Director of Purchasing

**18-Mar-08**  
Date

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT WITH BIG TEX PAVING OF JOHNSON CITY, TEXAS, FOR THE FY 2008 SEAL COAT PROGRAM BASED ON A UNIT PRICE OF \$1.76 PER SQUARE YARD; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on March 18, 2008, the City received 4 bids for the construction of the FY 2008 Seal Coat Program;

**Whereas**, Staff recommends accepting the bid from Big Tex Paving of Johnson City, Texas, based on a unit price of \$1.76 per square yard;

**Whereas**, funds are available in Account No. 110-3400-531-2322 for this project; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a contract between the City of Temple and Big Tex Paving of Johnson City, Texas, after approval as to form by the City Attorney, for the construction of the FY 2008 Seal Coat Program based on a unit price of \$1.76 per square yard.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(J)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works  
Nicole Torralva, P.E., Assistant City Engineer

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing Change Order #4 to the Loop 363 Utility Relocation Phase 2 construction contract with Bell Contractors, Inc., for items related to final connections and quantity reconciliations to the project as required in the deduct amount of \$91,654.93.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** On February 15, 2007, Council authorized a construction contract in the amount of \$1,394,406.36 with Bell Contractors, Inc. to relocate City owned utilities along Loop 363 and 31<sup>st</sup> Street, from 57<sup>th</sup> Street to 5<sup>th</sup> Street. Through the course of construction, field adjustments and design issues have resulted in changes to the construction contract.

This change order #4 in the total deduct amount of \$91,654.93 is a reconciliation of quantities required to complete the project. The change order includes additional fittings required for final waterline connections, additional concrete and asphalt repair, replacement of driveways, additional manholes, replacement of storm drain, repair of gate valves and coordination of removal of gate valves to the project. Total additional costs through this change order are \$46,313.02. This change order also includes a deduction of quantities not installed in the field, in the total deduct amount of \$137,967.95, resulting in a total deduct change order amount of \$91,654.93. Specific details for each item are included on the attached change order.

In summary, Change Order #1 (approved by council in August 2007) in the amount of \$170,805.40, Change Order #2 (approved by council in November 2007) in the amount of \$62,829.46, Change Order #3 (approved by the City Manager in February 2008) in the amount of \$23,796.20, and Change Order #4 in the deduct amount of \$91,654.93 results in a total addition to the contract of \$165,776.13, approximately 11.89% of the total contract amount. At the TxDOT reimbursable rate of 39.54%, approximately \$55,414.57 will be the City's share of the deducted amount.

**FISCAL IMPACT:** Funding in the amount of \$2,700,000 has been appropriated for all phases of this project in the 2006 Utility Revenue Bond Issue in account 561-5200-535-6916, project #100097, which includes the City's estimated share of the project cost only. TxDOT's share of the project is \$1,761,598. At the TxDOT reimbursable percentage rate of 39.54% for Phase 2 improvements, the City's share of the deduct cost for this Change Order #4 will be approximately \$55,414.

A summary of the updated costs for this project, including the awarded construction contracts for all three phases, previously executed Change Orders, and recommended Change Order #4 for Phase 2, and the TxDOT cost participation rate per the recommended Utility Agreements is as follows:

|  | Phase I             | Phase 2             | Phase 3           | Total               |
|--|---------------------|---------------------|-------------------|---------------------|
| TxDOT participation (excluding betterments)    | 51.55%              | 39.54%              | 39.54%            |                     |
| Construction                                   | \$ 1,119,274        | \$ 1,394,406        | \$ 446,189        | \$ 2,959,869        |
| Construction Change Order #1                   | 49,136              | 170,805             | (1,540)           | 218,401             |
| Construction Change Order #2                   | 152,644             | 62,829              | -                 | 215,473             |
| Construction Change Order #3                   | 6,030               | 23,796              | -                 | 29,826              |
| Construction Change Order #4                   | -                   | (91,655)            | -                 | (91,655)            |
| Engineering                                    | 230,800             | 412,818             | 192,182           | 835,800             |
| On-Site Representation                         | 36,000              | 41,000              | 31,000            | 108,000             |
| Easement Acquisition                           | 5,356               | 112,998             | 22                | 118,376             |
| (estimated)                                    |                     |                     |                   |                     |
| Total Project Cost                             | <u>\$ 1,599,240</u> | <u>\$ 2,126,997</u> | <u>\$ 667,853</u> | <u>\$ 4,394,090</u> |
| Betterments Included Above                     | \$ 9,572            | \$ 359,207          | \$ 52,932         | \$ 421,711          |
| City's Estimated Share (including betterments) | <u>\$ 779,766</u>   | <u>\$ 1,428,013</u> | <u>\$ 424,713</u> | <u>\$ 2,632,492</u> |
| TxDOT's Estimated Share                        | <u>\$ 819,474</u>   | <u>\$ 698,984</u>   | <u>\$ 243,140</u> | <u>\$ 1,761,598</u> |

A budget adjustment is presented for Council's approval reducing revenue to be received from TxDOT for their share of the project in the amount of \$23,723 related to the net costs of change order #3 and change order #4.

**ATTACHMENTS:**

[Change Order #4](#)  
[Budget Adjustment](#)  
[Resolution](#)

# CHANGE ORDER

PROJECT: Loop 363 and 31st Street Utility Relocations, Phase II-Utility Crossings and Frontage Roads  
 OWNER: City of Temple  
 CONTRACTOR: Bell Contractors, Inc.  
 ENGINEER: Kasberg, Patrick & Associates, LP  
 CHANGE ORDER #: 4

Make the following additions, modifications or deletions (circle those that apply) to the work described in the Contract Documents:

## WATER

1. 8" Water Line and fittings required for connection to 18" Water Line "H" and for separation of the 876 and 785 Planes near the intersection of the Loop and South 39th Street.

| Item      | Description         | Quantity | Unit | Cost      | Total       |
|-----------|---------------------|----------|------|-----------|-------------|
| 12        | 8" C-900 Waterline  | 110      | LF   | \$ 34.50  | \$ 3,795.00 |
| 16        | 8" Gate Valve       | 1        | EA   | \$ 890.00 | \$ 890.00   |
| 28        | 8" 90° Bend         | 2        | EA   | \$ 260.00 | \$ 520.00   |
| 29        | 8" 22.5° Bend       | 2        | EA   | \$ 245.00 | \$ 490.00   |
| 69        | Asphalt Replacement | 100      | LF   | \$ 19.00  | \$ 1,900.00 |
| CO4-1     | 8" Solid Sleeve     | 1        | EA   | \$ 210.00 | \$ 210.00   |
| CO4-2     | 8" x 8" Tee         | 1        | EA   | \$ 340.00 | \$ 340.00   |
| Sub-Total |                     |          |      |           | \$ 8,145.00 |

2. Additional 8" Water Line and Concrete Repair required for connection to Existing 8" Water Line on 57th Street, which was further north than anticipated.

| Item      | Description                 | Quantity | Unit | Cost     | Total       |
|-----------|-----------------------------|----------|------|----------|-------------|
| 12        | 8" C-900 Waterline          | 30       | LF   | \$ 34.50 | \$ 1,035.00 |
| CO1-13    | Remove and Replace Concrete | 164      | LF   | \$ 47.08 | \$ 7,721.12 |
| Sub-Total |                             |          |      |          | \$ 8,756.12 |

3. Replacement of the Medical Center Driveway near Sta 1+50 along Water Line "F" with concrete in lieu of asphalt, as existing entrance apron was concrete.

| Item      | Description                 | Quantity | Unit | Cost     | Total       |
|-----------|-----------------------------|----------|------|----------|-------------|
| 69        | Asphalt Replacement         | -26      | LF   | \$ 19.00 | \$ (494.00) |
| CO1-13    | Remove and Replace Concrete | 25       | LF   | \$ 47.08 | \$ 1,177.00 |
| Sub-Total |                             |          |      |          | \$ 683.00   |

4. Crew Hours associated with the removal of two 18" Gate Valves from the I-35 project and installed by ID Guerra. These valves were installed to facilitate the tie-in between the two construction projects and were to be abandoned. The valves were salvaged at the request of the City.

| Item      | Description | Quantity | Unit | Cost      | Total       |
|-----------|-------------|----------|------|-----------|-------------|
| CO2-5     | Crew Hours  | 14       | EA   | \$ 185.00 | \$ 2,590.00 |
| Sub-Total |             |          |      |           | \$ 2,590.00 |

5. TxDOT allowed the Existing 12" Water Line crossing Loop 363 to be abandoned in place in lieu of slurry filled. The cost of the cut and cap for slurry fill purposes was subsidiary to the payment of slurry fill, which is being deleted from the contract by this change order.

| Item      | Description                | Quantity | Unit | Cost        | Total       |
|-----------|----------------------------|----------|------|-------------|-------------|
| CO4-3     | 12" Water Line Abandonment | 100%     | LS   | \$ 2,500.00 | \$ 2,500.00 |
| Sub-Total |                            |          |      |             | \$ 2,500.00 |

Change Order (continued)

6. Revised vertical alignment of 18" Water Line "H" and subsequent deletion of Air Valve.

| Item      | Description               | Quantity | Unit | Cost        | Total         |
|-----------|---------------------------|----------|------|-------------|---------------|
| 34        | F&I 4" Air Valve Assembly | -1       | EA   | \$ 5,050.00 | \$ (5,050.00) |
| Sub-Total |                           |          |      |             | \$ (5,050.00) |

7. Relocation of the 8" Water Line east of Exchange Place on Sheet WW8 was by directional bore and paid under Change Order No. 3.

| Item      | Description                    | Quantity | Unit | Cost        | Total         |
|-----------|--------------------------------|----------|------|-------------|---------------|
| 57        | Relocate Existing 8" Waterline | -100%    | LS   | \$ 8,680.00 | \$ (8,680.00) |
| Sub-Total |                                |          |      |             | \$ (8,680.00) |

8. Deletion of quantity not installed in the field.

| Item      | Description           | Quantity | Unit | Cost      | Total           |
|-----------|-----------------------|----------|------|-----------|-----------------|
| 25        | 12" 45° Bend          | -2       | EA   | \$ 380.00 | \$ (760.00)     |
| 26        | 12" 22.5° Bend        | -1       | EA   | \$ 378.00 | \$ (378.00)     |
| 30        | 6" 11.25° Bend        | -2       | EA   | \$ 199.00 | \$ (398.00)     |
| 31        | 6" Plug               | -2       | EA   | \$ 90.00  | \$ (180.00)     |
| 64        | Slurry Fill           | -6,958   | LF   | \$ 16.20  | \$ (112,719.60) |
| 67        | Remove & Replace Curb | -24      | LF   | \$ 11.20  | \$ (268.80)     |
| 72        | Furnish Rock Berm     | -150     | LF   | \$ 6.95   | \$ (1,042.50)   |
| 73        | Furnish Silt Fence    | -1,255   | LF   | \$ 2.40   | \$ (3,012.00)   |
| 76        | Install Hydromulch    | -2,756   | SY   | \$ 1.55   | \$ (4,271.80)   |
| CO1-4     | 6" Gate Valve         | -1       | EA   | \$ 832.25 | \$ (832.25)     |
| CO1-5     | 6" Cap                | -2       | EA   | \$ 187.50 | \$ (375.00)     |
| Sub-Total |                       |          |      |           | \$ (124,237.95) |

## **WASTEWATER**

9. Additional manhole on Wastewater Line "A" to tie-in service line to Sylvan. Existing manhole, located on south side of Frontage Road, was buried and not shown by TxDOT to be replaced.

| Item      | Description                    | Quantity | Unit | Cost        | Total       |
|-----------|--------------------------------|----------|------|-------------|-------------|
| 54        | 4' Diameter Wastewater Manhole | 1        | EA   | \$ 1,449.00 | \$ 1,449.00 |
| Sub-Total |                                |          |      |             | \$ 1,449.00 |

10. Additional length of rock landscaping to be replaced due to bore pit area and wastewater line construction.

| Item      | Description      | Quantity | Unit | Cost     | Total     |
|-----------|------------------|----------|------|----------|-----------|
| 70        | Rock Landscaping | 26       | LF   | \$ 16.25 | \$ 422.50 |
| Sub-Total |                  |          |      |          | \$ 422.50 |

11. Replacement of Storm Drain along Wastewater Line "A" that had to be returned to service due to timeline of TxDOT. Crew Hours for removal of concrete encasement within the wastewater line alignment near the drainage structure.

| Item      | Description                | Quantity | Unit | Cost      | Total        |
|-----------|----------------------------|----------|------|-----------|--------------|
| CO4-5     | Replacement of Storm Drain | 225      | LF   | \$ 30.00  | \$ 6,750.00  |
| CO2-5     | Crew Hour                  | 21       | Hrs  | \$ 185.00 | \$ 3,885.00  |
| Sub-Total |                            |          |      |           | \$ 10,635.00 |

Change Order (continued)

12. Excavation of the existing manhole to be raised near Sta 1+70 on Wastewater Line "A" revealed two 45 degree bends in lieu of the manhole. Therefore, the item for raising the manhole is deleted and replaced with crew hours and concrete for the driveway repair.

| Item      | Description                 | Quantity | Unit | Cost      | Total       |
|-----------|-----------------------------|----------|------|-----------|-------------|
| 56        | Raise Manhole               | -1       | EA   | \$ 90.00  | \$ (90.00)  |
| CO2-5     | Crew Hours                  | 14       | EA   | \$ 185.00 | \$ 2,590.00 |
| CO1-13    | Remove and Replace Concrete | 30       | LF   | \$ 47.08  | \$ 1,412.40 |
| Sub-Total |                             |          |      |           | \$ 3,912.40 |

13. Additional Asphalt Replacement along Wastewater Lines "A" and "B". The wastewater lines will be outside the proposed frontage roads, however, asphalt replacement along the entire length was required to reopen to traffic on the existing frontage road.

| Item      | Description         | Quantity | Unit | Cost     | Total       |
|-----------|---------------------|----------|------|----------|-------------|
| 69        | Asphalt Replacement | 380      | LF   | \$ 19.00 | \$ 7,220.00 |
| Sub-Total |                     |          |      |          | \$ 7,220.00 |

**Total Deduct    \$ (91,654.93)**

The compensation agreed upon in this Change Order is full, complete and final payment for all costs the Contractor may incur as a result of or relating to this change whether said costs are known, unknown, foreseen or unforeseen at this time, including without limitation, any cost for delay (for which only revised time is available), extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of this Change Order.

|  |                 |
|--|-----------------|
| Original Contract Amount               | \$ 1,394,406.36 |
| Previous Net Change in Contract Amount | \$ 257,431.06   |
| Net Change in Contract Amount          | \$ (91,654.93)  |
| Revised Contract Amount                | \$ 1,560,182.49 |
| Original Contract Time                 | 300 days        |
| Previous Net Change in Contract Time   | N/A             |
| Net Change in Contract Time            | 0 days          |
| Revised Contract Time                  | 300 days        |
| Original Final Completion Date         | March 30, 2008  |
| Revised Final Completion Date          | March 30, 2008  |

Recommended By Engineer:

Approved By Contractor:

By \_\_\_\_\_  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Date \_\_\_\_\_

Approved by City of Temple:

Approved as to Form:

By: \_\_\_\_\_

By: \_\_\_\_\_  
City Attorney's Office                      Date



FY **2008****BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.  
Adjustments should be rounded to the nearest \$1.

|                    |           | +                                    |          | -         |  |
|--------------------|-----------|--------------------------------------|----------|-----------|--|
| ACCOUNT NUMBER     | PROJECT # | ACCOUNT DESCRIPTION                  | INCREASE | DECREASE  |  |
| 561-0000-461-08-65 |           | Miscellaneous Reimbursements         |          | \$ 23,723 |  |
| 561-5200-535-69-16 | 100097    | Loop 363/31st Street Util Relocation |          | 23,723    |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
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|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
|                    |           |                                      |          |           |  |
| <b>TOTAL.....</b>  |           |                                      | \$ -     | \$ 47,446 |  |

**EXPLANATION OF ADJUSTMENT REQUEST-** Include justification for increases AND reason why funds in decreased account are available.

To recognize TXDOT's estimated cost sharing reimbursement on the Loop 363/31st Utility Relocation project related to change order #3 for Phase 1 & Phase 2 and change order #4 for Phase 2. . Utility Agreements have been submitted to TXDOT setting the TXDOT eligibility percentage at 51.55% for Phase 1 and 39.54% for Phase 2 & 3. Per the Utility Agreements the City will fund the progress payments to the contractors upfront and then will be reimbursed by the State at not less than monthly intervals in an amount not to exceed 80% of the eligible costs. Upon completion of the Utility Relocation project, the remaining eligible reimbursable will be received. This change order is for the net changes of those change orders. Change order #3 increases TXDOT's share by \$12,517. Change order #4 reduces TXDOT's share by \$36,240 for a net decrease of \$23,723.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒ Yes☐ No

DATE OF COUNCIL MEETING

5/1/2008

WITH AGENDA ITEM?

☒ Yes☐ No

Department Head/Division Director

Date

☐ Approved  
☐ Disapproved

Finance

Date

☐ Approved  
☐ Disapproved

City Manager

Date

☐ Approved  
☐ Disapproved

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING CHANGE ORDER #4 IN THE DEDUCT AMOUNT OF \$91,654.93 TO THE LOOP 363 UTILITY RELOCATION PHASE 2 CONSTRUCTION CONTRACT WITH BELL CONTRACTORS, INC., FOR ITEMS RELATED TO CHANGES DUE TO FINAL CONNECTIONS AND QUANTITY RECONCILIATIONS TO THE PROJECT AS REQUIRED; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on February 15, 2007, the City Council authorized a construction contract with Bell Contractors, Inc., of Belton, Texas, in the amount of \$1,394,406.36, to relocate City owned utilities along Loop 363 and 31<sup>st</sup> Street related to TxDOT's widening of Loop 363 between 57<sup>th</sup> and 5<sup>th</sup> Street;

**Whereas**, through the course of construction, field adjustments and design issues have resulted in increased costs to the construction contract;

**Whereas**, the Staff recommends approving a deduct change order for \$91,654.93 which is a reconciliation of quantities required to complete the project;

**Whereas**, an amendment to the FY2007-08 budget reducing revenue to be received from TxDOT for their share of the project needs to be approved; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute Change Order #4, in the deduct amount of \$91,654.93, to the construction contract with Bell Contractors, Inc., of Belton, Texas, after approval as to form by the City Attorney, for items related to changes due to final connections and quantity reconciliations to the project as required.

**Part 2:** The City Council authorizes an amendment to the FY2007-08 budget, substantially in the form of the copy attached as Exhibit A, for this purpose.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(K)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Belinda Mattke, Director of Purchasing

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a purchase agreement with Triple S Petroleum of Austin for the purchase of on-site fuel for Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport in the estimated annual amount of \$40,000.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** On April 1, 2008, the City received one (1) bid for the purchase of on-site fuel services for Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport. The bid tabulation is attached.

Both Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport have fueling locations with two tanks each. One tank is for unleaded fuel and the other is for diesel. Both locations have relatively small tanks and require small transports. The inter-local agreement with Bell County for the purchase of fuel from Texas Fleet Fuel does not cover these transports.

The bid prices are based on the OPIS price (Oil Price Information Service) per actual unbranded rack price for that day's delivery. Unleaded is priced at 18 cents above OPIS and diesel is priced a 20 cents above OPIS. This price does not include the state mandated petroleum product delivery fee which is billed at .0015 cents per gallon.

The proposed purchase contract will commence immediately and continue through December 31, 2009. The City reserves the right to extend the contract for two (2) additional two-year periods if agreeable by both parties

The City has done business with Triple S Petroleum in the past and finds them to be a responsible vendor.

**FISCAL IMPACT:**

FY 2008 Airport budgeted auto supplies: 110-3600-560-2115 -- \$11,551.00

FY 2008 Golf Links Operations budgeted auto supplies: 110-3110-551-2115 -- \$12,689.00

FY 2008 Golf Links Maintenance budgeted auto supplies: 110-3120-551-2115 -- \$24,853.00

Year-to-date expenditures for delivered fuel totals \$20,246.88 for both departments.

**ATTACHMENTS:**

[Bid Tabulation](#)  
[Resolution](#)

Tabulation of Bids Received  
on April 1, 2008 at 2:30 p.m.  
On-Site Fuel Services (Re-bid)

| Bidders                         |                                      |                          |
|---------------------------------|--------------------------------------|--------------------------|
| Triple S Petroleum Co<br>Austin |                                      |                          |
| Description                     | Based on OPIS Price/Gallon<br>+ or - | Service Fee Price/Gallon |
| Regular Unleaded Gasoline       | + \$0.18                             | \$0.0015                 |
| Grade 2-0 Diesel                | + \$0.20                             | \$0.0015                 |
| Exceptions                      | Yes                                  |                          |
| CIQ Form                        | Yes                                  |                          |
| Insurance Affidavit             | Yes                                  |                          |
| Credit Check Authorization Form | Yes                                  |                          |

I hereby certify that this is a correct and true tabulation of all bids received.

*Belinda Mattke*

*1-Apr-08*

Belinda Mattke, Director of Purchasing

Date

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A PURCHASE AGREEMENT WITH TRIPLE S PETROLEUM OF AUSTIN, TEXAS, FOR THE PURCHASE OF ON-SITE FUEL FOR SAMMONS GOLF LINKS AND THE DRAUGHON-MILLER CENTRAL TEXAS REGIONAL AIRPORT, IN THE ESTIMATED ANNUAL AMOUNT OF \$40,000; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on April 1, 2008, the City received 1 bid for the purchase of on-site fuel for Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport;

**Whereas**, Staff recommends accepting the bid from Triple S Petroleum of Austin, Texas, for this purpose;

**Whereas**, funds are available in Account Nos. 110-3600-5560-2115, 110-3110-551-2115, and 110-3120-551-2115 for this purchase; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes a purchase agreement with Triple S Petroleum of Austin, Texas, for the purchase of on-site fuel for Sammons Golf Links and the Draughon-Miller Central Texas Regional Airport, in the estimated annual amount of \$40,000.

**Part 2:** The City Council authorizes the City Manager, or his designee, to execute any documents, after approval as to form by the City Attorney, that may be necessary for this purchase.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(L)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works  
Nicole Torralva, P.E., Assistant Director of Public Works / Operations

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a professional services agreement with Carollo Engineers of Austin for engineering services required to rehabilitate the mixed media filters at the Conventional Water Treatment Plant (including modifications to the filter backwash process and instrumentation system) and structural repairs to Lagoon #4, in an amount not to exceed \$264,671 and declaring an official intent to reimburse this expenditure prior to the issuance of tax-exempt obligations designated for this project.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** The conventional water treatment plant has been operating in its current location and configuration since the 1960s. Several additions and improvements have taken place since that time, including filter rehabilitation in the late 1990s. Modifications performed in the 1990s did not substantially improve filter operation, and additional work is needed to reduce the loss of media and to correct the backwash process for more efficient operations.

Objectives of the design for the mixed media portion of the project are to evaluate the filter process, backwash pumping, backwash flow measurement, and valve control to identify and design needed improvements. Currently, backwash cycles are run for a longer period of time at a lower flow rate, resulting in a less thorough cleaning cycle. As a result, plant operators have established an aggressive backwash program in which the filters are backwashed directly from the high service pumps, resulting in substantial loss of media to adequately clean the filters. On average, coal is being replaced every two years. Improvements to the process will reduce media loss and provide more thorough and complete cleaning through the rehabilitated filters.

The second objective of the project is to evaluate the structural problems associated with Lagoon #4, recommend alternatives, and complete the design of improvements. Lagoon #4 has experienced several cracks in the concrete structure due to differential settlement in the soil and loss of backfill material. This lagoon is critical to producing water from both the conventional and membrane plants. Currently, the use of this lagoon is dramatically impaired and its condition is continuing to deteriorate. At some point in the near future, the structure without improvements will become unusable and the capacity of the water plant will be diminished.



The proposed timeline for engineering work is six months. Per the attachment, specific tasks are broken down as follows:

|              |                               |                   |
|--------------|-------------------------------|-------------------|
| Task A       | Preliminary Engineering Phase | \$ 26,882         |
| Task B       | Design Phase                  | \$ 145,572        |
| Task C       | Bid Phase                     | \$ 936            |
| Task D       | Construction Phase Services   | \$ 83,157         |
| Task E       | Project Management            | \$ 8,124          |
| <b>TOTAL</b> |                               | <b>\$ 264,671</b> |

Approximately 25,000 of the total engineering fee is allocated toward the Lagoon #4 Project, with the remaining \$239,671 allocated for the mixed media filter project. The total budgeted project cost for rehabilitation of the mixed media filters is \$1.3 million dollars. The total budgeted project cost for rehabilitation of Lagoon #4 is \$250,000. To adequately correct the backwash process, instrumentation, and media replacement, additional funding will be needed during the construction phase to replace the existing filter underdrain system. At this time, staff anticipates that funding for this additional work will be available through the master plan recommendation account. Once the preliminary engineering phase is complete, an updated construction cost estimate will be prepared and a recommendation for funding of the construction contract will be provided. Both construction contracts are anticipated to be let during the fall of 2008, with construction occurring during winter 2008 and spring 2009.

**FISCAL IMPACT:** Funding in the amount of \$1,300,000 is designated for the Mixed Media Filter Project in the proposed 2008 Utility Revenue Bond Issue. Funding in the amount of \$250,000 is designated for the Water Treatment Plant Lagoon #4 Rehabilitation Project in the proposed 2008 Utility Revenue Bond Issue. It is recommended that engineering services for both projects be funded through the Mixed Media Filter Project under one engineering contract, with two subsequent construction contracts being awarded correspondingly as the project moves into construction.

Initially, funding for this contract will come from funding available from the 2006 Utility Revenue Bonds in accounts 561-5100-535-6924, Project 100335, and 561-5100-535-6913, project # 100334, with the intent to reimburse the 2006 Utility Revenue Bonds from the proposed 2008 Utility Revenue Bond issue.

**ATTACHMENTS:**

[Engineer's Proposal](#)  
[Scope of Services](#)  
[Resolution](#)

January 28, 2008  
300.45.000

Ms. Nicole Torralva, P.E.  
Assistant City Engineer  
City of Temple  
3210 E. Avenue H, Building A  
Temple, Texas 76501

Subject: City of Temple Water Treatment Plant – Filter Improvements  
Engineering Proposal, Revision 1

Dear Ms. Torralva:

This letter presents our proposal to the City of Temple (City) to provide engineering services for preliminary engineering, design, and construction phase services for the filter, backwash, and Lagoon No. 4 improvements for the City of Temple Conventional Water Treatment Plant (WTP).

## **BACKGROUND**

The City has been operating its conventional WTP since the 1960s. Several additions and improvements have taken place since that time, including the installation of ceramic-type filter underdrains for Filters 7 and 8 in 1998.

The plant operation staff has been experiencing challenges for some time during filter backwash operations, demonstrated in the excessive loss of anthracite coal and unclean filters resulting in aggressive backwash practices. Additionally, Lagoon No. 4 has experienced several cracks in the concrete structure due to differential settlement and loss of backfill material. Based on visual observation of Lagoon No. 4, we recommend demolition of the existing one and design of a new one.

## **OBJECTIVES**

Objectives of the design are:

1. Design improvements to filter to include backwash pumping, backwash flow measurement, and valve control at the plant.
2. Develop a summary letter that identified the current problems and recommends solutions.

3. Engineer and design the recommended improvements and prepare construction drawings and project technical specifications.
4. Evaluate bids and proceed with construction phase services.

## **PROPOSED SCOPE OF WORK AND BUDGET**

### **Proposed Scope**

Task A – Initial Evaluation Phase. Collect and analyze technical data and information to evaluate the backwash and lagoon structural problems and submit recommended solution.  
**\$26,882**

Task B – Design Phase. Prepare 50 percent, 90 percent, and 100 percent bid documents, including cost estimate.  
**\$145,572**

Task C – Bid Phase. Attend pre-bid conference and evaluate bids.  
**\$936**

Task D – Construction Phase Services. Assist the City of review of shop drawings, construction schedules and pay estimates. Provide part time construction field observation services.  
**\$83,157**

Task E – Management (All Phases). Coordinate the planning, execution, monitoring and controlling process, and the closing process throughout the project duration.  
**\$8,124**

Total Cost A through E. **\$264,671**

### **Proposed Schedule**

Our schedule was estimated assuming a Notice to Proceed (NTP) will be issued by February 18, 2008.

Ms. Nicole Torralva  
City of Temple  
January 28, 2008  
Page 3

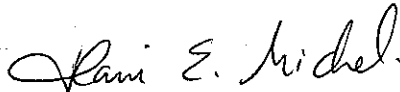
We estimate that the engineering design work effort can be completed within approximately within 6 months of receiving the NTP (Exhibit C).

We look forward to working with you and your staff on this important project and providing assistance where needed.

Should you require any further information, please do not hesitate to contact me at (512) 453-5383.

Sincerely,

CAROLLO ENGINEERS, P.C.



Hani Michel, P.E.  
Project Manager

HEM:cap

Enclosures: Exhibits A, B, C

cc: Mary Clyburn (Carollo - DAL)  
C.B. Hagar (Carollo - AUS)  
Paul Walker (Carollo - AUS)

**EXHIBIT A**  
**CITY OF TEMPLE - MEMBRANE WATER TREATMENT PLANT**  
**CAPACITY and IMPROVEMENTS STUDY**  
**SCOPE OF SERVICES**

**January 28, 2008**

**Contact Details:**

|                          |  |
|--------------------------|--|
| City of Temple:          | Ms. Nicole Torralva, P.E., Assistant Director , (254) 298-5660<br>E-mail: <a href="mailto:ntorralva@ci.temple.tx.us">ntorralva@ci.temple.tx.us</a> |
| Carollo Engineers, P.C.: | Hani Michel, P.E., Project Manager, (512) 453-5383<br>Email: <a href="mailto:hmichel@carollo.com">hmichel@carollo.com</a>                          |

**BACKGROUND**

The City has been operating its conventional WTP since the 1960s. Several additions and improvements have taken place since that time, including the installation of ceramic-type filter underdrains for Filters 7 and 8 in 1998.

The plant operation staff has been experiencing challenges for some time during filter backwash operations, demonstrated in the excessive loss of anthracite coal and unclean filters resulting in aggressive backwash practices. Additionally, Lagoon No. 4 has experienced several cracks in the concrete structure due to differential settlement and loss of backfill material. An evaluation of the structural integrity of Lagoon No. 4 is needed as well as alternatives for stabilizing the existing structure, or demolition of the existing one and design of a new one.

**PROPOSED SCOPE OF WORK AND BUDGET**

The scope of work includes the following.

**TASK A. INITIAL EVALUATION PHASE**

**Task A.1 – Collect and Analyze Data**

Carollo will collect existing information from existing engineering construction drawings and specifications for filters, filter piping, pumping system, backwash system, clearwells, elevated back storage tank, and sludge lagoons. This will provide background information for developing a solution to the backwash problem.

### **Task A.2 – Develop Solution to Backwash Problem**

It is anticipated that a new backwash pump station will be designed to tie-in to the clearwells, elevated backwash storage tank, and the existing backwash system.

### **Task A.3 – Evaluate Structural Conditions of Lagoon No. 4**

The purpose of this third task is to visit the site and communicate the needed design parameters to the geotechnical engineer.

A.3.1 Perform geotechnical soils boring and evaluate compaction of existing fill.

A.3.2 Site visit by the structural engineer to evaluate existing conditions. Review of existing structural plans and details.

### **Task A.4 – Issue Engineering Summary Letter**

Based on the information above, present recommended solutions to City in a half-day workshop.

A.4.1 Prepare design sketches for proposed engineering design.

A.4.2 Prepare written summary for proposed engineering design.

A.4.3 Meet with City personnel to discuss and review engineering design work.

#### **Deliverable:**

Summary letter.

**TOTAL COST FOR TASK A = \$26,882**

## **TASK B. DESIGN PHASE**

### **Task B.1 – Engineering Design of Selected Alternatives**

Proceed with the preparation of the design drawings and technical specifications for the proposed solution. Also included is a typical design for a new filter underdrain system and specifications for media replacement.

B.1.1 Prepare 50 percent design submittal for review by City.

B.1.2 Prepare 90 percent submittal for design drawings and project technical specifications for review by the City.

B.1.3 Prepare 100 percent submittal, including preparation of bid documents. Provide City with reproducible bid documents.

#### **Deliverable:**

Final construction bid sets, including construction estimate.

**TOTAL COST FOR TASK B = \$145,572**

## **TASK C      BID PHASE**

### **Task C.1 – Attend Pre-Bid Conference and Evaluate Bids**

Assist the City during the bid phase.

C.1.1 Attend pre-proposal conference and respond to contractor's questions.

C.1.2 Prepare addenda(s) (if needed).

C.1.3 Review bids and prepare Engineer's letter of concurrence for successful bidder.

#### **Deliverables:**

Bid support and issue addenda(s) (if needed) as well as Engineer's letter of concurrence.

**TOTAL COST FOR TASK C = \$936**

## **TASK D      CONSTRUCTION PHASE SERVICES**

### **Task D.1 – Office Support Services**

The purpose of this task is to assist the City of review of shop drawings, construction schedules, pay estimates, and construction observation.

D.1.1 Conduct and attend pre-construction meeting.

D.1.2 Review shop drawings and project submittals.

D.1.3 Review construction schedules.

D.1.4 Review monthly contractor cost estimates and change order requests.

D.1.5 Monthly construction project meeting.

D.1.6 Review and provide as-built drawings.

### **Task D.2 – Field Observation**

Provide sixteen hours per week construction observation field services based on a projected project construction duration of 6 months. Prepare weekly reports and construction photos as well as field directives. Should there be an increase in the construction schedule or efforts needed, the consultant will be requesting additional funding at the time to cover the increased costs.

**TOTAL COST FOR TASK D = 83,157**

## **TASK E      MANAGEMENT (ALL PHASES)**

### **Task E.1 – Project Management**

Effective communication and teamwork will be key to the delivery of the PER and final design of a selected alternative within the required project timeframe. We will coordinate the planning, execution, monitoring and controlling process, and the closing process throughout the duration of the project.

E.1.1    Develop Project Management Plan (PMP).

E.1.2    Implement PMP and update it as needed.

E.1.3    Conduct kick-off meeting.

E.1.4    Plan and facilitate one-day workshop.

E.1.5    Issue monthly progress report.

E.1.6    Issue meeting and conference call minutes.

#### **Deliverables:**

Project Management Plan, monthly progress reports and meeting minutes.

### **Task E.2 – Meetings**

Meet with City of Temple to review project status and present results and conclusions.

E.2.1    Initial Project Meeting.

E.2.2    Monthly design progress meeting.

E.2.3    Pre-proposal meeting.

E.2.4    Pre-construction meeting.

E.2.5    Monthly construction progress meeting.

**TOTAL COST FOR TASK E = \$8,124**

Based on the above, the **Total Cost for Completing Tasks A through E is \$264,671.**

## **ASSUMPTIONS**

The City will be responsible for the following:

1. Providing existing record drawings for projects completed at the plant.
2. Provide O&M records for filter and backwash system, as needed.

## **PROJECT TEAM**



Table 1 presents our proposed project team, which consists of the same individuals involved in our initial technical discussions (C.B. Hagar, P.E., Hani Michel, P.E., and John Mitchell, P.E.). Michelle Barry, P.E. and Neil Higa, P.E. have been added to the project team for their expertise in filter and media design.

| <b>Table 1      Carollo Personnel<br/>Conventional WTP – Filter Improvements<br/>City of Temple</b> |                               |
|---|-------------------------------|
| <b>Personnel</b>  | <b>Area of Responsibility</b> |
| C.B. Hagar, P.E.  | Partner in Charge             |
| Hani Michel, P.E.   | Project Manager               |
| John Mitchell, P.E.   | Senior Engineer Professional  |
| Neil Higa, P.E.   | Project Professional          |
| Mike Florio, P.E.   | Structural Engineer           |
| Brad Rodgers, P.E.  | Electrical / I&C Engineer     |
| Michelle Barry, P.E.  | Project Engineer              |
| Greg Pope, PhD  | Filter Specialist             |

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CAROLLO ENGINEERS OF AUSTIN, TEXAS, FOR ENGINEERING SERVICES REQUIRED TO REHABILITATE THE MIXED MEDIA FILTERS AT THE CONVENTIONAL WATER TREATMENT PLANT (INCLUDING MODIFICATIONS TO THE FILTER BACKWASH PROCESS AND INSTRUMENTATION SYSTEM) AND STRUCTURAL REPAIRS TO LAGOON #4, IN AN AMOUNT NOT TO EXCEED \$264,671; DECLARING OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT OBLIGATIONS FOR THIS PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the Staff recommends entering into an agreement with Carollo Engineers of Austin, Texas, for engineering services required to rehabilitate the mixed media filters at the Conventional Water Treatment Plant (including modifications to the filter backwash process and instrumentation system) and structural repairs to Lagoon #4;

**Whereas**, Carollo Engineers submitted a proposal (\$264,671) and the staff recommends accepting it;

**Whereas**, the City of Temple anticipates the issuance of one or more series of obligations, the interest on which will be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended, in order to finance all or a portion of this project;

**Whereas**, certain expenditures relating to the Project will be paid prior to the issuance of the Obligations;

**Whereas**, the City hereby certifies that such expenditures have not been made prior to the date of passage of this Resolution;

**Whereas**, upon issuance of the Obligations, the City desires to reimburse these prior expenditures with proceeds of the Obligations;

**Whereas**, Section 1.150-2 of the Treasury Regulations provides that an expenditure on the Project may not be reimbursed from Obligation proceeds unless,

along with other requirements, the City declares official intent to reimburse the expenditure prior to the date that the expenditure to be reimbursed was paid; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a Professional Services Agreement, not to exceed \$264,671, between the City of Temple, Texas, and Carollo Engineers of Austin, Texas, for engineering services required to rehabilitate the mixed media filters at the Conventional Water Treatment Plant (including modifications to the filter backwash process and instrumentation system) and structural repairs to Lagoon #4.

**Part 2:** The findings, determinations and certifications contained in the preamble hereof are incorporated herein for all purposes.

**Part 3:** This Resolution is a declaration of official intent under Section 1.150.2 of the Treasury Regulations by the City that it reasonably expects to reimburse the expenditures described in Part 4 with proceeds of debt to be incurred by the City, such debt to be issued on or before eighteen (18) months after the date of (i) the date the first expenditure is paid; or (ii) the date on which the property is placed in service, but in no event three years after the first expenditure is paid.

**Part 4:** The following is a general functional description of the Project for which the expenditures to be reimbursed are paid and a statement of the maximum principal amount of debt expected to be issued for the purpose of paying the costs of the Project.

| <b><u>Project Description</u></b> |                               | <b><u>Debt To Be Issued</u></b> |
|-----------------------------------|-------------------------------|---------------------------------|
| Task A                            | Preliminary Engineering Phase | \$ 26,882                       |
| Task B                            | Design Phase                  | \$ 145,572                      |
| Task C                            | Bid Phase                     | \$ 936                          |
| Task D                            | Construction Phase Services   | \$ 83,157                       |
| Task E                            | Project Management            | \$ <u>8,124</u>                 |
|                                   |                               | <b>\$ 264,671</b>               |

**Part 5:** The expenditures described in Part 4 is a capital expenditure under general Federal income tax principles or a cost of issuance.

**Part 6:** Except for the proceeds of the Obligations, no funds are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the City or by any member of the same controlled group to pay for the expenditures described in Part 4.

**Part 7:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydetta Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(M)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works  
Nicole Torralva, P.E., Assistant Director of Public Works / Operations

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick, and Associates of Temple for engineering services required to perform preliminary engineering of the South Temple Pump Station and Ground Storage Tank Project, in an amount not to exceed \$119,730.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** In order to meet increased water demands in the southern growth area of the City and to provide for a redundant water supply, the City of Temple Water Master Plan proposes a transmission main, pump station and ground storage facility to be constructed in the southern portion of the City. The construction of these facilities will allow for a secondary supply point, additional water storage and additional pumping capacity for the 876' and 785' Pressure Zones. These pressure zones serve the Scott & White, King's Daughters and VA Hospitals and the growth areas along 31<sup>st</sup> Street, FM 93 and 5<sup>th</sup> Street in the southeast portion of the City.

Recent system investigations related to development of the update to the Water Master Plan has revealed that the City of Temple water distribution system has minimal redundancies. Currently, water is supplied to the City through two aging pipelines located generally along the I-35 corridor. In an effort to provide an alternate water supply to the City, the South Temple Water System Improvements Project (to include construction of a new transmission pipeline, ground storage tank, and pump station) will provide a feed from the south and provide system redundancy to critical tanks and pump stations in the central regions of the City.

The objective of this preliminary engineering phase of the project is to develop project criteria and design standards for design of a dual-zone booster pump station and ground storage tank. This will include an evaluation of alternative pump station configurations and conceptual facility layouts (including power and site acreage requirements and capital cost estimates) to achieve optimal design meeting the requirements of system operations. Specifically, the new pump station will draw water from the new South Temple Water Transmission Main and ground storage tank and provide service to both the 785' and 876' pressure zones through new and existing waterlines. These improvements,

summarized in a final report, will support projected increases in water demands and enhance the reliability of the water system.

The proposed timeline for preliminary engineering work is six months. Per the attachment, specific tasks are broken down as follows:

|              |  |                   |
|--------------|--|-------------------|
| Task 1       | Data Collection  | \$ 7,330          |
| Task 2       | Site Selection / Conceptual Layout   | \$ 9,920          |
| Task 3       | Evaluation of Electrical Power Supply /<br>Selection of Electrical Equipment | \$ 14,560         |
| Task 4       | System Head Curve / Pump Selection   | \$ 21,930         |
| Task 5       | Develop Requirements for Ground Storage Tank                                 | \$ 11,800         |
| Task 6       | Development of Overall South Temple Project<br>Schedules                     | \$ 6,150          |
| Task 7       | Analysis of Water Availability in 18" Southwest                              | \$ 9,340          |
| Task 8       | Prepare Opinions of Probable Cost  | \$ 17,700         |
| Task 9       | Attend and Coordinate Meetings with City Staff                               | \$ 8,000          |
| Task 10      | Prepare Preliminary Engineering Report                                       | \$ 13,000         |
| <b>TOTAL</b> |  | <b>\$ 119,730</b> |

The total anticipated project cost for pump station, tank, and waterline is \$13 million dollars. Currently, Kasberg, Patrick, and Associates is also under contract with the City of Temple for engineering services required to perform preliminary engineering of the South Temple Water Transmission Main Project, in the amount of \$157,000. Preliminary engineering reports for both portions of the project will be incorporated into one document. Once preliminary engineering is complete, an updated construction cost estimate and engineering contract amendment will be brought to council for final design of the facility.

**FISCAL IMPACT:** Funding in the amount of \$1,600,000 is currently appropriated in account 561-5200-535-6909, Project 100333, for the South Temple Water System Improvements Project (to include the transmission main, storage tank, and pump station) from the 2006 Utility Revenue Bond Issue. Preliminary engineering for the South Temple Water Transmission Main Project in the amount of \$157,000 has been allocated leaving \$1,443,000 funds available for preliminary engineering for South Temple Pump Station and Ground Storage Tank and final design of the projects.

Construction of the project will be funded through future Utility Revenue Bond Issues. The current adopted Capital Improvement Program proposes an allocation of \$8.66 million of future bond proceeds during FY 2008/2009 for construction of the project. Staff is now recommending that the project be considered 3 separate projects. The water transmission main project is anticipated to be constructed in FY 2009 with the ground storage tank and pump station constructed in FY 2010.

**ATTACHMENTS:**

[Engineer's Proposal](#)  
[Resolution](#)



**KASBERG, PATRICK & ASSOCIATES, LP**  
**CONSULTING ENGINEERS**

One South Main  
Temple, Texas 76501

(254) 773-3731

Fax (254) 773-6667

mail@kpaengineers.com

RICK N. KASBERG, P.E.  
R. DAVID PATRICK, P.E., C.F.M.  
THOMAS D. VALLE, P.E.

April 22, 2008

Mrs. Nicole Torralva, P.E.  
Assistant Director of Public Works - Operations  
3210 E. Avenue H  
Building A  
Temple, Texas 76501

Re: City of Temple  
Preliminary Design of South Temple Booster Pump Station and Ground Storage Tank

Dear Mrs. Torralva:

This letter proposal is in response to your request for our services required to perform preliminary engineering of the South Temple Booster Pump Station and Ground Storage Tank. The Pump Station and Ground Storage facilities are outlined in the Water Master Plan and will provide additional water storage and supply water to the 876 and 785 Pressure Zones.

Generally, the preliminary engineering for the Pump Station and Ground Storage Tank will consist of conceptual layout of the facilities, determination of the necessary pumping and storage capacities and opinions of probable cost. The specific tasks are detailed in Attachment A - Scope of Services, and are generalized with their respective cost as follows:

**Pump Station and Ground Storage Preliminary Design**

|  |           |                   |
|--|-----------|-------------------|
| Task 1 - Data Collection   | \$        | 7,330.00          |
| Task 2 - Site Selection/Conceptual Layout  | \$        | 9,920.00          |
| Task 3 - Evaluation of Electrical Power Supply/Selection of Electrical Equipment | \$        | 14,560.00         |
| Task 4 - System Head Curve/Pump Selection  | \$        | 21,930.00         |
| Task 5 - Develop Requirements for Ground Storage Tank                            | \$        | 11,800.00         |
| Task 6 - Development of Overall South Temple Project Schedules                   | \$        | 6,150.00          |
| Task 7 - Analysis of Water Availability in 18" Southwest Transmission Main       | \$        | 9,340.00          |
| Task 8 - Prepare Opinions of Probable Cost                                       | \$        | 17,700.00         |
| Task 9 - Attend and Coordinate Meetings with Public Works/Engineering            | \$        | 8,000.00          |
| Task 10 - Prepare Preliminary Engineering Report                                 | \$        | 13,000.00         |
| <b>Total Preliminary Design</b>  | <b>\$</b> | <b>119,730.00</b> |

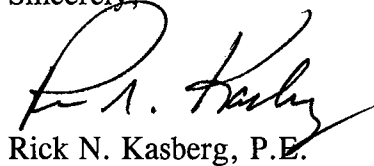
Mrs. Nicole Torralva, P.E.  
April 22, 2008  
Page Two

The charges for our services will be a lump sum amount of \$ 119,730. Attachment B outlines rates which would be used to charge for special or additional services authorized beyond the scope as described in this proposal.

KPA will begin work once a written notice to proceed is issued by the City. The Preliminary Engineering Report for the South Temple Pump Station and Ground Storage Tank will be incorporated into the Transmission Main Report, for which we are currently under contract with the City.

We are available to address any questions or comments that you may have about this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "R. N. Kasberg", written over the printed name.

Rick N. Kasberg, P.E.

GRT/



## **ATTACHMENT A**

### **CITY OF TEMPLE, TEXAS**

### **PRELIMINARY DESIGN of**

### **SOUTH TEMPLE PUMP STATION AND GROUND STORAGE TANK**

### **SCOPE OF SERVICES**

#### **BACKGROUND**

In order to provide for redundant water supply, the City of Temple Water Master Plan proposes a transmission main, pump station and ground storage facility be constructed in the southern portion of the City. The construction of these facilities will allow for a secondary supply point, additional water storage and additional pumping capacity for the 876 and 785 Pressure Zones.

#### **PRELIMINARY DESIGN OF PUMP STATION AND GROUND STORAGE TANK**

##### **Task 1 – Data Collection**

- 1.1 The purpose of the task will be to obtain and review historical flow and pressure data with regard to the High Service Pump Station and 18” Southwest Transmission Main.

##### **Task 2 – Site Selection / Conceptual Layout**

- 2.1 Determination of site requirements for the dual pump station and ground storage tank, including conceptual facility layout.

**Deliverable:** Conceptual Facility Layout

##### **Task 3 – Evaluation of Power Supply/Selection of Electrical Equipment**

- 3.1 Analysis of electrical requirements
- 3.2 Determination of level control and SCADA requirements
- 3.3 Evaluation of available electrical power supply
- 3.4 Coordination with Oncor
- 3.5 Evaluation of variable frequency drive options
- 3.6 Selection of electrical equipment

#### **Task 4 – System Head Curves / Pump Selections**

Perform hydraulic analysis for determination of system head curves and selection of pumps based on recommended transmission main alignment.

- 4.1 Prepare system curve for Proposed South Temple 785 Pump Station to Scott Tank
- 4.2 Prepare system curve for Proposed South Temple 876 Pump Station to 25<sup>th</sup> Street Tank
- 4.3 Select Pumps for Proposed South Temple 785 Pump Station
- 4.4 Select Pumps for Proposed South Temple 876 Pump Station
- 4.5 Coordination with manufacturer representatives
- 4.5 Prepare Exhibit

**Deliverable:** System Head Curve and Pump Curve Exhibits

#### **Task 5 – Develop Requirements for Ground Storage Tank**

- 5.1 Determine required capacity
- 5.2 Meet with manufacturer representatives
- 5.3 Review specifications
- 5.4 Determine yard piping layout
- 5.5 Prepare Exhibit

**Deliverable:** Exhibit and Draft Specification

#### **Task 6 – Development of Overall South Temple Project Schedules**

Provide project schedule illustrating each component of the overall project from preliminary phase through construction.

**Deliverable:** Schedule

#### **Task 7 – Analysis of Water Availability in 18” Southwest Transmission Main**

Review the maximum water available through the 18” Southwest Transmission Main and determine the initial and ultimate constraints for the South Temple Main. Determine if specific valving appurtenances will be required to facilitate operations.

#### **Task 8 – Prepare Opinions of Probable Cost**

### **Task 9 – Attend and Coordinate Meetings with City Staff**

Meet with City of Temple to obtain data, review project status and present results.

9.1 Initial Project Meeting

9.2 Data Collection

9.3 Progress Meetings

9.3 Receive comments on Draft Report

9.4 As required to successfully complete Preliminary Design

### **Task 10 – Prepare Preliminary Engineering Report**

Prepare a report summarizing the necessary pumping and storage capacities and conceptual facility layout.

10.1 Prepare Draft Preliminary Engineering Report

10.2 Provide 10 hard copies of the Draft Report

10.3 Submit to City for review and comment

10.4 Incorporate City comments as appropriate

10.5 Provide 10 hard copies of the Preliminary Engineering Report

**Deliverable:** Draft and Final Preliminary Engineering Reports

**ATTACHMENT B**

**Charges for Additional Services**

**City of Temple**

**Preliminary Design of South Temple Booster Pump Station and  
Ground Storage Tank**

| <u>POSITION</u>            | <u>MULTIPLIER</u> | <u>SALARY COST/RATES</u> |
|----------------------------|-------------------|--------------------------|
| Principal                  | 2.4               | \$ 60.00 – 80.00/hour    |
| Project Manager            | 2.4               | 45.00 – 58.00/hour       |
| Project Engineer           | 2.4               | 40.00 – 45.00/hour       |
| Engineer-in-Training       | 2.4               | 32.00 – 40.00/hour       |
| Engineering Technician     | 2.4               | 22.00 – 40.00/hour       |
| CAD Technician             | 2.4               | 18.00 – 40.00/hour       |
| Clerical                   | 2.4               | 13.00 – 25.00/hour       |
| Expenses                   | 1.1               | actual cost              |
| Computer                   | 1.0               | 15.00/hour               |
| Survey Crew                | 1.1               | 95.00 – 120.00/hour      |
| Registered Public Surveyor | 1.0               | 110.00/hour              |
| On-Site Representative     | 2.1               | 30.00 – 40.00/hour       |

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TEMPLE, TEXAS, AND KASBERG, PATRICK & ASSOCIATES, L.P., FOR ENGINEERING SERVICES REQUIRED TO PERFORM PRELIMINARY ENGINEERING OF THE SOUTH TEMPLE PUMP STATION AND GROUND STORAGE TANK PROJECT, IN AN AMOUNT NOT TO EXCEED \$119,730; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, in order to meet the increased water demands in the southern growth area of the City and to provide for a redundant water supply, the City of Temple Water Master plan proposes a transmission main, pump station and ground storage facility to be constructed in the southern portion of the City;

**Whereas**, Kasberg, Patrick & Associates, L.P., submitted a proposal for the preliminary engineering required for the South Temple Pump Station and Ground Storage Tank project for \$119,730, and the Staff recommends accepting it;

**Whereas**, funds are available for this project in Account No. 561-5200-535-6909, Project No. 100333; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute a professional services agreement, not to exceed \$119,730, between the City of Temple, Texas, and Kasberg, Patrick & Associates, L.P., after approval as to form by the City Attorney, to perform preliminary engineering of the South Temple Pump Station and Ground Storage Tank Project.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of May, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(N)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

David A. Blackburn, City Manager  
Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing the City Manager to execute a Lease of Land for Track Construction of Track (CL), a new Industrial Track Agreement (ITA) and a Contractor's Right of Entry Agreement with BNSF Railway in the total amount of \$374,585, and declaring an official intent to reimburse certain expenditures made prior to the issuance of obligations for this project.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** As part of the development agreement executed last fall with Gulf States Toyota (GST), the City committed to making certain improvements to the rail park that will benefit not only that project, but also open up rail service to other areas of the City's industrial park, Central Pointe.

The City has spent the past few months negotiating an agreement with the Burlington Northern Santa Fe Railroad (BNSF) that will allow the City to construct a rail line off of the main BNSF into eastern side of Central Pointe. The rail line will bring the main line along the southern boundary of the GST property, construct ladder "stacking lines" off the main line (east of Wendland Road), and construct a rail spur off that rail line extension that will serve the Wilsonart and Integrigo tracts. The City in cooperation with TxDOT has committed to providing an alternative rail connection to the Wilsonart tract that will allow an at grade spur on northwest Loop 363 to be abandoned with the future work to be done by TxDOT on Loop 363.

The agreements negotiated with BNSF will allow this connection to the BNSF main line with the City (in conjunction with the TIFRZ) maintaining the rail line and ladder stacking lanes. BNSF requires that two agreements be executed prior to beginning construction: (1) a *Lease of Land for Track Construction of Track* which will remain in effect for the life of the track; and (2) a new *Industrial Track Agreement* to cover maintenance, operation, and liability issues associated with this project. A *Contractor's Right of Entry Agreement* will also be required at a later date between BNSF and the contractor once selected by the City. This resolution asks authority to execute all three of these agreements—the Lease and Industrial Tract Agreement now, and the Contractor's Right of Entry at a later date when the contractor is identified.

BNSF will construct one No. 11 turnout from point of switch to clearance point off the Belco lead track, along with the required signalization work at Loop 363 grade crossing, at the City's expense in the amount of \$374,585.00. The City will be responsible for performing all grading, drainage, and placement of sub-ballast for the entire track, including construction of berm/pad alongside the track to allow assembly of the turnout, with no disruption of traffic. It will also be the responsibility of the City to raise or relocate any utility power lines and encase any existing underground utility lines.

Staff requests your approval to enter into the *Lease of Land for Track Construction of Track* and the *Industry Track Agreement* now and approval to execute the *Contractor's Right of Entry Agreement* upon determination and identification of the rail contractor.

**FISCAL IMPACT:** Funding for the construction to be done by BNSF in the amount of \$374,585 is designated within the Railroad Park Phase II project, Account No. 795-970-531-6825, project #100166 to be funded with 2008 TIRZ Taxable Revenue Bonds. These bonds are anticipated to be sold in early summer 2008.

**ATTACHMENTS:**

[BNSF Railway Company Lease](#)  
[Industry Track Agreement](#)  
[Contractor's Right of Entry Agreement](#)  
[Resolution](#)



**BNSF RAILWAY COMPANY**  
**LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK**

**THIS LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK ("Lease")** is made as of the 15th day of May, 2008 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter called "**Railroad**"), and **CITY OF TEMPLE**, a corporation, formed under the Laws (as hereinafter defined) of Texas, (hereinafter, whether one party or more, called "**Industry**").

**RECITALS**

A. Railroad owns or controls certain land situated at or near the railway station of Temple, County of Bell, State of Texas, as described or shown on the print hereto attached, dated \_\_\_\_\_, marked **Exhibit "A"**, and made a part of this Lease ("**Premises**").

B. Railroad and Industry have entered into that certain Industry Track Agreement ("**Track Agreement**") dated effective May 15, 2008, relating to the operation and maintenance of that certain Railroad Track (as defined in the Track Agreement) and that certain Industry Track (as defined in the Track Agreement) (the Railroad Track and Industry Track to be collectively referred to herein as the "**Track**") located on or near the Premises to serve the Plant (as defined in the Track Agreement).

C. The parties desire to enter into this Lease to allow Industry to occupy the Premises for the construction of the Track and the performance of certain activities related to the Track.

**AGREEMENTS**

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**LEASE OF PREMISES**

1. (a) Railroad hereby leases to Industry, subject to all rights, interests and estates of third parties, and upon the terms and conditions set forth below, the Premises for the Permitted Uses (as hereinafter defined).

(b) In the event Industry requires access to and from the Premises by use of the Railroad Track or Railroad's property adjacent to the Premises, Railroad hereby grants Industry a non-exclusive license and permission to enter upon Railroad's property for such purpose. Railroad shall, at its sole discretion, designate the location or route to be used by Industry. For the purposes of this Lease, the designated access, whether specifically defined or not, is included in the definition of Premises.

**PERMITTED USES**

2. Industry shall use the Premises exclusively as a site for: (i) the performance of Routine Activities (as hereinafter defined) and (ii) Major Construction (as hereinafter defined) related to the Track and for no other purposes (collectively, the "**Permitted Uses**"). Industry shall provide all relevant information to Railroad's inquiries regarding the use or condition of the Premises. Railroad may enter the Premises at any time Railroad desires to inspect the Premises. For purposes of this Lease:

(a) "**Routine Activities**" shall mean Industry's normal maintenance and operation of the Track that does not include Major Construction. Routine Activities shall be deemed to include, but not be limited to, those normal maintenance and operating activities further described in the Track Agreement so long as such normal maintenance and operating activities described in the Track Agreement do not involve Major Construction.

(b) "**Major Construction**" shall mean planning, designing, construction, erection, installation, modification, repair, maintenance, reconstruction, rehabilitation, reinstallation, removal, relocation or replacement of the Track that includes: (i) activities requiring the excavation of soil that would alter or disturb the Premises; (ii) activities requiring the use of heavy machinery within fifty (50) feet of the Track or upon the Premises; (iii) activities involving the Fouling (as hereinafter defined) of the Track; (iv) activities creating a significant risk of the Fouling of the Track; or (v) activities requiring the sheltering of the Industry's Facilities (as hereinafter defined) or Equipment (as hereinafter defined) in shelters located closer than 25 feet from the nearest portion of the Track. In addition, the parties agree that all activities on the Premises prior to the Revenue Commencement Date (as hereinafter defined) shall be deemed to be "Major Construction", even if such activities do not include activities described in (i), (ii), (iii), (iv) or (v) above.

(c) **"Revenue Commencement Date"** shall mean the first date that initial construction/rehabilitation of the Track is complete to the point that railroad cars can operate over the Track.

(d) **"Fouling"** or **"Fouled"** shall mean the existence, movement or placement of equipment and/or personnel on the Track or within twenty-five (25) feet vertically or laterally of the centerline of the Track, or any other activity which in Railroad's sole opinion may interfere with any operations of Railroad.

### **TERM**

3. Unless earlier terminated as hereinafter provided, this Lease shall be in force for a term commencing on the Effective Date and shall automatically continue thereafter until terminated by either party giving to the other thirty (30) days' written notice of its desire to terminate the Lease. Notwithstanding the foregoing, upon the expiration or earlier termination of the Track Agreement, Railroad may, in its sole discretion upon notice to Industry, immediately terminate this Lease.

### **RENTAL**

4. Industry shall pay to Railroad, prior to the Effective Date of this Lease, a one-time sum of \$500 for the lease of the Premises.

### **COMPLIANCE WITH LAWS AND RAILROAD REQUIREMENTS**

5. (a) Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Premises, provided Industry obtains prior written consent from Railroad.

(b) Industry has examined the Premises and accepts the condition thereof "AS IS", and shall exercise its rights and fulfill its obligations under this Lease in full compliance with all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction (referred to herein as "**Law**" or "**Laws**"), including without limitation all Environmental Laws (as hereinafter defined), relating to the use of the Premises, Track, Facilities or Equipment.

(c) Prior to entering the Premises, Industry shall and shall cause its contractor(s) to comply with all Railroad's applicable safety rules and regulations. Prior to commencing any Major Construction or Routine Activities on the Premises, Industry shall complete and shall require its contractor(s) to complete the safety-training program at the Railroad's Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Industry's entry on the Premises.

(d) Prior to any contractor of Industry entering the Premises, Industry shall cause each such contractor to enter into and comply with Railroad's standard Contractor's Right of Entry Agreement ("**Right of Entry Agreement**") in the form attached hereto as **Exhibit "D"** and incorporated herein by this reference.

### **USE AND MAINTENANCE OF PREMISES**

6. (a) Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Premises, Track and all Facilities and Equipment (if any) in a safe and satisfactory condition, in compliance with all applicable Laws and in a condition satisfactory to Railroad. Industry shall not cause, permit, commit, or maintain any waste or nuisance in, on or about the Premises.

(b) Maintenance for the purpose of this Lease includes, but is not limited to, responsibility for providing proper drainage along the relevant portion of the Track and for keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles. Maintenance also includes, but is not limited to, responsibility for the maintenance of grade crossing warning devices, passive warning signs, stop signs, gates, fences, barriers, roadways and roadway construction, track drainage facilities, lighting, track signals and signal maintenance.

(c) If Industry installs any gates or fencing across the Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "**Facilities**") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with or affecting the Track ("**Equipment**") and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any equipment spotted onto the

Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities, Equipment and spotted equipment so as not to adversely affect the safe and efficient operation over the Track. Industry shall, among other things: keep any gates across the Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track; keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; keep all doors firmly secured; and keep adjustable loading docks at warehouses securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad.

(d) Railroad may require for safety purposes that Industry, at its sole cost and expense, provide flagmen, lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with Industry's use of the Premises for the Permitted Uses identified in **Section 2** above. Industry shall reimburse Railroad within thirty (30) days of receipt of a bill rendered for all such costs expended by Railroad, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railroad, when deemed necessary by the Railroad's representative, will be borne by the Industry. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railroad and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(e) Industry shall notify Railroad's representative Roadmaster Dave Mooney, at 2100 Baker Blvd, Temple, TX 76501, telephone (254) 771-4676, five (5) days prior to commencing any construction or rehabilitation of the Track on the Premises.

(f) All alterations, additions, or betterments to the Premises, other than the rails and the ties, shall upon construction become the sole property of Railroad.

(g) Industry agrees that Railroad shall not be required to furnish to Industry any water, light, power or any other services in connection with the use of the Premises.

(h) Notwithstanding anything contained herein to the contrary, in the event of any conflict between the terms of this Lease and the Track Agreement with regard to the use and maintenance of the Premises, the most stringent provision or requirement applicable to Industry will control.

#### **DEFINITION OF COST AND EXPENSE**

7. (a) For the purposes of this Lease, "cost" or "costs" or "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

(b) All invoices are due thirty (30) days after the date of invoice. In the event that Industry shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Industry at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by applicable Law, whichever is less.

#### **RIGHT OF RAILROAD TO USE**

8. Railroad excepts and reserves the right, to be exercised by Railroad and any other parties who may obtain written permission or authority from Railroad:

(a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

(b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

(c) to use the Premises in any manner as the Railroad in its sole discretion deems appropriate; provided Railroad uses

all commercially reasonable efforts to avoid material interference with the use of the Premises by Industry for the Permitted Uses specified in **Section 2** above.

### **CLEARANCES**

9. (a) Industry shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction within 8½ feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or within 24 feet vertically from the top of the rail of the Track ("**Minimal Clearances**"), provided that if any Law requires greater clearances than those provided for in this **Section 9**, then Industry shall strictly comply with such Law. However, lateral or vertical clearances which are less than the Minimal Clearances but are in compliance with applicable Laws will not be a violation of this **Section 9**, so long as Industry strictly complies with the terms of any such Law.

(b) Railroad or Industry's operation over the Track with Railroad's knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this **Section 9** or of Railroad's right to recover and be indemnified and defended against such damages to property, or injury to or death of persons, that may result therefrom.

(c) Industry shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on the Premises.

### **INDEMNIFICATION**

10. (a) The provisions of this **Section 10** shall apply to Industry throughout the term of this Lease; provided, however, the provisions of **Exhibit "B"**, attached hereto and incorporated herein by this reference, shall also apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

(i) **INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY CLAIM THAT BY VIRTUE OF THE USE OF THE TRACK CONTEMPLATED IN THIS LEASE, UNDER CERCLA OR OTHER ENVIRONMENTAL LAWS, RAILROAD IS (I) AN "OWNER", "OPERATOR", "ARRANGER" OR "TRANSPORTER" OF THE TRACK, OR (II) OTHER THAN A COMMON CARRIER WITH RESPECT TO THE TRACK, REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE.**

(ii) **IF ANY EMPLOYEE OF INDUSTRY OR INDUSTRY'S OFFICERS, AGENTS, INVITEES, LICENSEES, EMPLOYEES, OR CONTRACTORS, OR ANY PARTY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANY PARTY THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "INDUSTRY PARTIES") CLAIMS HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, INDUSTRY SHALL INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH CLAIM INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATED TO PROCEEDINGS UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE AND REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.**

(b) Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Lease for which Industry has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Industry shall pay all costs incident to such defense, including,

but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

### **PERSONAL PROPERTY WAIVER**

11. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF INDUSTRY ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

### **INSURANCE**

12. (a) The provisions of this **Section 12** shall apply to Industry throughout the term of this Lease; provided, however, the provisions of **Exhibit "C"**, attached hereto and incorporated herein by this reference, shall also apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement. Throughout the term of this Lease, Industry shall, at its sole cost and expense, procure and maintain the following insurance coverage:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, Bodily Injury and Property Damage, and Products and completed operations. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.

- B. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ Industry's statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

(b) In addition to the foregoing, the following other requirements shall apply to this **Section 12**:

Any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided. If any portion of the operation is to be subcontracted by Industry, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

Prior to commencing operations governed by this Lease, Industry shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation or non-renewal with such provision indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Industry will make available any required policy covering such claim or lawsuit.

Failure to provide evidence as required by this **Section 12** shall entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this **Section 12** shall not operate as a waiver of Industry's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

(c) For purposes of this **Section 12**, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns, and affiliates of each.

### **ENVIRONMENTAL**

13. (a) **"Environmental Law(s)"** shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

(b) **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous substances, materials, or wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

(c) Industry shall strictly comply with all Environmental Laws. Industry shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Industry shall not release or suffer the release of oil or Hazardous Materials, as defined by Environmental Laws, on or about the Premises.

(d) Except as authorized in advance in writing by Railroad, Hazardous Materials are not permitted on the Premises. Any Hazardous Materials so permitted by Railroad shall be placed, generated, used, received, maintained, treated, stored and disposed of by Industry in a manner consistent with good engineering practice and in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials that are not previously authorized by Railroad in writing in advance of such use or storage is a breach of this Lease.

(e) Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on or from the Premises and to Railroad's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Industry's use of the Premises. Industry shall use its best efforts to promptly respond to any release on or from the Premises. Industry also shall give Railroad's Manager-Environmental Leases immediate notice of all measures undertaken on behalf of Industry to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Railroad's Manager-Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises. In the event that Railroad has notice from Industry or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises, Railroad's adjoining property or Railroad's right-of-way.

(f) Industry shall promptly report to Railroad in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Lease. Industry shall promptly respond to Railroad's request for information regarding said conditions or activities.

(g) Railroad and their respective agents and representatives shall have a right of entry and access to the Premises: (i) at any time an actual or suspected emergency exists and (ii) at any reasonable time, upon prior written notice, and, at Industry's election, with a representative of Industry present, for the purposes of (a) inspecting the documentation relating to Hazardous Materials or environmental matters maintained by Industry or any occupant of the Premises and (b) ascertaining whether Industry is in compliance with its obligations under this **Section 13**.

(h) Prior to the termination of this Lease, Railroad may, at Railroad's option, require Industry to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Railroad, at Industry's sole cost and

expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Industry's occupancy thereof. The audit shall be conducted to Railroad's satisfaction and a copy of the audit report shall promptly be provided to Railroad for its review. Industry shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Industry prior to the termination of this Lease.

#### **ALTERATIONS**

14. Industry may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Railroad's prior written consent.

#### **NO WARRANTIES**

15. **RAILROAD'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LEASE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY RAILROAD OTHER THAN THOSE CONTAINED IN THIS LEASE. INDUSTRY HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **QUIET ENJOYMENT**

16. **RAILROAD DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND INDUSTRY IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

#### **DEFAULT**

17. (a) If Industry creates or maintains any condition, including without limitation, any environmental condition, on or about the Premises, which in Railroad's sole judgment interferes with or endangers the operations of Railroad, or in case of any assignment or transfer of this Lease by operation of law, Railroad may, at its option, terminate this Lease by serving five (5) days' notice in writing upon Industry.

(b) Except as otherwise set forth in subparagraph (a) above, if Industry defaults on any of the covenants or agreements of Industry contained in this Lease, for a period of thirty (30) days following written notice of such default by Railroad, Railroad may, at its option, terminate this Lease on five (5) days' notice in writing to Industry.

(c) Any waiver by Railroad of any default or defaults shall not constitute a waiver of the right to terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Railroad's ability to enforce any section of this Lease. The remedy set forth in this **Section 17** shall be in addition to, and not in limitation of, any other remedies that Railroad may have at law or in equity.

#### **LIENS**

18. Industry shall promptly pay and discharge any and all liens arising out of any Construction, Routine Activities or any other activities done, suffered or permitted to be done by Industry on the Premises. Railroad is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Railroad to take any such action shall not relieve Industry of any obligation or liability under this **Section 18** or any other section of this Lease.

#### **TERMINATION**

19. If Industry fails to surrender the Premises to Railroad upon any termination of this Lease, all liabilities and obligations of Industry hereunder shall continue in effect until the Premises are surrendered. The termination of this Lease shall not release Industry from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of such termination.

### **ASSIGNMENT/ SUBLETTING**

20. Neither Industry, nor the heirs, legal representatives, successors or assigns of Industry, nor any subsequent assignee, shall sublease the Premises nor assign or transfer this Lease or any interest herein, without the prior written consent and approval of Railroad, which may be withheld in Railroad's sole discretion.

### **NOTICES**

21. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Railroad:                      Staubach Global Services – RR, Inc.  
5650 N. Riverside Drive, Suite 101  
Fort Worth, Texas 76137  
Attn: Track Agreements

If to Industry:                      City of Temple  
2 North Main Street  
Temple, TX 76501

### **SURVIVAL**

22. Neither termination nor expiration of this Lease will release either party from any liability or obligation under this Lease, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Lease, or, if later, the date when the Premises are restored in accordance with the applicable provisions of the Track Agreement.

### **RECORDATION**

23. It is understood and agreed that this Lease shall not be placed on public record.

### **APPLICABLE LAW**

24. All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the Laws of the State of Texas.

### **SEVERABILITY**

25. To the maximum extent possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Lease shall be prohibited by, or held to be invalid under, applicable Law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Lease.

### **INTEGRATION**

26. This Lease, together with the Track Agreement, is the full and complete agreement between Railroad and Industry with respect to all matters relating to lease of the Premises and the construction, maintenance and operation of the Track located thereon, and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties, including, but not limited to, the Track Agreement.

### **MISCELLANEOUS**

27. In the event that the Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.



28. The waiver by Railroad of the breach of any provision herein by Industry shall in no way impair the right of Railroad to enforce that provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.

**IN WITNESS WHEREOF**, this Lease has been duly executed, in duplicate, by the parties hereto as of the Effective Date.

**BNSF RAILWAY COMPANY, a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF TEMPLE, a Texas corporation**

2 North Main Street  
Temple, TX 76501

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

**Description of Premises**

[to be attached]

**EXHIBIT "B"**

**Indemnification Provisions Applicable During Major Construction**

In addition to the provisions of **Section 10** above, the provisions of this **Exhibit "B"** shall apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

**1. TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (a) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (b) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE,**
- (c) INDUSTRY'S OCCUPATION AND USE OF THE PREMISES,**
- (d) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY INDUSTRY, OR**
- (e) ANY ACT OR OMISSION OF INDUSTRY OR INDUSTRY'S OFFICERS, AGENTS, INVITEES, LICENSEES, EMPLOYEES, OR CONTRACTORS, OR ANY PARTY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANY PARTY THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "INDUSTRY PARTIES"),**

**EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH INDUSTRY'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.**

**2. FURTHER, NOTWITHSTANDING THE LIMITATION IN SECTION 1, INDUSTRY SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" OF THE PREMISES FOR PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. INDUSTRY WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. INDUSTRY FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT RAILROAD TO CLAIMS THAT RAILROAD IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL RAILROAD BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

**3. INDUSTRY FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF INDUSTRY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND**

**HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR  
FEDERAL STATUTE.**

**EXHIBIT "C"****Insurance Provisions Applicable During Major Construction**

In addition to the provisions of **Section 12** above, the provisions of this **Exhibit "C"** shall apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

1. Industry must, at its sole cost and expense, procure and maintain the following insurance coverages:

A. **Commercial General Liability Insurance.** This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage may be included on the policy with regard to the work being performed under this Lease or otherwise with respect to any obligations under this Lease.

B. **Business Automobile Insurance.** This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to, the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. **Workers Compensation and Employers Liability insurance** including coverage for, but not limited to:

- ◆ Industry's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. **Railroad Protective Liability insurance** naming only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement
- ◆ No other endorsements restricting coverage may be added
- ◆ The original policy must be provided to the Railroad prior to performing any work or services under this Lease

In lieu of providing a Railroad Protective Liability Policy, Industry or its contractor(s) may participate in Railroad's Blanket Railroad Protective Liability Insurance Policy available to Industry or its contractor(s). The limits of coverage are the same as above. The cost is \$\_\_\_\_\_.

- ☐ I **elect** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any);
- ☐ I **elect not** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any).

2. In addition to the foregoing, the following other requirements shall apply to this **Exhibit "C"**:

Where allowable by law, all policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Industry agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Industry further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad, for loss of its owned or leased property or property under its care, custody or control.

Industry's insurance policies, through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and must name Railroad and Staubach Global Services - RR, Inc. as additional insureds with respect to work performed under this Lease. Severability of interest and naming Railroad and Staubach Global Services - RR, Inc. as additional insureds must be indicated on the certificate of insurance.

Industry is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Industry in lieu of insurance. Any and all Railroad's liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Industry's insurance will be covered as if Industry elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing work, Industry must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Lease, Industry will make available any required policy covering such claim or lawsuit.

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Industry represents that this Lease has been thoroughly reviewed by Industry's insurance agent(s)/broker(s), who have been instructed by Industry to procure the insurance coverage required by this Lease. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Industry, Industry must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Industry is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Exhibit "C"** will entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this **Exhibit "C"** will not operate as a waiver of Industry's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Industry will not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

3. For purposes of this **Exhibit "C"**, "**Railroad**" means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns, and affiliates of each.

**EXHIBIT "D"**

**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**  
**FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF**  
**BNSF RAILWAY COMPANY**

This Right of Entry Agreement ("**Agreement**") is entered into effective as of \_\_\_\_\_200\_, by and between \_\_\_\_\_ ("**Contractor**"), \_\_\_\_\_ corporation, and BNSF RAILWAY COMPANY ("**Railway**"), a Delaware corporation.

WHEREAS, Railway operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, \_\_\_\_\_ [**insert Industry's name here**] desires Contractor to perform certain construction services adjacent to and upon Railway's right of way and/or property, and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railway entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises (defined herein), Contractor agrees with Railway as follows:

**SECTION 1. SCOPE OF SERVICES**

Contractor [and/or Industry] will perform the following services, hereinafter described as "**Work**": \_\_\_\_\_.

Performance of the Work will necessarily require Contractor to enter Railway's right of way and property ("**Premises**"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railway; and (ii) Contractor provides the Railway with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railway with evidence certifying that the signatory is empowered to execute this Agreement.

**SECTION 2. PAYMENT OF FEES**

Industry will be responsible for paying Contractor for the Work performed under this Agreement.

**SECTION 3. RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for, from and against all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right of way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

## SECTION 4. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverages:

(a) **Commercial General Liability Insurance.** This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage may be included on the policy with regard to the work being performed under this Agreement or otherwise with respect to any obligations under this Agreement.

(b) **Business Automobile Insurance.** This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

(c) **Workers Compensation and Employers Liability insurance** including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

(d) **Railroad Protective Liability insurance** naming only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement
- ◆ No other endorsements restricting coverage may be added
- ◆ The original policy must be provided to the Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in Railroad's Blanket Railroad Protective Liability Insurance Policy available to Contractor. The limits of coverage are the same as above. The cost is \$\_\_\_\_\_.

- ☐ I **elect** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any);
- ☐ I **elect not** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any).

### Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of



recovery, and its insurers also waive their right of subrogation against Railroad, for loss of its owned or leased property or property under its care, custody or control.

Contractor's insurance policies, through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and must name Railroad and Staubach Global Services – RR, Inc. as additional insureds with respect to work performed under this agreement. Severability of interest and naming Railroad and Staubach Global Services – RR, Inc. as additional insureds must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Lease, Industry will make available any required policy covering such claim or lawsuit.

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, "**Railroad**" means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

## **SECTION 5. CONTRACTOR REQUIREMENTS**

(a) While on or about the Premises, Contractor must fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be responsible for fully informing itself as to Railway "Contractor Requirements".

(b) Prior to entering the Premises, each person providing labor, material, supervision, or services connected with the Work to be performed on or about the Premises must complete the safety training program (hereinafter called, "**Railway Contractor Safety Orientation**") at the following internet website: "contractororientation.com". Contractor must ensure that each of its employees, subcontractors, agents or invitees completes the Railway Contractor Safety Orientation before any Work is performed under this Agreement. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation prior to entering the Premises. Contractor must renew the Railway Contractor Safety Orientation annually.

(c) Prior to entering the Premises, the Contractor must prepare and implement a safety action plan acceptable to Railway. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by Railway at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least 50 feet from the centerline of Railway's nearest track. Contractor must not cross Railway's tracks except at existing open public crossings.

## **SECTION 6. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES**

(a) The Contractor must give Railway's Roadmaster (telephone \_\_\_\_\_) a minimum of thirty (30) working days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(b) Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

(1) When in the opinion of the Railway's representative, it is necessary to safeguard the Premises, employees, trains, engines and facilities.

(2) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

(3) When work in any way interferes with the safe operation of trains at timetable speeds.

(4) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

(5) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(c) Flagging services will be performed by qualified Railway flaggers. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(1) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by the Railway's representative.

(2) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

(3) The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the \_\_\_\_\_/Contractor.

## **SECTION 7. INDEPENDENT CONTRACTOR**

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railway in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work to be performed under this Agreement; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

## **SECTION 8. TRAIN DELAYS**

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railway Representative. Additionally, Contractor must not, at any time, impair the safety of Railway operations or the operations of Railway's lessees, licensees or other Railway invitees. Delays to freight or passenger trains affect BNSF's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be

responsible to Railway, including its subsidiaries, affiliated companies, partners, successors and assigns, for economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

**(a) Train Delay Damages**

(1) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railway performing Work associated with this project.

(2) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with the Railway. Under such arrangements, if Railway does not meet its contract service commitments, Railway may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor, or its subcontractors.

(3) The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the maximum extent consistent with Railway confidentiality obligations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

Address \_\_\_\_\_

\_\_\_\_\_

**BNSF Railway Company, a Delaware corporation**

By \_\_\_\_\_  
Vice President and Chief Engineer

**BNSF RAILWAY COMPANY  
INDUSTRY TRACK AGREEMENT**

**THIS AGREEMENT** ("**Agreement**") made as of this 15th day of May, 2008, ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**"), and **CITY OF TEMPLE**, a Texas corporation ("**Industry**").

**WHEREAS**, Industry desires that Railroad: (i) maintain and operate over certain rail, ties, ballast, and appurtenances thereto shown as heavy solid on Exhibit "A" attached hereto and incorporated herein ("**Railroad Track**"); and (ii) operate over certain additional track shown as heavy hatched on Exhibit "A" ("**Industry Track**"), (Railroad Track and Industry Track collectively, together with all appurtenances, called "**Track**"), located at Temple, County of Bell, State of Texas, to serve a facility operated by Industry ("**Plant**"), and Railroad desires to provide such service, subject to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **OWNERSHIP**. Railroad shall own the Railroad Track and Industry shall own the Industry Track.

2. **MAINTENANCE AND OPERATION**.

(a) Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Track. Industry shall strictly comply with all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction, including, without limitation, those pertaining to environmental matters (collectively, "**Legal Requirements**") and other Railroad requirements relating to the use of the Track, Facilities or Equipment. Prior to entering Railroad's property, Industry shall and shall cause its contractor(s) to comply with all Railroad's applicable safety rules and regulations. Prior to commencing any work on Railroad's Property, Industry shall complete and shall require its contractor to complete the safety training program at the Railroad's Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Industry's entry on Railroad's property.

(b) Railroad shall, for the accommodation of and at the sole risk and expense of Industry, maintain the Railroad Track. Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Industry Track and all Facilities and Equipment (defined below) (if any) in a safe and satisfactory condition and in compliance with all applicable Legal Requirements (defined below). Maintenance means, among other things, providing proper drainage along the relevant portion of the Track, keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles, maintaining grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals. Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Track or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad shall resume operation over the Industry Track or use of or entry into the Facilities or contact with the Equipment. Railroad's operation over the Track or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of Railroad's right to recover for or be indemnified and defended against such damages to property or injury to or death of persons that may result therefrom.

(c) Industry shall, at its sole expense, pay all costs for changes, repairs or alterations to the Industry Track that may be necessary to conform to any changes of grade or relocation of the Railroad Track at the point of connection with the Industry Track, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond Railroad's reasonable control.

(d) If Industry installs any gates or fencing across the Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "**Facilities**") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with or affecting the Track ("**Equipment**") and shall not allow any Equipment to be source of danger to the safer operation of the Track. Before utilizing or unloading any equipment spotted onto the Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities, Equipment and spotted equipment so as not to affect negatively safe and efficient operation over the Track. Industry shall, among other things: keep any gates across the Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track; keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; keep all doors firmly

secured; and keep adjustable loading docks at warehouses securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad.

(e) Railroad may require for safety purposes that Industry, at its sole cost and expense, provide flagmen, lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the Industry's use of the Track, including but not limited to the furnishing of Licensors' Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(f) In the event the public authority having jurisdiction thereover orders the separation of the grade of the Track and any street, road, highway, other rail line or the like, Industry hereby consents to the removal and/or relocation of the Track and shall reimburse Railroad all expenses in connection with the removal and/or relocation of the Track.

(g) Industry shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction within 8½ feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved Track) or within 23 feet vertically from the top of the rail of said Track ("**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 2(g), then Industry shall strictly comply with such Legal Requirement. Industry shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on the Track. Railroad's operation over the Track with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this Section 2(g) or of Railroad's right to recover and be indemnified and defended against such damages to property, or injury to or death of persons, that may result therefrom.

3. **TERM**. Unless earlier terminated as provided herein, this Agreement will be in force for the term of ONE MONTH from its date and will automatically continue thereafter until terminated by either party giving to the other thirty (30) days' written notice.

4. **INDEMNITY**.

(a) For purposes of this Agreement: (i) "**Indemnitees**" means Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents; (ii) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (iii) "**Industry Parties**" means Industry or Industry's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

(b) **INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES UNDER CERCLA OR OTHER ENVIRONMENTAL LAWS ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY CLAIM THAT BY VIRTUE OF THE USE OF THE TRACK CONTEMPLATED IN THIS AGREEMENT RAILROAD IS (I) AN "OWNER", "OPERATOR", "ARRANGER" OR "TRANSPORTER" OF THE INDUSTRY TRACK OR THE PLANT, OR (II) OTHER THAN A COMMON CARRIER WITH RESPECT TO THE TRACK REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE.**

(c) **IF ANY EMPLOYEE OF ANY INDUSTRY PARTY CLAIMS HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, INDUSTRY SHALL INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH CLAIM INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATED TO PROCEEDINGS UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE AND REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.**

(d) Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Agreement for which Industry has an obligation to assume

liability for and/or save and hold harmless any Indemnitee. Industry shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

5. **INSURANCE**. Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability insurance that contains broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, Bodily Injury and Property Damage, Products and completed operations. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- B. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
  - ◆ Industry's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

In addition, Industry shall comply with the following additional requirements with respect to such insurance:

Any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided. If any portion of the operation is to be subcontracted by Industry, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

Prior to commencing operations governed by this Agreement, Industry shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation or non-renewal with such provision indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Industry will make available any required policy covering such claim or lawsuit.

Failure to provide evidence as required by this section shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Industry's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

6. **DEFINITION OF COST AND EXPENSE**. For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used. In the event that Industry shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from such due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), or (ii) the maximum rate permitted by law.

7. **RIGHT OF RAILROAD TO CONSTRUCT FUTURE FACILITIES**. Railroad retains the right, without liability to the Industry or any other party, to construct or allow to be constructed upon its property other facilities, and to use its property in any manner, provided Railroad uses all commercially reasonable efforts to avoid material interference with the use of the Track as described herein.

8. **PUBLIC ASSESSMENTS**. Industry shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating the Track, and shall not cause or permit any liens to be filed against the Railroad Track or any Railroad property. In the event any such liens are filed, Industry shall cause such liens to be released within fifteen (15) days.

9. **NOTIFICATION REQUIREMENTS**

(a) Industry shall give immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Track, violation of environmental Legal Requirements, or inspection or inquiry by governmental

authorities charged with enforcing environmental Legal Requirements with respect to Industry's use of the Track. Industry shall use the best efforts to promptly respond to any release on or from the Track. Industry also shall give Railroad immediate notice of all measures undertaken on behalf of Industry to investigate, remediate, respond to or otherwise cure such release or violation.

(b) In the event that Railroad has notice from Industry or otherwise of a release or violation of Environmental Laws the Track which occurred or may occur during the term of this Agreement, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Track or Railroad's property.

(c) Industry shall promptly report to Railroad in writing any conditions or activities upon the Plant or Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement. Industry shall promptly respond to Railroad's request for information regarding said conditions or activities.

10. **DEFAULT.** The following events shall constitute defaults hereunder: (a) creating or allowing to remain any condition, including without limitation, any environmental condition, on or about the Track, which in Railroad's sole judgment interferes with or endangers the operations of Railroad; (b) assignment or transfer by operation of law of Industry's rights or obligations under this Agreement; (c) defaults on any of the covenants or agreements of Industry contained in this document.

11. **TERMINATION.**

(a) In addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry, terminate this Agreement and discontinue the maintenance and operation of the Track and remove the Railroad Track, in the event of any of the following events:

- (i) any default as described in Sections 10(a) or (b) occurs;
- (ii) any default as described in Section 10(c) occurs and persists for 30 days following written notice from Railroad;
- (iii) Industry fails to utilize rail service from Railroad to or from the Plant for a period of eight (8) months in any period of twelve (12) months;
- (iv) Railroad is authorized by competent public authority to abandon its line to which said Track is connected; or
- (v) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof, Railroad may terminate this Agreement effective immediately by written notice to Industry.

(b) Upon the expiration or earlier termination of this Agreement as provided herein, Railroad at its sole discretion shall have the right to: (i) require Industry to transfer title to that portion of the Industry Track located upon Railroad's property, and any Facilities or improvements located upon, over, or under Railroad's property to Railroad. Upon such transfer, Railroad shall pay Industry the salvage value of the same; or (ii) require Industry to remove, at its sole cost and expense, that portion of the Industry Track located upon Railroad's property and any Facilities, Equipment or improvements upon, over, or under such property and restore the Railroad's property to substantially the state in which it was on the Effective Date of this Agreement. In the event Railroad elects option (ii) and Industry fails within thirty (30) days after the date of such termination to make the removal and restoration, then Railroad may do so itself and in such event Industry shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for any costs incurred.

(c) Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has or may have against Railroad because of the discontinuance of operation and removal of the Railroad Track as provided in this Section 11.

12. **ASSIGNMENT.** This Agreement will inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that Industry may not assign this Agreement without the prior written consent of Railroad, which may be withheld in Railroad's sole discretion. Either party hereto may assign any receivables due them under this Agreement; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Agreement.

13. **NOTICES.** Any notice required or permitted to be given hereunder must be in writing and the same shall be given and will be deemed to have been given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice. The address for such notice shall be the address set forth below each party's signature, which may be changed by written notice to the other party.

14. **SURVIVAL.** Neither termination nor expiration will release either party from any liability or obligation under this Agreement,

whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, provided Railroad does not elect option 13(b)(i), the date when the Track, Facilities, Equipment and improvements are removed and the right-of-way is restored to its condition as of the Effective Date.

15. **MISCELLANEOUS.**

(a) This Agreement must not be placed of public record.

(b) To the maximum extent possible, each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and this will not invalidate the remainder of such provision or any other provision of this Agreement. All questions concerning the interpretation or application of provisions of this Agreement must be decided according to the laws of the State of Texas.

(c) This Agreement is the full and complete agreement between Railroad and Industry with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties.

(d) In the event that the Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

(e) The waiver by Railroad of the breach of any provision herein by Industry shall in no way impair the right of Railroad to enforce that provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.

(f) This Agreement is also made for the benefit of such other railroads that, either by agreement with Railroad or order of competent public authority, have the right to use the Track, all of which railroads shall be deemed "Railroad" under this Agreement. **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

**RAILROAD:**

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

Staubach Global Services  
3017 Lou Menk Dr., Suite 100  
Fort Worth, TX 76131-2800  
Attn: Track Agreements

**INDUSTRY:**

**CITY OF TEMPLE**

By: \_\_\_\_\_  
Name:  
Title:

Address for notices:

City of Temple  
2 North Main Street  
Temple, TX 76501





|                             |  |
|-----------------------------|--|
| <b>James O'Donley</b>       | <b>BNSF Railway Company</b>                                |
| <i>Regional Manager</i>     |  |
| <i>Economic Development</i> |  |
|                             | 2650 Lou Menk Drive, MOB-2<br>Fort Worth, Texas 76131-2830 |
|                             | Office: 817-867-6137                                       |
|                             | Cell: 817-307-6067   |
|                             | Fax: 817-352-7157  |
|                             | James.ODonley@bnsf.com                                     |

April 16, 2008

Mr. David Blackburn  
City Manager - City of Temple  
City Manager's Office  
2 North Main, Suite 306  
Temple, Texas 76501

**RE: Track Construction – Temple, TX**

Dear Mr. Blackburn:

Thank you for working with us throughout the track planning process. The proposed industrial park lead track plans have received approval of BNSF's Engineering and Operating Departments. We have received the cost analysis for the BNSF portion of the construction.

BNSF Railway (BNSF) will construct one (1) No. 11 turnout from point of switch to clearance point (280 ft) off the Belco lead track, along with all required signalization work at loop 363 grade crossing, at City of Temple's expense in the amount of \$374,585.00. Construction of new track beyond the clearance point, including the placement of a double switch-point derail device, will be performed by your private contractor to BNSF specification and approval, all at City of Temple's expense, including the acquisition of a small parcel of land in close proximity to the turnout location off the Belco lead track. City of Temple, at its separate expense, will be responsible for performing all grading, drainage and placement of sub-ballast for the entire track, including construction of berm/pad, as shown on page A-3 of the BNSF "Guidelines for Industrial Track Projects", alongside the track to allow assembly of the turnout, with no disruption of traffic. It will also be the responsibility of City of Temple to raise or relocate any utility power lines and encase any existing underground utility lines.

We also want to call to your attention that flagging services may be necessary at any time your track contractor is working within 25-foot clearance from the centerline of BNSF tracks. This cost, based on \$95 per hour or \$500 per 8-hour day will be billed to City of Temple as a separate expense direct from the BNSF Roadmaster. You or your contractor should discuss flagging service requirements with Mr. Dave Mooney, BNSF Roadmaster, at (254) 771-4676 to determine estimate of how many hours/days your construction will be within the 25-foot clearance.

BNSF will own trackage from headblock to clearance point and will maintain this portion of track at City of Temple's expense. City of Temple will own trackage from clearance point to ends of tracks and will maintain, by private contractor, that portion of track at City of Temple's expense.

I have attached the two agreements that will require execution between City of Temple and BNSF Railway Company. A Lease of Land for Track Construction of Track (CL) will be necessary and will remain in effect for the life of the track. A new Industrial Track Agreement (ITA) will be necessary to cover maintenance, operation, and liability issues associated with this project. The ITA will cover all proposed new track, in addition to all existing track. Lastly, a Contractor's Right of Entry Agreement (CROE) will be required between BNSF and your rail contractor, which will be prepared upon determination and identification of said rail contractor. Certificates of



Page 2 – New Track Construction – Temple, TX

Insurance are required in association with each and every agreement and must be approved before BNSF will execute. In order to expedite this project, I have sent the agreements pending an exhibit. I will send the exhibits immediately upon receipt.

If you wish to proceed with this project, please send a check in the amount of \$374,585.00 made payable to the BNSF Railway to cover the switch installation and track construction. Additionally, please forward a separate check for **\$500** made payable to BNSF Railway to cover the one-time lease fee. The track design and cost figure provided will be honored for a period of sixty (60) days from the date of this letter. All agreements and insurance certificates (including those required of your contractor) must be submitted and approved within sixty (60) days or pricing adjustment may be required.

As information, it may take from 90 to 120 days to receive materials once they have been ordered. Requisition of materials and commencement of construction will be held in abeyance until all insurance requirements are in compliance and all required agreements are executed by both parties.

We appreciate your business and are anxious to get started on your project. Should you have any questions regarding the Agreements please contact me at 817-230-2691, and for any questions regarding insurance please contact Jamie Johnson at 817-352-3485. Should you have any other questions or if we may be of further service, please contact me. Thank you very much.

Respectfully,

Lindsay Garrett  
The Staubach Company  
Economic Development Specialist

c/o BNSF Railway Company  
2650 Lou Menk Drive, MOB-2  
Fort Worth, TX 76131-2830  
(817) 230-2691

Attachments: Industrial Track Agreement  
Lease of Land for Construction/Rehabilitation

Cc: Keith Adams, BNSF Engineering  
Lance Brewer, BNSF Operations  
Steve Curtright, BNSF Operations  
Dave Mooney, BNSF Roadmaster  
James O'Donley- BNSF Economic Development  
Marc Stephens- BNSF Operations  
Julie Taylor- Staubach Global Services

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A *LEASE OF LAND FOR TRACK CONSTRUCTION* AND AN *INDUSTRIAL TRACK AGREEMENT* WITH THE BURLINGTON NORTHERN SANTA FE RAILROAD (BNSF) ALLOWING THE CITY TO CONSTRUCT A RAIL LINE INTO THE EASTERN SIDE OF CENTRAL POINTE; DECLARING OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES MADE PRIOR TO THE ISSUANCE OF OBLIGATIONS FOR THIS PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, as part of the development agreement executed last fall with Gulf States Toyota, the City committed to making certain improvements to the rail park that will benefit not only that project, but also open up rail service to other areas of the City's industrial park;

**Whereas**, an agreement has been negotiated with BNSF Railroad Company that will allow the City to construct a rail line, and BNSF requires that a lease of land for track construction and an industrial track agreement be executed prior to beginning the project – a contractor's right of entry agreement will also need to be executed upon determination and identification of the rail contractor;

**Whereas**, funding for the construction to be done by BNSF in the amount of \$374,585 is designated within the Railroad Park Phase II project, Account No. 795-970-531-6825, project #100166, to be funded with 2008 taxable revenue bonds which are anticipated to be sold early in Summer 2008;

**Whereas**, the City of Temple anticipates the issuance of one or more series of obligations in order to finance all or a portion of this project;

**Whereas**, certain expenditures relating to the Project will be paid prior to the issuance of the Obligations;

**Whereas**, the City hereby certifies that such expenditures have not been made prior to the date of passage of this Resolution;

**Whereas**, upon issuance of the Obligations, the City desires to reimburse these prior expenditures with proceeds of the Obligations; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes the City Manager, or his designee, to execute an *Industrial Track Agreement* and a *Lease of Land for Track Construction for Track*, after approval as to form by the City Attorney, allowing the City to construct a rail line off of the main BNSF into the eastern side of Central Pointe. The City Manager, or his designee, is authorized to execute a *Contractor's Right of Entry Agreement*, after approval as to form by the City Attorney, at a later date upon determination and identification of the rail contractor for this project.

**Part 2:** The findings, determinations and certifications contained in the preamble hereof are incorporated herein for all purposes.

**Part 3:** This Resolution is a declaration of official intent by the City that it reasonably expects to reimburse the expenditures described in Part 4 with proceeds of debt to be incurred by the City.

**Part 4:** The following is a general functional description of the Project for which the expenditures to be reimbursed are paid and a statement of the maximum principal amount of debt expected to be issued for the purpose of paying the costs of the Project.

**Project Description**

**Debt To Be Issued**

Rail line construction

\$374,585

**Part 5:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(O)(1)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-08-19-A: Consider adopting an ordinance authorizing an amendment to the West Temple Comprehensive Plan to reflect commercial uses on approximately 43 acres of land commonly known as Outblock 561-M, City addition located on the west side of North General Bruce Drive, north of Saulsbury park.

**P&Z COMMISSION RECOMMENDATION:** The Planning and Zoning Commission voted 8/0 to recommend approval of a future land use map amendment from Medium Density Residential to Commercial at its meeting on April 7, 2008. Commissioner Norman was absent.

**STAFF RECOMMENDATION:** Staff recommends approval of the future land use map amendment request from Moderate Density Residential to Commercial for the following reasons:

1. The request complies the Future Land Use Plan;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public and private facilities serve the site.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-08-19A, from the Planning and Zoning meeting, April 2, 2008. This request tracks with Z-FY-08-019-B, a zone change request from A, Agricultural to C, Commercial. This request matches the zoning with the long-standing use of the property.

The Commission did not raise any issues requiring additional staff attention.

### **Public Notice**

Six notices of the P&Z hearing were sent out. As of Tuesday, April 8 at 4 PM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the P&Z hearing on March 29, 2008 in accordance with state law and local ordinance

**FISCAL IMPACT:** NA



**ATTACHMENTS:**

Future Land Use Map  
P&Z Staff Report (Z-FY-08-19A)  
P&Z Minutes (April 7, 2008)  
Ordinance



Z-FY-08-19-A

OB# 561-M

4.63 Acres

**CLUP**

**Agricultural**

○ AGRICULTURE

**Residential**

○ LOW DENSITY (UE)

○ MOD DENSITY (SF1, SF2, SF3, MH, 2F)

○ MED DENSITY (MH, 2F, TH, MF1)

○ HIGH DENSITY (MF2)

**Commercial**

○ OFFICE (O1, O2)

○ RETAIL (NS, GR)

○ COMMERCIAL (C, CA)

**Mixed Use**

○ MIXED USE (MU)

**Industrial**

○ INDUSTRIAL (LI, HI)

○ Warehouse/Distribution

○ Manufacturing/Distribution

○ Bio-Science/Technology

○ Corporate Campus & Office

○ Aviation Industrial Dist

○ Heavy Com/Tech/Indust

○ Intermodal

**Community Facilities**

○ COMMUNITY FACILITY

○ CF-E (EDUCATIONAL)

○ CF-G (GENERAL)

○ CF-R (RESIDENTIAL)

○ CF-M (MEDICAL)

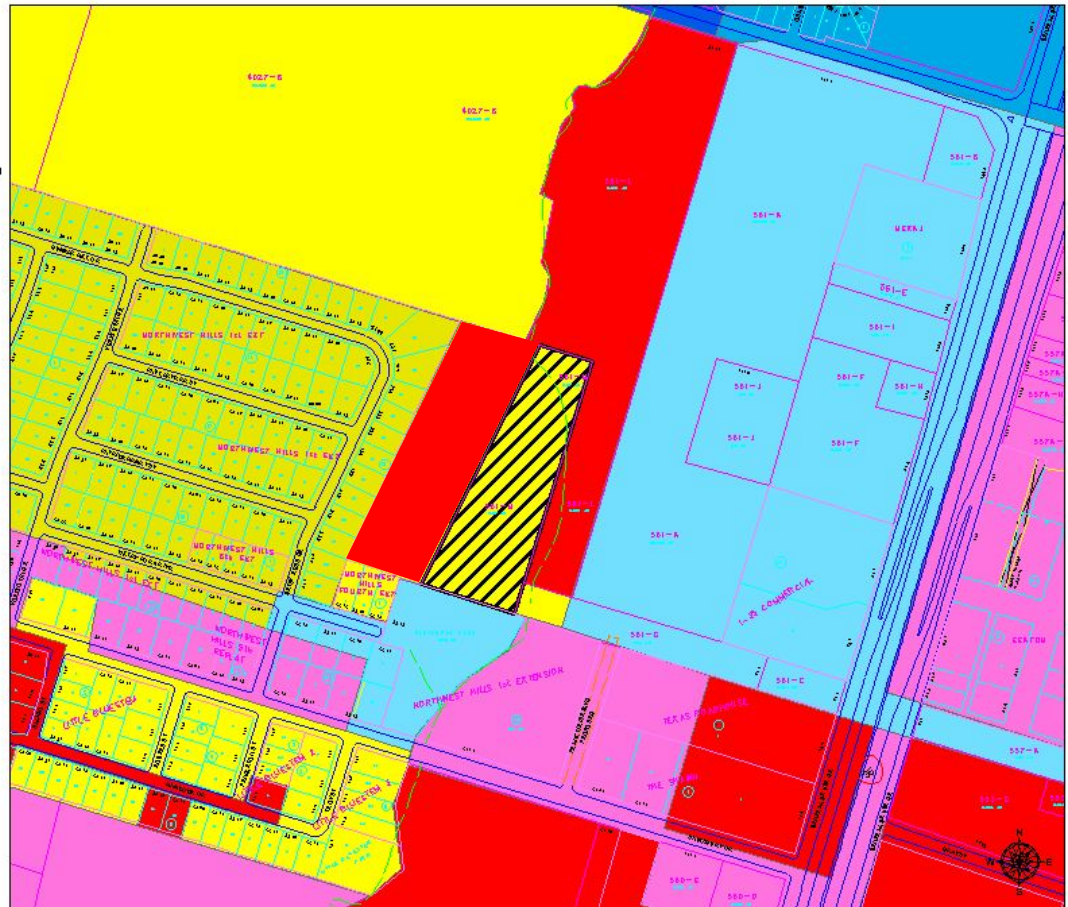
**Park Land**

○ PROPOSED FLOATING PARK

○ PARKS

**Downtown**

○ DOWNTOWN



A to C

1 inch equals 400 feet

J Stone 03.07.08





# PLANNING AND ZONING COMMISSION AGENDA ITEM

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04/07/08  
Item #4  
Page 1 of 2

**APPLICANT / DEVELOPMENT:** Rodney Deyoe for Shallow Ford Construction

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** Z-FY-08019-A Hold a public hearing to consider an amendment to the West Temple Comprehensive Plan to reflect commercial uses on 4.63± acres of land commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury park. (Applicant: Rodney Deyoe for Shallow Ford Construction))

**BACKGROUND:** This request tracks with Z-FY-08-019-B, a zone change request from A, Agricultural to C, Commercial.

The West Temple Plan, prepared in 1999, shows Moderate and Medium Density Residential future land use categories for the subject property. Land to the north and east of the subject property has the Commercial future land use category.

## Future Land Use Plan

The requested Commercial future land use category accommodates the CA, Central Area and the C, Commercial zoning districts; however CA is designated only for the downtown area and its surroundings. The West Temple Plan amendment request complies with the Future Land Use Plan.

## Thoroughfare Plan

A paved private road approximately 20 feet in width has served the property since at least 1976. This road intersects with Interstate 35 and with Frank Weise Boulevard, which runs behind the Texas Road House. Frank Weise Boulevard connects to Saulsbury Drive. The property has indirect access to a freeway (I-35) and a collector (Saulsbury). The West Temple Plan amendment request complies with the Thoroughfare Plan.

## Adequacy of Public Facilities

The property is served by a septic system. The nearest public waterline is along Interstate 35 to the east however a private water line serves the property and its surroundings. The applicant is working with a local engineering firm to connect with public water and sewer services. Adequate public and private facilities serve the property.

## Public Notice

Six notices of the P&Z hearing were sent out. As of Wednesday, April 2 at 11 AM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the P&Z hearing on March 29, 2008 in accordance with state law and local ordinance

**Double Sided**

**STAFF RECOMMENDATION:** Staff recommends approval of the future land use map amendment request from Moderate Density Residential to Commercial for the following reasons:

1. The request complies the Future Land Use Plan;
1. The request complies with the Thoroughfare Plan; and
2. Adequate public and private facilities serve the site.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

Future Land Use Map

**EXCERPTS FROM THE  
PLANNING & ZONING COMMISSION MEETING**

**MONDAY, APRIL 7, 2008**

**ACTION ITEMS**

Chair Luck asked if Item 4, Z-FY-08-19A and Item 5, Z-FY-08-19B, could be presented together and then have separate motions and votes on each item. Mr. Dolan replied that that would be acceptable. Chair Luck continued with the meeting.

4. Z-FY-08-19A Hold a public hearing to consider an amendment to the West Temple Comprehensive Plan to reflect commercial uses on 4.63± acres of land commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury park. (Applicant: Rodney Deyoe for Shallow Ford Construction)
5. Z-FY-08-19B Hold a public hearing to consider a zone change from Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park. (Applicant: Rodney Deyoe/Shallow Ford Construction Co.)

Mr. Brian Mabry, Senior Planner, began with Item 4, **Z-FY-08-19A**, as presented in the Planning and Zoning Agenda Item. He said the applicant for this case is Mr. Rodney Deyoe for Shallow Ford Construction. Mr. Mabry said this case would go before City Council on April 17, 2008 for first reading and second reading will be on May 1, 2008. This case tracks with Z-FY-08-19B, however this case is the amendment of the West Temple Plan which was adopted in 1999 and shows moderate medium density residential future land use for the subject property. He said land to the north and to the east and to the west is commercial on the future land use map which he displayed on the overhead screen. Mr. Mabry discussed the future land use plan and the adequacy of public facilities as outlined in the agenda item. He said the applicant has stated that they are working with a local engineering firm to connect with some water and sewer facilities to the south near the Saulsbury park area. Mr. Mabry said Staff recommends approval from Moderate Density Residential to Commercial, based on items 1, 2, and 3 in the agenda item.

Mr. Mabry concluded with zone change **Z-FY-08-19B**. He said the zoning is for the existing use which is for contract storage or equipment yard that is permitted in Central Area, Commercial and Industrial Districts. Mr.

Mabry said this fills in the gap for the approved commercial zoning at a previous Planning & Zoning commission meeting for property immediately to the west. He displayed the zoning map, Future Land Use Map, an aerial of the area, a utility map and a notification radius map and discussed surrounding property uses, the Future Land Use Plan, the Thoroughfare Plan, adequacy of public facilities, and development regulations. Six notices were mailed to surrounding property owners within 200 feet. None were returned in favor or in opposition to the request. Mr. Mabry said Staff recommends approval of the zone change request based on the items listed in the agenda item.

Chair Luck opened the public hearing for item **Z-FY-08-19A**, an amendment to the West Temple Comprehensive Plan, asking anyone wishing to speak in favor or against the request to address the Commission.

Mr. Rodney Deyoe, President of the Charter Group, 3000 S. 31<sup>st</sup> Street addressed the Commission speaking in favor of the request. He said the small portion of land not included in the zone change would come before the Commission later when the Charter Group obtains the metes and bounds on the property.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-19A. See no one Chair Luck closed the public hearing.

Chair Luck opened the public hearing for item **Z-FY-08-19B**, a zone change from Agricultural District to Commercial District, asking anyone wishing to speak in favor or against the zone change to address the Commission. Seeing no one, Chair Luck closed the public hearing.

Motion to recommend approval of **Z-FY-08-19A**, amendment to the West Temple Comprehensive plan to reflect Commercial uses, by Commissioner Carothers; seconded by Vice-Chair Pope.

Motion passed (8/0).

Motion to recommend approval of **Z-FY-08-19B**, a zone change from Agricultural District to Commercial District, by Commissioner Carothers; seconded by Commissioner Secrest.

Motion passed (8/0).

8. Z-FY-08-14 Hold a public hearing to consider an amendment to the City of Temple Zoning Ordinance (Section 13) to add standard masonry exteriors. (Applicant: Staff)

Mr. Tim Dolan, Planning Director, presented this case as outlined in the Planning and Zoning Agenda Item. He said the Commission tabled the item at the February 18, 2008 meeting. The Commission requested to form a work group including Vice-Chair Pope and Commissioner Carothers along with representatives from the Temple Area Builders Association, Keep Temple Beautiful, The Chamber of Commerce, and Temple Economic Development Commission plus the Assistant City Manager of Temple to review the draft ordinance. Mr. Dolan described the comparison of what the City Council approved 1<sup>st</sup> reading on Thursday, February 7, 2008, and the proposed ordinance considered by the Commission. He said there is one clause that included to have language that included building that were permitted for construction prior to the second reading of the ordinance and that was done to add instead of those buildings in existence prior to. Mr. Dolan said there was also discussion where it did describe that the standards applied to the first two stories; the work group asked for it to be 25 feet vertical height of a building or the first two stories whichever is lower. The other idea was brought to the Commission for looking at adding some other Strategic Investment Zone Corridors.

Commissioner Carothers said that from the meetings he attended there seemed to be a collaboration of thoughts from people across the community that this ordinance would be reviewed again in a year and how it would be looked at because he was not sure that the committee that was formed knew if this ordinance was still the answer but it was a livable ordinance to go through now, however, what would be the process when this ordinance is reviewed again a year from now. Mr. Dolan stated that what had been discussed in the work groups would be to try to review what actual building permits came in for commercial building and to try to monitor those to see if any of them required the use to go through the process to have masonry exterior or some one chose that their product was a different use and if they would have the right to apply for a special use permit which were the mitigation standards that were discussed. Mr. Dolan said after a year a report would be generated to show the Commission and Council and to say "over twelve months you have blank number of commercial permits and blank number of permits that sought some type of exception to the proposed ordinance".

Commissioner Pilkington asked how this would affect the outcome of the I-35 Overlay. Mr. Dolan replied that the I-35 Overlay committee wanted to wait for the outcome of the masonry ordinance before going forward with the I-35 Overlay ordinance. He said regarding the Temple Medical Education District, if they chose to go forward the criteria for the masonry requirements would have to be in effect; however, they do have the right to ask for better or more restrictive requirements for these areas.

Chair Luck opened the public hearing asking anyone wishing to speak in favor or against the request to address the Commission.

Mr. Michael Robinson, 5303 Wildflower Lane, Temple, Mr. Pat Patterson, 2116 W. Ave H, Temple, Mr. Troy Glasson, 12 N. 5<sup>th</sup> St., Temple Area Home Builders, and Mr. Ken Higdon, 2 S. 5<sup>th</sup> St., Temple Chamber of Commerce addressed the Commission with questions and concerns regarding the cost of a metal building verses a masonry building, the affect on existing small businesses or new ones trying to come into Temple, passing an ordinance that everyone knows will need to be reviewed in a year, the affect on industrial development and that the builder's association stated they were not in opposition or in favor of the proposed ordinance.

Chair Luck closed the public hearing.

Two motions failed to first request the ordinance apply to only corridors and a secondly to exempt private business parks, after discussion between Staff and the Commissioners about the Overlay District and public or quasi-public business parks superseding this ordinance, applying these regulations to properties just to certain corridors instead of city wide, and private business parks coming in without the same standards if they have the correct screening.

Motion by Vice-Chair Pope to recommend approval of Z-FY-08-14, an amendment to the City of Temple Zoning Ordinance Section 13 to add standards regarding masonry building exteriors as presented in Ordinance 2008-4196; seconded by Commissioner Talley.

Motion by Commissioner Secrest to amend Vice-Chair Pope's motion to have the ordinance to apply only to the corridors designated in paragraph 6, sub-sections (a) through (x); seconded by Commissioner Pilkington.

Motion failed (4/4). Commissioner Kjelland, Commissioner Martin, Vice-Chair Pope, and Chair Luck voted nay.

Motion by Commissioner Carothers to amend Vice-Chair Pope's motion to add 5 (e) to Exceptions, to add private business parks; seconded by Commissioner Pilkington.

Motion failed (4/4). Commissioner Kjelland, Commissioner Martin, Vice-Chair Pope, and Chair Luck voted nay.

Original motion by Vice-Chair Pope to recommend approval of **Z-FY-08-14**; seconded by Commissioner Talley **passed (5/3)**. Commissioner Secrest, Commissioner Pilkington, and Commissioner Carothers voted nay.

ORDINANCE NO. \_\_\_\_\_

[ZONING NO. Z-FY-08-19(A)]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING AN AMENDMENT TO THE WEST TEMPLE COMPREHENSIVE PLAN TO REFLECT COMMERCIAL USES ON APPROXIMATELY 4.63 ACRES OF LAND COMMONLY KNOWN AS OUTBLOCK 561-M, CITY ADDITION, LOCATED ON THE WEST SIDE OF NORTH GENERAL BRUCE DRIVE, NORTH OF SAULSBURY PARK; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves an amendment to the West Temple Comprehensive Plan to reflect commercial uses on approximately 4.63 acres of land commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2:** The City Council directs the Director of Planning to make the necessary changes to the Future Land Use Map accordingly.

**Part 3:** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

**Part 4:** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 5:** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 17<sup>th</sup> day of April, 2008.

PASSED AND APPROVED on Second Reading on the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(O)(2)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-08-19-B: Consider adopting an ordinance authorizing a zoning change from Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park.

**P&Z COMMISSION RECOMMENDATION:** The Planning and Zoning Commission voted 8/0 to recommend approval of a zone change from A, Agricultural District to C, Commercial District at its meeting on April 7, 2008. Commissioner Norman was absent

**STAFF RECOMMENDATION:** Staff recommends approval of the zone change request from A, Agricultural to C, Commercial for the following reasons:

1. The zone change request complies with the requested amendment to the Future Land Use Map;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public and private facilities serve the site.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-08-19B, from the Planning and Zoning meeting, April 7, 2008. This request matches the zoning with the long-standing use of the property.

The Commission did not raise any issues requiring additional staff attention.

### **Public Notice**

Six notices of the P&Z hearing were sent out. As of Tuesday, April 8 at 4 PM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the P&Z hearing on March 29, 2008 in accordance with state law and local ordinance

**FISCAL IMPACT:** NA

**ATTACHMENTS:**

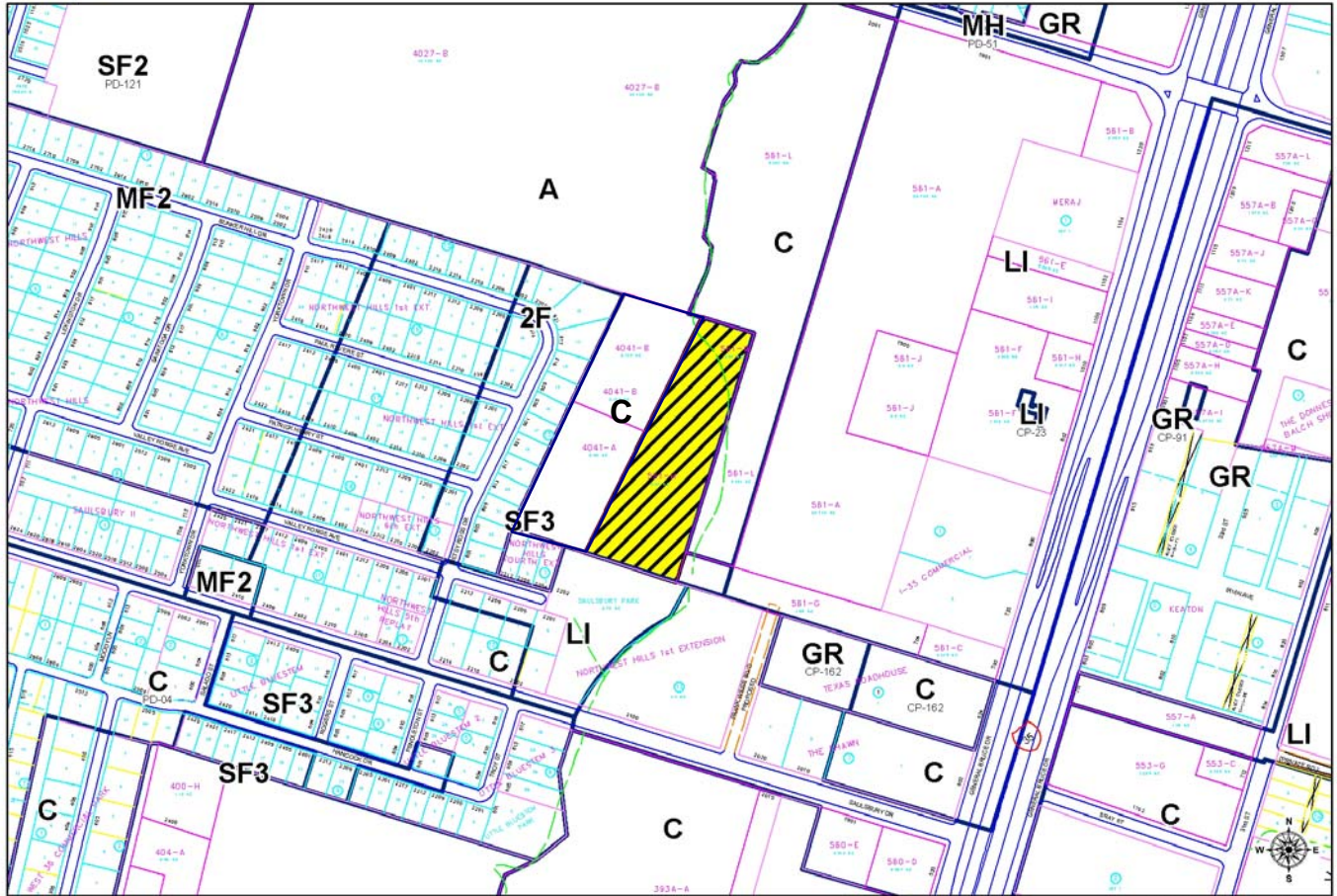
Zoning Map  
Future Land Use Map  
Aerial  
Utility Map  
Notification Radius Map  
P&Z Staff Report (Z-FY-08-19B)  
P&Z Minutes (April 7, 2008)  
Ordinance



Z-FY-08-19-B

OB# 561-M

4.63 Acres



 ZFY0819

A to C

1 inch equals 400 feet  
J Stone 03.07.08



Z-FY-08-19-B

OB# 561-M

4.63 Acres

**CLUP**

**Agricultural**

- AGRICULTURE

**Residential**

- LOW DENSITY (UE)
- MOD DENSITY (SF1, SF2, SF3, MH, 2F)
- MED DENSITY (MH, 2F, TH, MF1)
- HIGH DENSITY (MF2)

**Commercial**

- OFFICE (O1, O2)
- RETAIL (NS, GR)
- COMMERCIAL (C, CA)

**Mixed Use**

- MIXED USE (MU)

**Industrial**

- INDUSTRIAL (LI, HI)
- Warehouse/Distribution
- Manufacturing/Distribution
- Bio-Science/Technology
- Corporate Campus & Office
- Aviation Industrial Dist
- Flex Com/Tech/Indust
- Intermodal

**Community Facilities**

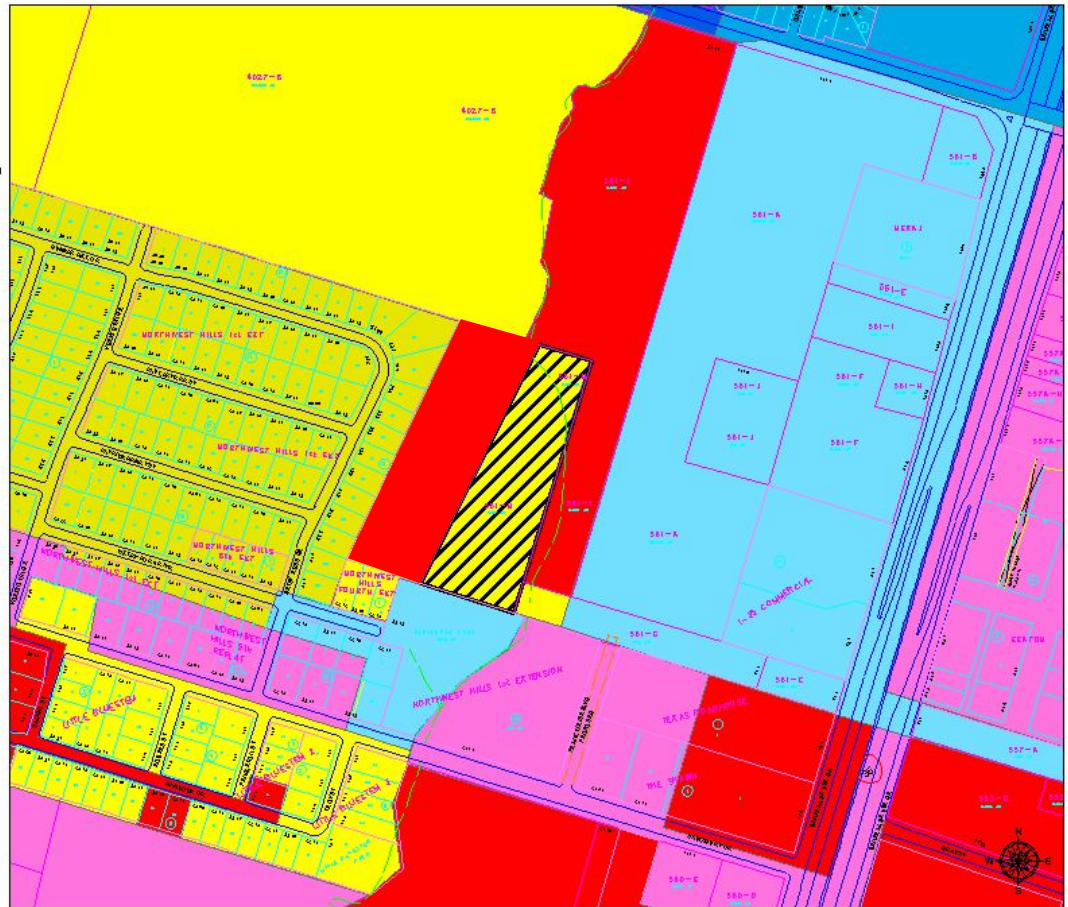
- COMMUNITY FACILITY
- CF-E (EDUCATIONAL)
- CF-G (GENERAL)
- CF-R (RESIDENTIAL)
- CF-M (MEDICAL)

**Park Land**

- PROPOSED FLOATING PARK
- PARKS

**Downtown**

- DOWNTOWN



A to C

1 inch equals 400 feet

J Stone 03.07.08





**Z-FY-08-19-B**

**OB# 561-M**

**4.63 Acres**

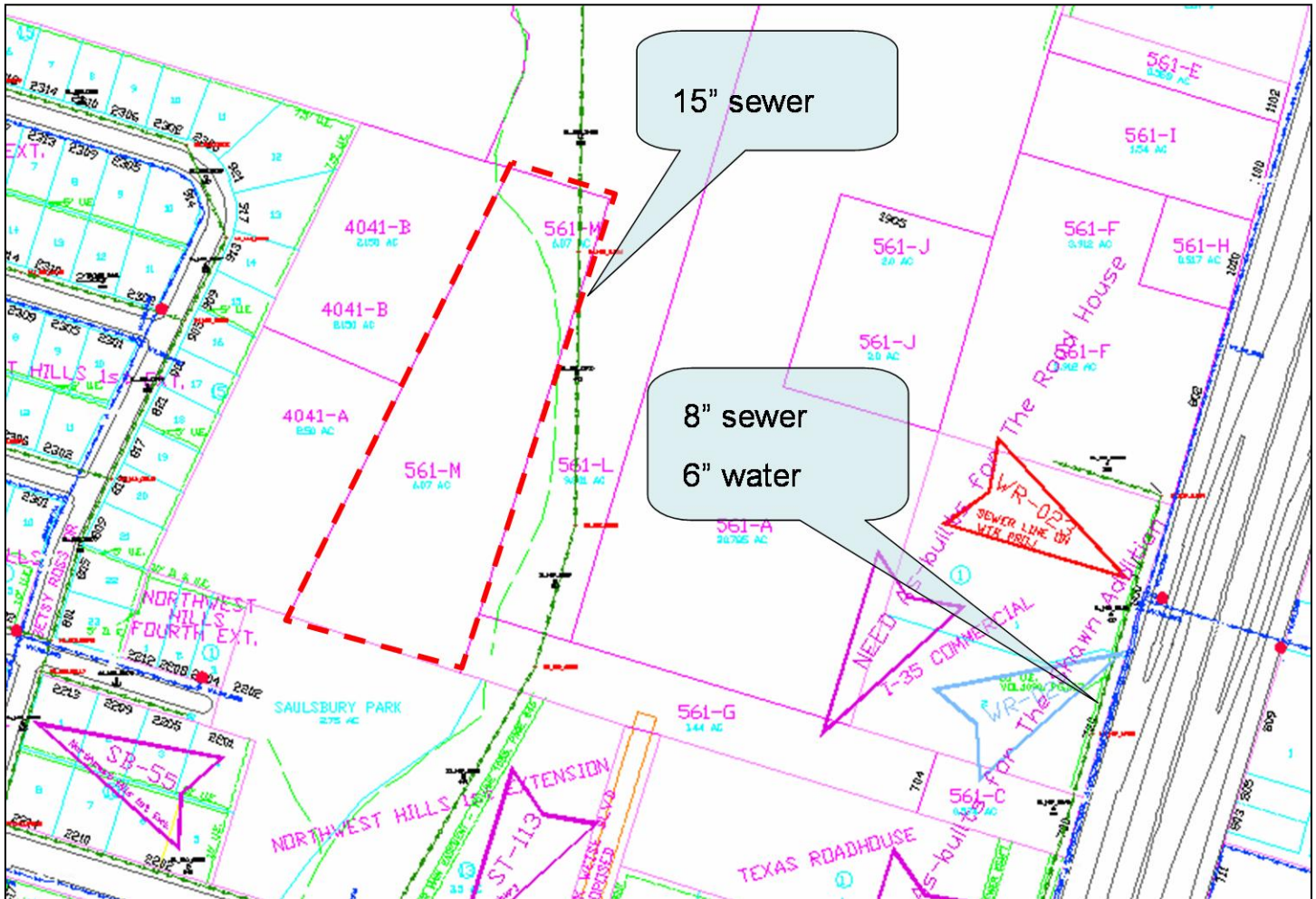




Z-FY-08-19-B

OB# 561-M

4.63 Acres



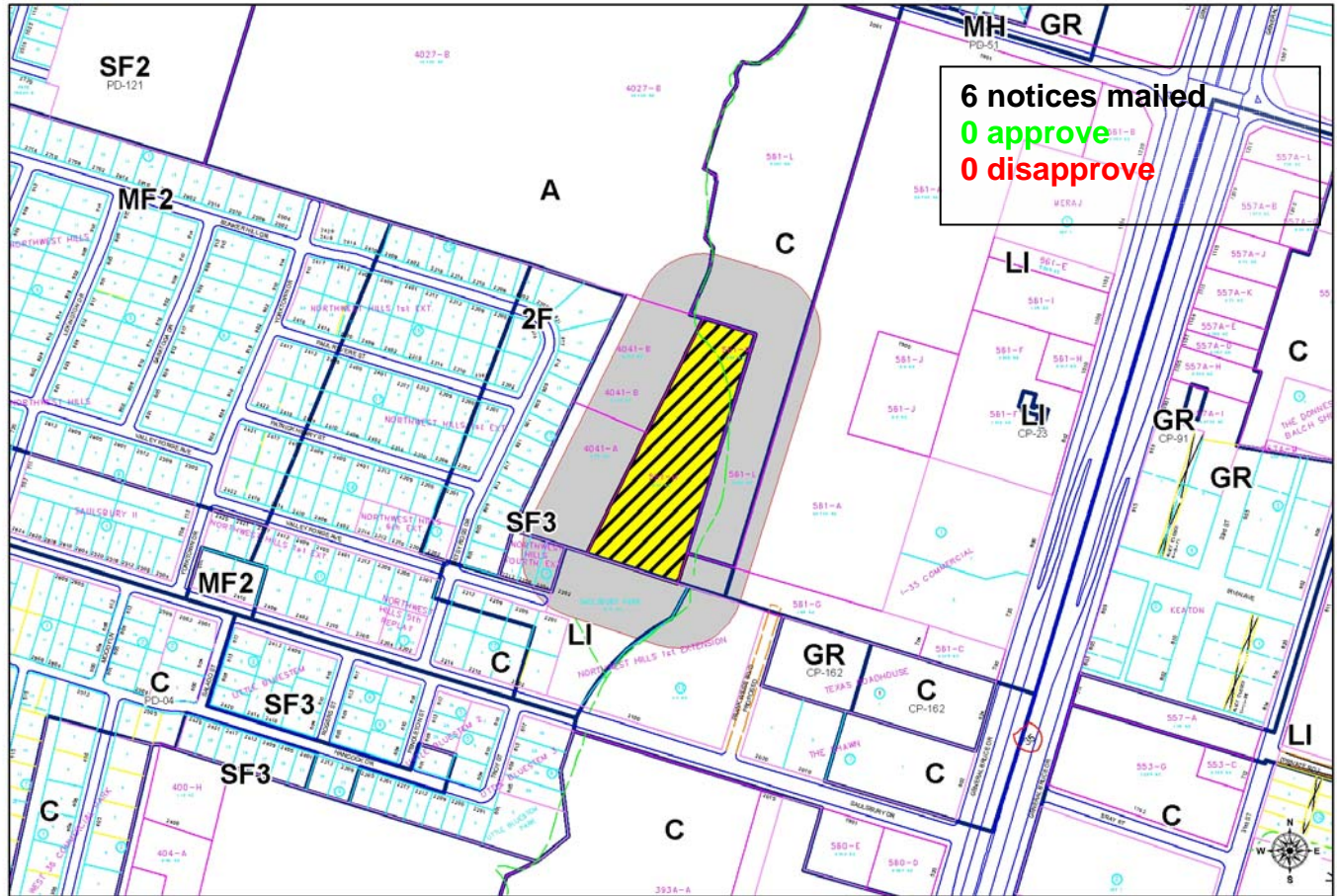




Z-FY-08-19-B

OB# 561-M

4.63 Acres



ZFY0819 200' Buffer

A to C

1 inch equals 400 feet  
J Stone 03.07.08



# PLANNING AND ZONING COMMISSION AGENDA ITEM

April 7, 2008

Item #5

Page 1 of 3

**APPLICANT / DEVELOPMENT:** Rodney Deyoe for Shallow Ford Construction

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** Z-FY-08-19-B Hold a public hearing to consider a zone change from Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park. (Applicant: Rodney Deyoe/Shallow Ford Construction Co.)

**BACKGROUND:** This request tracks with Z-FY-08-019-A, a West Temple Plan amendment request from the Medium Density Residential future land use category to the Commercial future land use category.

The applicant is requesting a zone change from A, Agricultural to C, Commercial. The property is currently used as a contractor storage and equipment yard. This use is permitted by right in the Central Area, Commercial and Industrial districts.

The subject property was annexed in November of 1990 with the existing use already in place. All properties are annexed into the City with an A, Agricultural zoning designation. The granting of a zone change for this property would have the affect of matching the zoning with a long-standing use. The property abuts a vacant storage yard that was rezoned on March 20, 2008, from A, Agricultural to C, Commercial.

## Surrounding Property and Uses

The following table shows the existing zoning and current land uses surrounding the subject property.

| Direction | Zoning | Current Land Use         |
|-----------|--------|--------------------------|
| North     | C      | Vacant                   |
| East      | C      | Vacant & vehicle storage |
| South     | LI     | Vacant                   |
| West      | C      | Vacant                   |

A zoning request should be reviewed for compliance with the Comprehensive Plan.

## Future Land Use Plan

The zone change request complies with the request amendment to the West Temple Plan.

## Thoroughfare Plan

A paved private road approximately 20 feet in width has served the property since at least 1976. This road intersects with Interstate 35 and with Frank Weise Boulevard, which runs behind the Texas

**Double Sided**



Road House. Frank Weise Boulevard connects to Saulsbury Drive. The property has indirect access to a freeway (I-35) and a collector (Saulsbury). The zone change request complies with the Thoroughfare Plan.

#### Adequacy of Public Facilities

The property is served by a septic system. The nearest public waterline is along Interstate 35 to the east however a private water line serves the property and its surroundings. The applicant is working with a local engineering firm to connect with public water and sewer services. Adequate public and private facilities serve the property.

#### Development Regulations

The purpose of the C, Commercial zoning district is to serve citywide or regional service areas. This district should be located along major highways and should provide total on-site traffic maneuvering such that traffic entering and exiting the facility should have room to turn, queue for parking areas, and park within the confines of the facility. This district should also be located at the intersection of major thoroughfares or highways. This district should be located away from low and medium density residential development and may be used as a buffer between retail and industrial uses.

Permitted uses include all retail and most commercial land uses including auto dealerships with complete servicing facilities, building material sales, light manufacturing, heavy machinery sales and storage and the requested use. Prohibited uses include, but are not limited to, apartments, heavy industrial uses, sexually oriented businesses, shooting ranges, and wrecker and salvage yards. Restaurants and bars serving alcohol require a conditional use permit.

Minimum lot area and setback requirements are as follow:

| <b>C, Commercial</b>           |      |
|--------------------------------|------|
| <b>Min. Lot Area (sq. ft.)</b> | None |
| <b>Min. Lot Width (ft.)</b>    | None |
| <b>Min. Lot Depth (ft.)</b>    | None |
| <b>Max. Height (stories)</b>   | None |
| <b>Min. Yard (ft)</b>          |      |
| Front                          | None |
| Side                           | None |
| Rear                           | None |

#### Public Notice

Six notices of the P&Z hearing were sent out. As of Wednesday, April 2 at 11 AM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the P&Z hearing on March 29, 2008 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of the zone change request from A, Agricultural to C, Commercial for the following reasons:

1. The zone change request complies with the requested amendment to the Future Land Use Map;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public and private facilities serve the site.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

Zoning Map

Future Land Use Map

Aerial

Utility Map

Notification Radius Map

**EXCERPTS FROM THE**  
**PLANNING & ZONING COMMISSION MEETING**  
**MONDAY, APRIL 7, 2008**

**ACTION ITEMS**

Chair Luck asked if Item 4, Z-FY-08-19A and Item 5, Z-FY-08-19B, could be presented together and then have separate motions and votes on each item. Mr. Dolan replied that that would be acceptable. Chair Luck continued with the meeting.

4. Z-FY-08-19A Hold a public hearing to consider an amendment to the West Temple Comprehensive Plan to reflect commercial uses on 4.63± acres of land commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury park. (Applicant: Rodney Deyoe for Shallow Ford Construction)
5. Z-FY-08-19B Hold a public hearing to consider a zone change from Agricultural District to Commercial District on approximately 4.63 acres of land, commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park. (Applicant: Rodney Deyoe/Shallow Ford Construction Co.)

Mr. Brian Mabry, Senior Planner, began with Item 4, **Z-FY-08-19A**, as presented in the Planning and Zoning Agenda Item. He said the applicant for this case is Mr. Rodney Deyoe for Shallow Ford Construction. Mr. Mabry said this case would go before City Council on April 17, 2008 for first reading and second reading will be on May 1, 2008. This case tracks with Z-FY-08-19B, however this case is the amendment of the West Temple Plan which was adopted in 1999 and shows moderate medium density residential future land use for the subject property. He said land to the north and to the east and to the west is commercial on the future land use map which he displayed on the overhead screen. Mr. Mabry discussed the future land use plan and the adequacy of public facilities as outlined in the agenda item. He said the applicant has stated that they are working with a local engineering firm to connect with some water and sewer facilities to the south near the Saulsbury park area. Mr. Mabry said Staff recommends approval from Moderate Density Residential to Commercial, based on items 1, 2, and 3 in the agenda item.

Mr. Mabry concluded with zone change **Z-FY-08-19B**. He said the zoning is for the existing use which is for contract storage or equipment yard that is permitted in Central Area, Commercial and Industrial Districts. Mr.

Mabry said this fills in the gap for the approved commercial zoning at a previous Planning & Zoning commission meeting for property immediately to the west. He displayed the zoning map, Future Land Use Map, an aerial of the area, a utility map and a notification radius map and discussed surrounding property uses, the Future Land Use Plan, the Thoroughfare Plan, adequacy of public facilities, and development regulations. Six notices were mailed to surrounding property owners within 200 feet. None were returned in favor or in opposition to the request. Mr. Mabry said Staff recommends approval of the zone change request based on the items listed in the agenda item.

Chair Luck opened the public hearing for item **Z-FY-08-19A**, an amendment to the West Temple Comprehensive Plan, asking anyone wishing to speak in favor or against the request to address the Commission.

Mr. Rodney Deyoe, President of the Charter Group, 3000 S. 31<sup>st</sup> Street addressed the Commission speaking in favor of the request. He said the small portion of land not included in the zone change would come before the Commission later when the Charter Group obtains the metes and bounds on the property.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-19A. See no one Chair Luck closed the public hearing.

Chair Luck opened the public hearing for item **Z-FY-08-19B**, a zone change from Agricultural District to Commercial District, asking anyone wishing to speak in favor or against the zone change to address the Commission. Seeing no one, Chair Luck closed the public hearing.

Motion to recommend approval of **Z-FY-08-19A**, amendment to the West Temple Comprehensive plan to reflect Commercial uses, by Commissioner Carothers; seconded by Vice-Chair Pope.

Motion passed (8/0).

Motion to recommend approval of **Z-FY-08-19B**, a zone change from Agricultural District to Commercial District, by Commissioner Carothers; seconded by Commissioner Secrest.

Motion passed (8/0).

8. Z-FY-08-14 Hold a public hearing to consider an amendment to the City of Temple Zoning Ordinance (Section 13) to add standard masonry exteriors. (Applicant: Staff)

Mr. Tim Dolan, Planning Director, presented this case as outlined in the Planning and Zoning Agenda Item. He said the Commission tabled the item at the February 18, 2008 meeting. The Commission requested to form a work group including Vice-Chair Pope and Commissioner Carothers along with representatives from the Temple Area Builders Association, Keep Temple Beautiful, The Chamber of Commerce, and Temple Economic Development Commission plus the Assistant City Manager of Temple to review the draft ordinance. Mr. Dolan described the comparison of what the City Council approved 1<sup>st</sup> reading on Thursday, February 7, 2008, and the proposed ordinance considered by the Commission. He said there is one clause that included to have language that included building that were permitted for construction prior to the second reading of the ordinance and that was done to add instead of those buildings in existence prior to. Mr. Dolan said there was also discussion where it did describe that the standards applied to the first two stories; the work group asked for it to be 25 feet vertical height of a building or the first two stories whichever is lower. The other idea was brought to the Commission for looking at adding some other Strategic Investment Zone Corridors.

Commissioner Carothers said that from the meetings he attended there seemed to be a collaboration of thoughts from people across the community that this ordinance would be reviewed again in a year and how it would be looked at because he was not sure that the committee that was formed knew if this ordinance was still the answer but it was a livable ordinance to go through now, however, what would be the process when this ordinance is reviewed again a year from now. Mr. Dolan stated that what had been discussed in the work groups would be to try to review what actual building permits came in for commercial building and to try to monitor those to see if any of them required the use to go through the process to have masonry exterior or some one chose that their product was a different use and if they would have the right to apply for a special use permit which were the mitigation standards that were discussed. Mr. Dolan said after a year a report would be generated to show the Commission and Council and to say “over twelve months you have blank number of commercial permits and blank number of permits that sought some type of exception to the proposed ordinance”.

Commissioner Pilkington asked how this would affect the outcome of the I-35 Overlay. Mr. Dolan replied that the I-35 Overlay committee wanted to wait for the outcome of the masonry ordinance before going forward with the I-35 Overlay ordinance. He said regarding the Temple Medical Education District, if they chose to go forward the criteria for the masonry requirements would have to be in effect; however, they do have the right to ask for better or more restrictive requirements for these areas.

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Mr. Michael Robinson, 5303 Wildflower Lane, Temple, Mr. Pat Patterson, 2116 W. Ave H, Temple, Mr. Troy Glasson, 12 N. 5<sup>th</sup> St., Temple Area Home Builders, and Mr. Ken Higdon, 2 S. 5<sup>th</sup> St., Temple Chamber of Commerce addressed the Commission with questions and concerns regarding the cost of a metal building verses a masonry building, the affect on existing small businesses or new ones trying to come into Temple, passing an ordinance that everyone knows will need to be reviewed in a year, the affect on industrial development and that the builder's association stated they were not in opposition or in favor of the proposed ordinance.

Chair Luck closed the public hearing.

Two motions failed to first request the ordinance apply to only corridors and a secondly to exempt private business parks, after discussion between Staff and the Commissioners about the Overlay District and public or quasi-public business parks superseding this ordinance, applying these regulations to properties just to certain corridors instead of city wide, and private business parks coming in without the same standards if they have the correct screening.

Motion by Vice-Chair Pope to recommend approval of Z-FY-08-14, an amendment to the City of Temple Zoning Ordinance Section 13 to add standards regarding masonry building exteriors as presented in Ordinance 2008-4196; seconded by Commissioner Talley.

Motion by Commissioner Secrest to amend Vice-Chair Pope's motion to have the ordinance to apply only to the corridors designated in paragraph 6, sub-sections (a) through (x); seconded by Commissioner Pilkington.

Motion failed (4/4). Commissioner Kjelland, Commissioner Martin, Vice-Chair Pope, and Chair Luck voted nay.

Motion by Commissioner Carothers to amend Vice-Chair Pope's motion to add 5 (e) to Exceptions, to add private business parks; seconded by Commissioner Pilkington.

Motion failed (4/4). Commissioner Kjelland, Commissioner Martin, Vice-Chair Pope, and Chair Luck voted nay.

Original motion by Vice-Chair Pope to recommend approval of **Z-FY-08-14**; seconded by Commissioner Talley **passed (5/3)**. Commissioner Secrest, Commissioner Pilkington, and Commissioner Carothers voted nay.

ORDINANCE NO. \_\_\_\_\_

[ZONING NO. Z-FY-08-19(B)]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURAL DISTRICT TO COMMERCIAL DISTRICT ON APPROXIMATELY 4.63 ACRES OF LAND COMMONLY KNOWN AS OUTBLOCK 561-M, CITY ADDITION, LOCATED ON THE WEST SIDE OF NORTH GENERAL BRUCE DRIVE, NORTH OF SAULSBURY PARK; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves a zoning change from Agricultural District to Commercial District on approximately 4.63 acres of land commonly known as Outblock 561-M, City Addition, located on the west side of North General Bruce Drive, north of Saulsbury Park, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2:** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

**Part 3:** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

**Part 4:** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 5:** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 17<sup>th</sup> day of April, 2008.

PASSED AND APPROVED on Second Reading on the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(P)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Director of Planning

**ITEM DESCRIPTION:** P-FY-08-15: Consider adopting a resolution approving the residential replat of Ingram Estates Subdivision, a 6.97 acre, two lot residential subdivision, located north of Sparta Road, at the southeast corner of Water Works Road at Denman's Loop, west of West Cliffe Park, in Temple's Western ETJ, subject to the applicant's requested exceptions to Subdivision Regulations Section 33-94(a) requiring rural streets to be edged with 12-inch wide ribbon curbs and Section 33-102(d)(2) requiring payment \$225 in park fees per dwelling unit,

**STAFF AND P&Z COMMISSION RECOMMENDATION:** At its April 21, 2008 meeting, the Planning and Zoning Commission voted 8/0 in accordance with the staff recommendation to approve the residential replat with:

1. Approval of the requested exception to Sec. 33-94(a) of the Subdivision Regulations requiring rural streets to be edged with 12-inch wide ribbon curbs; and
2. Approval of the requested exception to Sec. 33-102(d)(2) requiring payment of \$225 in park fees per dwelling unit.

Commissioner Kjelland was absent.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case P-FY-08-15, from the Planning and Zoning Commission meeting, April 21, 2008. This plat is a residential replat and required public notification and a public hearing. It takes in Lot 1 of the Water Works Landing subdivision (approved in October 2007 and shown in blue below) and makes it a part of the two lots that make up Ingram Estates shown in green below. The overlapping of the blue and green overlays shows the location of Lot 1 of Water Works Landing.

Except for the exceptions requested below, it meets the requirements of the Subdivision Ordinance.

| Sub Regs Citation | Requirement  | Applicant's Justification                            | Staff Support? |
|-------------------|--|--|----------------|
| Sec. 33-102(d)(2) | Payment of \$225 in park fees per dwelling unit                  | Pedestrian access to lake at rear of both properties | Yes            |
| Sec. 33-94(a)     | Rural streets shall be edged with 12 inch wide concrete ribbons. | Limited frontage on Water Works                      | Yes            |

Eleven notices of the Planning and Zoning Commission public hearing were sent out. Two were returned in favor of the request. No notices were returned against the request. Notice of the Planning and Zoning Commission hearing ran in the newspaper on April 6, 2008 in accordance with state statute and local ordinance.

**FISCAL IMPACT:** NA

**ATTACHMENTS:**

Plat  
Notice Map  
P&Z Staff Report (Z-FY-08-15)  
P&Z Minutes (04/21/08)  
Resolution

FINAL PLAT of  
INGRAM ESTATES

A SUBDIVISION SITUATED WITHIN THE E.T.J. OF THE CITY OF  
TEMPLE, BELL COUNTY, TEXAS.

Being part of the MEREDITH TONGATE SURVEY, ABSTRACT 828, Bell County, Texas, embracing that called 6.48 acre tract conveyed to DONNA K. INGRAM, in Volume 5605, Page 669, Official Public Records of Real Property, Bell County, Texas, and LOT 1, BLOCK 1, WATER WORKS LANDING, a subdivision situated in the E. T. J. of the City of Temple, Bell County, Texas, according to the plat of record in Cabinet D, Slide 196-D, Plat Records of Bell County, Texas.

This plat is to accompany a metes and bounds description of the herein shown 6.97 acre tract.

STATE OF TEXAS  
COUNTY OF BELL

THAT, DONNA KAY INGRAM, OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED HEREIN AS INGRAM ESTATES, WITHIN THE E.T.J. OF THE CITY OF TEMPLE, BELL COUNTY, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES SHOWN HEREON WITHIN THE PLAT BOUNDARIES OF THIS SUBDIVISION.

DONNA KAY INGRAM  
5084 Water Works Road  
Bell County, Texas 76513

BY: \_\_\_\_\_  
Donna Ingram

STATE OF TEXAS  
COUNTY OF BELL

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED DONNA KAY INGRAM, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

NOTARY PUBLIC, STATE OF TEXAS

I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF INGRAM ESTATES, WITHIN THE E.T.J. OF THE CITY OF TEMPLE, BELL COUNTY, TEXAS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007. SAID SUBDIVISION SHALL BE SUBJECT TO ALL REQUIREMENTS OF THE SUBDIVISION ORDINANCE OF THE CITY OF TEMPLE, TEXAS.

WITNESS MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY SECRETARY

THIS FINAL PLAT HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF TEMPLE, TEXAS, AND IS HEREBY APPROVED BY SUCH COMMISSION.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CHAIRPERSON SECRETARY, PLANNING & ZONING

I HEREBY CERTIFY THAT THIS PLAT WAS APPROVED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008, BY THE BELL COUNTY COMMISSIONERS COURT AND MAY BE FILED FOR RECORD IN THE PLAT RECORDS OF BELL COUNTY, TEXAS.

COUNTY JUDGE  
WITNESS MY HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

NOTARY PUBLIC, STATE OF TEXAS

BELL COUNTY PUBLIC HEALTH DISTRICT CERTIFICATE

THE BELL COUNTY PUBLIC HEALTH DISTRICT, THE LICENSING AUTHORITY FOR ON-SITE SEWAGE DISPOSAL IN BELL COUNTY, TEXAS, HEREBY CERTIFIES THAT THIS SUBDIVISION HAS BEEN EVALUATED FOR ON-SITE DISPOSAL. IN ITS CURRENT CONDITION, THE PROPOSED SUBDIVISION MEETS OR EXCEEDS THE MINIMUM STANDARDS ESTABLISHED BY THE BELL COUNTY BOARD OF HEALTH.

SANITARIAN DATE:

STATE OF TEXAS  
COUNTY OF BELL

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS ARE CORRECTLY SHOWN THEREON.

CHARLES C. LICKO, R.P.L.S. DATE SURVEYED: December 4, 2007  
REGISTRATION NO. 4636

AFFIDAVIT.

The Tax Appraisal District of Bell County, the taxing authority for all taxing entities in Bell County, Texas, does hereby certify that there are currently no delinquent taxes due or owing on the property described by this plat.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2008 A. D.

By: \_\_\_\_\_  
Bell County Tax Appraisal District

RECORDATION INFORMATION:

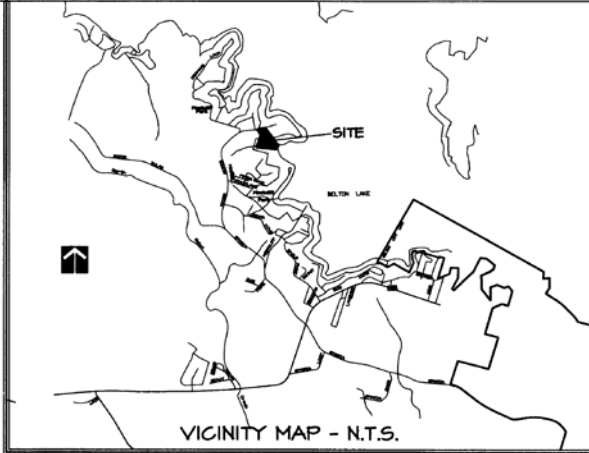
PLAT RECORDED IN CABINET \_\_\_\_\_, SLIDE \_\_\_\_\_  
PLAT RECORDS OF BELL COUNTY, TEXAS

DEDICATION RECORDED IN DOCUMENT NO. \_\_\_\_\_  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BELL COUNTY, TEXAS

FILED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

LOTS - TWO (2)  
BLOCKS - ONE (1)  
AREA - 6.97 ACRES

CITY OF TEMPLE  
MONUMENT INFORMATION:  
COT Monument No. 273  
N= 10367116.48 E= 3214321.44.



FINAL PLAT OF  
INGRAM ESTATES  
A SUBDIVISION SITUATED WITHIN THE E.T.J. OF THE CITY  
OF TEMPLE, BELL COUNTY, TEXAS.

Being part of the MEREDITH TONGATE SURVEY, ABSTRACT 828, Bell County, Texas, embracing that called 6.48 acre tract conveyed to DONNA K. INGRAM, in Volume 5605, Page 669, Official Public Records of Real Property, Bell County, Texas, and LOT 1, BLOCK 1, WATER WORKS LANDING, a subdivision situated in the E. T. J. of the City of Temple, Bell County, Texas, according to the plat of record in Cabinet D, Slide 196-D, Plat Records of Bell County, Texas.

ALL COUNTY SURVEYING, INC.  
1903 South 21st Street, Temple, Texas 76504  
(254) 718-2272 FAX (254) 714-7608



Plot Date: 12-04-2007

Survey completed 12-04-2007  
Scale: 1" = 60'  
Job No. 997937  
Dwg No. 997937P.dwg  
Drawn by SLH  
Surveyor CCL #4636

Based upon what can be scaled from the graphics shown on Federal Insurance Rate Map (FIRM), Community Panel No. 480706 0150 B, dated February 15, 1984, the above shown property does not appear within the "Special Flood Hazard Area", and appears to be situated in Zone C. This Flood statement does not imply that this tract will never flood, nor does it create any liability in such event on the part of this surveyor or company.

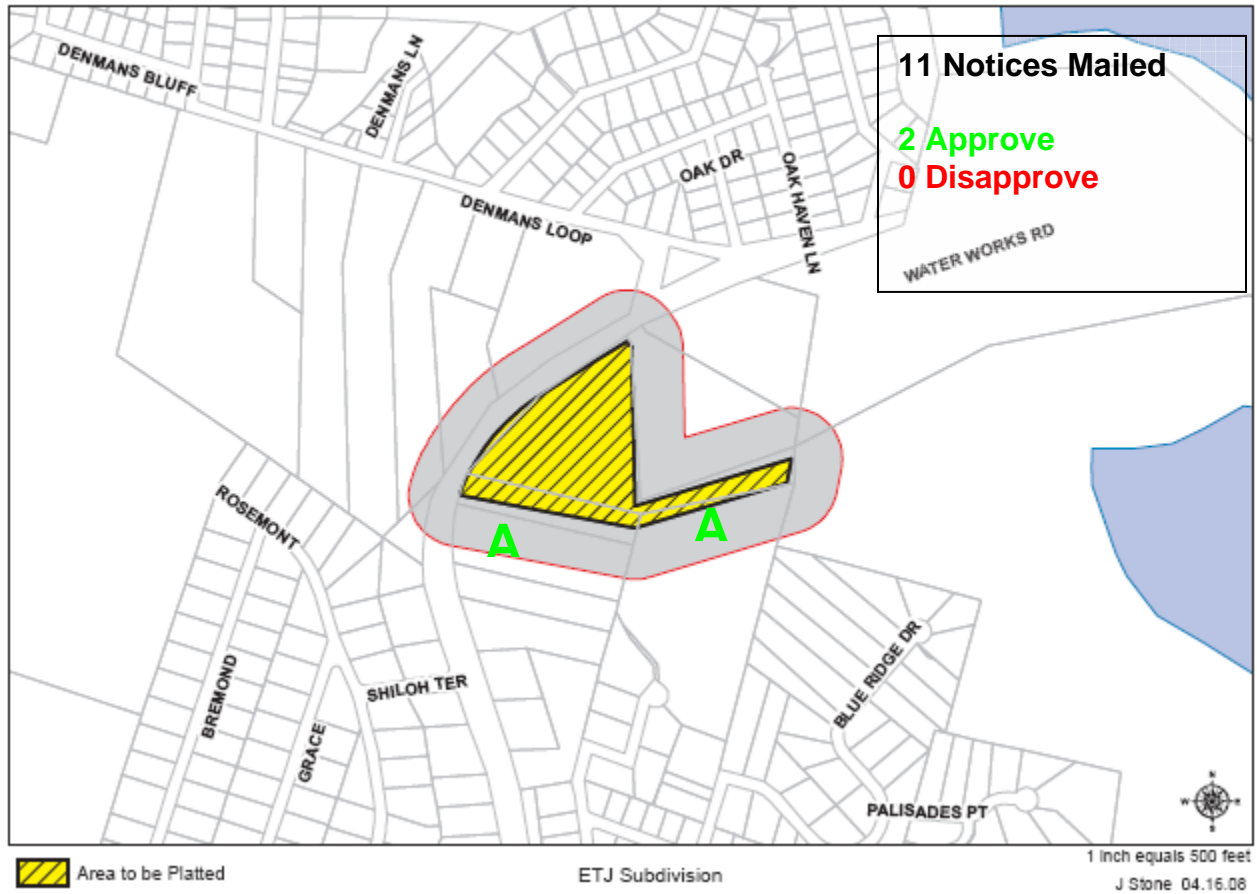
This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 273. The theta angle at City Monument No. 273 is 01°31'06". The combined correction factor (CCF) is 0.999853. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 273 to the northernmost corner of this 6.97 acre tract is N 68°58'35" W 41,737.65 feet. Published City coordinates for project reference point 273 are N= 10367116.48 E= 3214321.44.



P-FY-08-15

6.97 Acres

Ingram Estates Addition





# PLANNING AND ZONING COMMISSION AGENDA ITEM

04/21/08  
Item #3  
Page 1 of 2

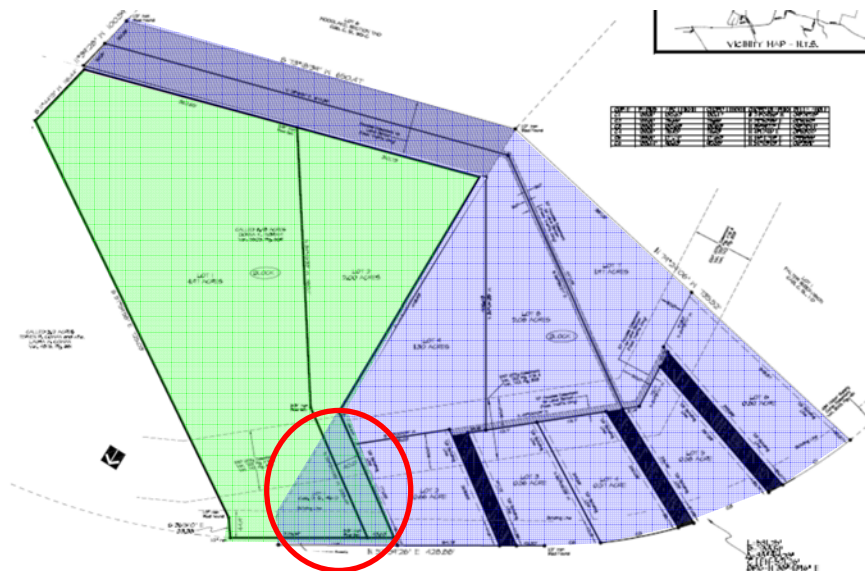
**APPLICANT / DEVELOPMENT:** All County Surveying for Donna Ingram

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** P-FY-08-15 Hold a public hearing to consider a recommendation to approve the single-family residential replat of Ingram Estates Subdivision, two single-family lots on a 6.9+ acres, subject to the applicant's requested exceptions to Subdivision Regulations Section 33-94(a) requiring rural streets to be edged with 12-inch wide ribbon curbs and Section 33-102(d)(2) requiring payment \$225 in park fees per dwelling unit, located north of Sparta Road, at the southeast corner of Water Works Road at Denman's Loop, west of West Cliffe Park, in Temple's Western ETJ. (Applicant: All County Surveying)

**STAFF RECOMMENDATION:** Staff recommends approval of the plat with approval of the requested exceptions to Sec. 33-94(a) and 33-102(d)(2).

**BACKGROUND:** This plat was reviewed and deemed complete by the Design Review Committee (DRC) on 01/03/08. This plat is a residential replat. It takes in Lot 1 of the Water Works Landing subdivision (approved in October 2007 and shown in blue below) and makes it a part of the two lots that make up Ingram Estates shown in green below. The overlapping of the blue and green overlays shows the location of Lot 1 of Water Works Landing.



Except for the exceptions requested below, it meets the requirements of the Subdivision Ordinance.

| Sub Regs Citation | Requirement  | Applicant's Justification                            | Staff Support? |
|-------------------|--|--|----------------|
| Sec. 33-102(d)(2) | Payment of \$225 in park fees per dwelling unit                  | Pedestrian access to lake at rear of both properties | Yes            |
| Sec. 33-94(a)     | Rural streets shall be edged with 12 inch wide concrete ribbons. | Limited frontage on Water Works                      | Yes            |

Staff supports the first exception listed above because of the applicant's justification and because the subdivision is approximately six miles from the nearest City park.

Staff supports the second exception listed above because of the applicant's justification resulting from the relatively narrow lot widths toward the street and because Water Works Landing was granted the same exception.

The City Council is the final plat authority since exceptions have been requested.

**ATTACHMENTS:**

Plat

Notice Map

**EXCERPTS FROM THE  
PLANNING & ZONING COMMISSION MEETING**

**MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

3. **P-FY-08-15** Hold a public hearing to consider a recommendation to approve the single-family residential Replat of Ingram Estates Subdivision, two single-family lots on a 6.9+ acres, subject to the applicant's requested exceptions to Subdivision Regulations Section 33-94(a) requiring rural streets to be edged with 12-inch wide ribbon curbs and Section 33-102(d)(2) requiring payment \$225 in park fees per dwelling unit, located north of Sparta Road, at the southeast corner of Water Works Road at Denman's Loop, west of West Cliffe Park, in Temple's Western ETJ. (Applicant: All County Surveying)

Mr. Brian Mabry, Senior Planner presented the residential Replat of Ingram Estates Subdivision. He said the applicant is All County Surveying. He displayed a vicinity map showing the location of the plat in the Western Extra Territorial Jurisdiction (ETJ) of the City of Temple as being on the other side of Belton Lake from the City of Temple in relation to Belton Lake. He indicated that a residential Replat is a lot that is being subdivided into more than one lot which requires a public notice and a public hearing. Mr. Mabry said this plat was reviewed and deemed complete by the Development Review Committee (DRC) on January 3, 2008. He presented a background of this plat. The gist of the plat is to take Lot 1 of the Water Works Landing Subdivision which was approved in October 2007 and make it a part of the two lots that make up Ingram Estates. There is a 100 foot wide overhead utility easement and a 25 foot building line across the front of all the properties that are in Water Works Landing Subdivision. Therefore, Lot 1 has very little area for building.

Mr. Mabry explained the exceptions being requested. (1) Section 33-102(d) (2), Payment of \$225 in park fees per dwelling unit. Justification being there is pedestrian access to the lake at rear of both properties; and (2) Section 33-94(a), rural streets shall be edged with 12 inch wide concrete. Justification is there is limited frontage for this subdivision and that Water Works Landing also had this exception for its lots.

Mr. Mabry explained the criteria for exceptions. The Commission would need to consider (1) whether special circumstances exist on the land that would prohibit the reasonable development of the property; (2) granting the exception would not be detrimental to the public welfare; and (3)

granting the exception would not prevent the orderly subdividing of land in the area. Eleven public notices were mailed with two recipients responding favorably and none were received in disapproval of the Replat.

Staff supports the first exception listed above because of the applicant's justification and because the subdivision is approximately six miles from the nearest City park. Also Staff supports the second exception listed above because of the applicant's justification resulting from the relatively narrow lot widths toward the street and because Water Works Landing was granted the same exception.

Chair Luck asked whether exceptions were granted to the Water Works Landing Subdivision. Mr. Mabry responded that exceptions to the park fees and ribbon curbing were approved. He said that one of the reasons for granting the park fee waiver was that two of the lots have a large pedestrian access way that leads to the lake.

Chair Luck opened the public hearing asking anyone wishing to speak in favor or against the request to address the Commission. Not having anyone to speak for or against, Chair Luck closed the public hearing.

Motion by Commissioner Pilkington to approve P-FY-08-15 with the exceptions regarding requiring park fees and ribbon curbing; seconded by Commissioner Martin. Motion passed (8/0).

City Council is the final plat authority since exceptions have been requested.



**RESOLUTION NO. \_\_\_\_\_**

[ PLANNING NO. P-FY-08-15]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE RESIDENTIAL REPLAT OF INGRAM ESTATES SUBDIVISION, A 6.97 ACRE, TWO LOT RESIDENTIAL SUBDIVISION LOCATED NORTH OF SPARTA ROAD, AT THE SOUTHEAST CORNER OF WATER WORKS ROAD AT DENMAN'S LOOP, WEST OF WEST CLIFFE PARK, IN TEMPLE'S WESTERN ETJ, WITH EXCEPTIONS TO THE SUBDIVISION ORDINANCE REGARDING RURAL STREETS AND PARK LAND DEDICATION FEE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 21, 2008, the Planning and Zoning Commission approved the residential replat of Ingram Estates Subdivision, a 6.97 acre, two lot residential subdivision located north of Sparta Road, at the southeast corner of Water Works road at Denman's Loop, west of West Cliffe Park in Temple's western EJT, with exceptions to the Subdivision Ordinance regarding rural streets and park land dedication fee; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to approve the residential replat of Ingram Estates Subdivision.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves the residential replat of Ingram Estates Subdivision, a 6.97 acre, two lot residential subdivision located north of Sparta Road, at the southeast corner of Water Works road at Denman's Loop, west of West Cliffe Park in Temple's western EJT, more fully shown on the Plat which is on file in the City's Planning Department, incorporated herein and referred to by reference, and including the following exceptions to the Subdivision Ordinance: (a) *[Section 33-94(a)]* requiring rural streets to be edged with 12-inch wide ribbon curbs; and (b) park land dedication *[Section 33-102 (d)(2)]* requiring payment of \$225 in park fees per dwelling unit.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, MAYOR

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(Q)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** P-FY-08-26: Consider adopting a resolution approving the amended preliminary plat of Windmill Farms Phase III, located on the along the west side of SH 317 adjacent to the city limit line, subject to the developer's requested exceptions to Subdivision Regulations Section 33-93(c) requiring extension of stub out streets to adjoining properties and Section 33-93(h)(1) requiring that cul-de-sacs be a maximum of 500 feet in length.

**STAFF AND P&Z COMMISSION RECOMMENDATION:** At its April 21, 2008 meeting, the Planning and Zoning Commission voted 7/0 in accordance with the staff recommendation to approve the preliminary plat with:

1. Approval of the requested exception to Sec. 33-93(c) (stub out streets) of the Subdivision Regulations to allow no stub out streets on Starlight Drive, creating an uninterrupted block approximately 1,267 feet in length compared to the requirement that stub out streets be provided to adjoining properties a minimum of every 1,000 feet. and;
2. Approval of the requested exception to Sec. 33-93(h)(1)(cul-de-sac length) of the Subdivision Regulations to allow a cul-de-sac (Orion Drive) approximately 1,300 feet in length compared to the requirement that cul-de-sacs be a maximum of 500 feet in length.

Commissioners Kjelland and Talley were absent.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case P-FY-08-26, from the Planning and Zoning Commission meeting, April 7, 2008 and April 21, 2008.

The applicant requests the following exceptions to the Subdivision Regulations.

| Subdivision Regulations Citation | Requirement                                    | Applicant's Justification  | Staff Support? |
|----------------------------------|--|--|----------------|
| Sec. 33-93(c)                    | Extension of stub outs to adjoining properties | Stub out would connect with planned commercial development.  | Yes            |
| Sec. 33-93(h)(1)                 | Cul-de-sac maximum length of 500'              | Exception granted in 2005. Previous administrations measured cul-de-sac length differently. There is a stub out on Orion connecting to the property to the west. | Yes            |

The Planning and Zoning Commission also reviewed this plat twice. At the first P&Z meeting on April 7, after much discussion and questioning regarding measurement of cul-de-sac length and staff's request to extend Smock Mill Lane to Starlight Drive, the applicant withdrew the plat application and waived the 30-day time limit for automatic approval of the plat.

At a subsequent meeting between staff and the applicant, all parties came to agreement that adding a 10' pedestrian access easement at the end of Orion Drive and widening Orion Drive from 30 feet of paved surface to 35 feet would help to mitigate staff's concerns about overlength cul-de-sacs. The pedestrian access easement would allow students to access the future school on the north property thus potentially reducing vehicular traffic from the subdivision to the school. In addition, a wider Orion Drive would be able to handle the vehicular traffic from the four cul-de-sacs that feed into it.

The plat for Phase II of Windmill Farms will need to be administratively amended to widen Orion Drive in that phase of the development. The applicant is currently working with staff to do this.

**FISCAL IMPACT:** NA

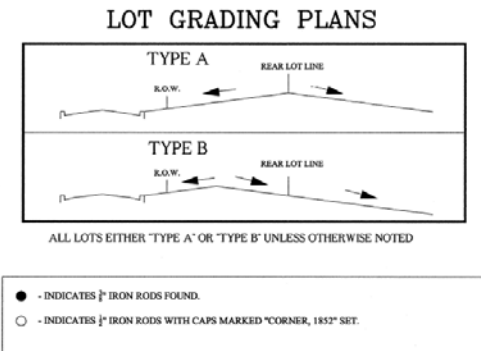
**ATTACHMENTS:**

Plat  
P&Z Staff Report (Z-FY-08-26)  
P&Z Minutes (04/7/08)  
P&Z Minutes (04/21/08)  
Resolution



| CURVE TABLE |         |            |              |                         |
|-------------|---------|------------|--------------|-------------------------|
| CURVE       | RADIUS  | ARC LENGTH | CHORD LENGTH | CHORD BEARING           |
| C1          | 210.00' | 92.42'     | 91.68'       | S 42°31'43" E 25°12'57" |
| C2          | 85.50'  | 9.71'      | 9.71'        | S 16°49'38" W 6°30'27"  |
| C3          | 85.50'  | 43.63'     | 43.16'       | S 01°02'42" E 29°14'14" |
| C4          | 155.00' | 194.99'    | 182.39'      | N 19°05'48" W 72°04'48" |
| C5          | 85.50'  | 53.34'     | 52.48'       | S 02°11'31" W 38°44'42" |
| C6          | 155.00' | 62.01'     | 61.60'       | N 05°27'02" E 22°55'18" |
| C7          | 155.00' | 82.41'     | 81.44'       | N 21°14'28" W 30°27'42" |
| C8          | 155.00' | 11.37'     | 11.37'       | N 38°34'26" W 4°12'13"  |
| C9          | 155.00' | 39.12'     | 39.02'       | N 47°54'22" W 14°27'39" |
| C10         | 155.00' | 109.13'    | 100.29'      | S 36°15'38" E 37°45'06" |
| C11         | 160.00' | 63.72'     | 63.30'       | N 05°58'31" W 22°49'09" |
| C12         | 210.00' | 25.64'     | 25.63'       | S 33°25'08" E 6°59'46"  |
| C13         | 210.00' | 66.78'     | 66.50'       | S 46°01'36" E 18°13'10" |
| C14         | 100.00' | 125.83'    | 117.69'      | S 19°05'20" E 72°05'43" |
| C15         | 50.00'  | 54.74'     | 52.05'       | S 11°20'04" E 62°43'48" |
| C16         | 50.00'  | 41.15'     | 40.00'       | S 43°35'30" W 47°09'23" |
| C17         | 50.00'  | 39.54'     | 38.52'       | S 89°50'30" W 45°18'36" |
| C18         | 50.00'  | 39.54'     | 38.52'       | N 44°50'54" W 45°18'36" |
| C19         | 50.00'  | 44.53'     | 43.08'       | N 03°19'20" E 51°01'52" |
| C20         | 50.00'  | 42.29'     | 41.04'       | N 53°04'10" E 48°27'47" |
| C21         | 50.00'  | 38.42'     | 37.48'       | S 69°18'49" W 44°01'32" |
| C22         | 50.00'  | 51.14'     | 48.94'       | N 59°22'13" W 58°36'23" |
| C23         | 50.00'  | 41.15'     | 40.00'       | N 06°29'20" W 47°09'23" |
| C24         | 50.00'  | 41.15'     | 40.00'       | N 40°40'02" E 47°09'23" |
| C25         | 50.00'  | 51.51'     | 49.26'       | S 86°14'23" E 59°01'47" |
| C26         | 50.00'  | 38.42'     | 37.48'       | S 34°42'43" E 44°01'32" |
| C27         | 50.00'  | 59.09'     | 55.71'       | S 81°09'25" W 67°42'44" |
| C28         | 50.00'  | 38.29'     | 37.36'       | N 43°03'04" W 43°52'17" |
| C29         | 50.00'  | 33.52'     | 32.90'       | N 01°54'26" W 38°24'58" |
| C30         | 50.00'  | 33.52'     | 32.90'       | N 36°30'32" E 38°24'58" |
| C31         | 50.00'  | 38.29'     | 37.36'       | N 77°39'10" E 43°52'17" |
| C32         | 50.00'  | 59.09'     | 55.71'       | S 46°33'19" E 67°42'44" |
| C33         | 50.00'  | 26.21'     | 25.91'       | S 62°18'58" W 30°01'49" |
| C34         | 50.00'  | 50.33'     | 48.23'       | N 73°49'56" W 57°40'24" |
| C35         | 50.00'  | 54.31'     | 51.68'       | N 13°52'47" W 62°13'53" |
| C36         | 50.00'  | 54.42'     | 51.77'       | N 48°24'59" E 62°21'40" |
| C37         | 50.00'  | 52.33'     | 48.23'       | N 89°14'45" E 63°44'00" |
| C38         | 50.00'  | 26.21'     | 25.91'       | S 27°42'52" E 30°01'49" |
| C39         | 50.00'  | 40.31'     | 39.22'       | S 70°23'42" W 46°11'18" |
| C40         | 50.00'  | 48.88'     | 46.96'       | N 58°30'17" W 56°00'45" |
| C41         | 50.00'  | 41.71'     | 40.51'       | N 06°35'56" W 47°47'57" |
| C42         | 50.00'  | 34.98'     | 34.27'       | N 37°20'24" E 40°04'42" |
| C43         | 50.00'  | 55.62'     | 52.79'       | N 89°14'45" E 63°44'00" |
| C44         | 50.00'  | 40.31'     | 39.22'       | S 35°47'36" E 46°11'18" |
| C45         | 50.00'  | 56.11'     | 53.21'       | N 79°08'28" E 64°17'52" |
| C46         | 50.00'  | 44.82'     | 43.33'       | S 43°03'50" E 51°21'31" |
| C47         | 50.00'  | 44.82'     | 43.33'       | S 08°17'40" W 51°21'31" |
| C48         | 50.00'  | 44.82'     | 43.33'       | S 59°39'11" W 51°21'31" |
| C49         | 50.00'  | 60.82'     | 57.14'       | N 59°49'16" W 69°41'34" |
| C50         | 50.00'  | 10.41'     | 10.40'       | N 19°00'29" W 11°56'02" |

| LINE TABLE |               |          |
|------------|---------------|----------|
| LINE       | BEARING       | DISTANCE |
| L1         | S 42°45'50" W | 88.49'   |
| L2         | S 83°04'23" W | 54.83'   |
| L3         | N 30°09'32" W | 81.88'   |



STATE OF TEXAS: I, the undersigned owner of the land shown on this plat, and designated herein as WINDMILL FARMS PHASE III, Temple, Bell County, Texas, being 36.91 acres of land part of the John J. Simmons Survey, Abstract #737, Bell County, Texas, and whose name is subscribed hereto, hereby dedicates to the use of the public forever, all streets, alleys, water courses, drains, easements, and public places as shown hereon.

Grantor does hereby give, grant and convey to the City of Temple, Texas, in fee simple, the drainage area shown as Tract A on the plat.

For: W&B Development, Ltd.  
By: G.W. Development, Inc.  
Its: General Manager  
Bruce Whitin, Vice President and Secretary-Treasurer

STATE OF TEXAS: BEFORE ME, the undersigned authority, on this day personally appeared Bruce Whitin, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15th day of April, 2008 A.D.

Notary Public for the State of Texas

STATE OF TEXAS: I, the undersigned, Registered Professional Land Surveyor, in the State of Texas, do hereby certify to the best of my knowledge and belief, that this plat is true and correct, that it was prepared from an actual survey of the property made on the ground, and that all necessary survey monuments are correctly shown thereon.

A. W. Kessler  
Registered Professional Land Surveyor No. 1852

STATE OF TEXAS: I, undersigned, a Registered Professional Engineer in the State of Texas, do hereby certify that proper engineering consideration has been given this plat.

A. W. Kessler  
Registered Professional Engineer No. 41963

This Final Plat has been submitted to and considered by the Planning and Zoning Board of the City of Temple, Bell County, Texas, and is hereby approved by such Commission.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008

Chairperson: \_\_\_\_\_

I hereby certify that the above and foregoing plat of WINDMILL FARMS PHASE II, to the City of Temple, Texas, and approved by the City of Temple on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 A.D. Said addition shall be subject to all the requirements of the subdivision ordinance of the City of Temple, Texas.

DATED: \_\_\_\_\_ day of \_\_\_\_\_, 2008 A.D.

City Secretary: \_\_\_\_\_

I, the undersigned, director of planning of the City of Temple, do hereby certify that this subdivision plat conforms to all requirements of the City of Temple, it qualifies for administrative plat approval as provided in this ordinance, and it is hereby approved.

Director of Planning: \_\_\_\_\_ Date: \_\_\_\_\_

PLAT FILED FOR RECORD this the \_\_\_\_\_ day of \_\_\_\_\_, 2008 A.D. in Cabinet \_\_\_\_\_, Slide \_\_\_\_\_, Plat Records of Bell County, Texas.

DEDICATION FILED FOR RECORD this the \_\_\_\_\_ day of \_\_\_\_\_, 2008 A.D. in Volume \_\_\_\_\_, Page \_\_\_\_\_, Official Records, Bell County, Texas.

TAX CERTIFICATE

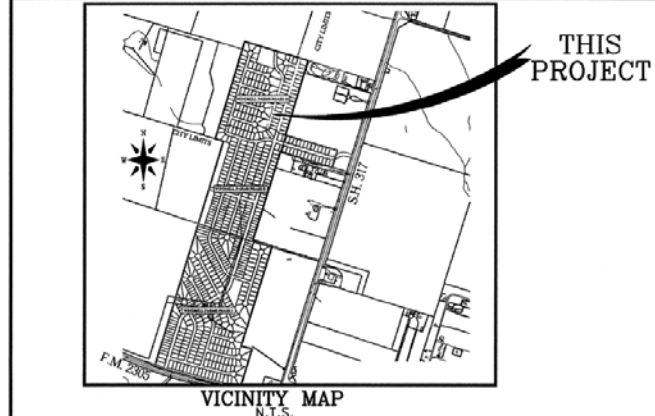
The Bell County Tax Office, the taxing authority for all entities in Bell County, Texas does hereby certify that there are currently no delinquent taxes due or owing on the property described by this plat.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2008

BELL COUNTY TAX OFFICE

By: \_\_\_\_\_

AMENDED PRELIMINARY PLAT OF  
WINDMILL FARMS PHASE III  
TO THE CITY OF TEMPLE, BELL COUNTY, TEXAS  
BEING PART OF THE JOHN J. SIMMONS SURVEY, ABSTRACT 737  
BELL COUNTY, TEXAS



NOTE: This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All bearings are grid bearings based upon the Texas Plane Coordinate System, NAD83 and referenced to the City of Temple control System, 1955. All coordinates are referenced to City Monument 504. The theta angle at City Monument No. 504 is 01°29'29". The combined factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from city Monument No. 504 to the southeast corner of the Permanent Easement is the Southeast corner of Windmill Farms Phase I, N22°57'49"W 5117.79 feet. Published City coordinates for project reference point 504 are N=10,378,796.21 E=3,202,019.50

1. All boundary corners set 3/8" iron rods with cap marked "1852" unless otherwise noted hereon.

2. 3.64 Acres reserved for drainage, 6.32 Acres reserved for right-of-ways, and the remaining 26.95 Acres are for residential lots.

STREET PAVEMENT NOTES:

1. Streets located within a 60 ft. right-of-way shall have a minimum pavement width of 36 ft. back-to-back of curb.

2. Streets located within a 50 ft. right-of-way shall have a minimum pavement width of 31 ft. back-to-back of curb.

3. Streets terminating in a cul-de-sac shall have a minimum 50 ft. right-of-way radius and a pavement radius of 41 ft. to back of curb.

4. Four ft. sidewalk to be installed along the west side of Starlight Drive to be installed by the home builder.

FINISHED FLOOR ELEVATION NOTE:

The Finished Floor Elevation (FFE) shown hereon were determined from the drainage studies and calculations and provided by the Developer. The Surveyor does not certify to the accuracy of said studies, calculations, or FFE's, and therefore does not warrant or imply that any tract or structure placed thereon will be free from flooding or flood damage.

NOTE:

The City of Temple Drainage Criteria and Design Manual allows for major storm runoff to accumulate to a level of 6 inches above the top of curb. Homeowners and homebuilders are advised to consider this when preparing site grading plans and setting finished floor elevations.

FLOOD PLAIN NOTE:

This project is not within the 100 year flood limits as shown on FEMA F.I.R.M. No. 4807060095B or 4807060155B, effective February 15, 1984, Bell County, or FEMA F.I.R.M. No. 480340004C, effective January 19, 1984, City of Temple, Bell County, Texas.

LEGEND

● - INDICATES IRON RODS WITH CAPS FOUND, UNLESS OTHERWISE NOTED.

○ - INDICATES IRON RODS WITH CAPS MARKED "CORNER, 1852" SET.

□ - INDICATES TxDOT CONIC MONUMENT FOUND.

BL - INDICATES BUILDING SET-BACK LINE.

UL - INDICATES PUBLIC UTILITY EASEMENT.

D.E. - INDICATES DRAINAGE EASEMENT.

FFE (840) - INDICATES FINISHED FLOOR ELEVATION.

| REV. | DESCRIPTION  | DATE | BY |
|------|--|------|----|
| 1    | PROJECT INFORMATION  |      |    |
| 2    | TOTAL ACRES: 36.91   |      |    |
| 3    | TOTAL BLOCKS: 5  |      |    |
| 4    | TOTAL LOTS: 145  |      |    |
| 5    | GRAPHIC SCALE  |      |    |
| 6    | BENCHMARK: TxDOT BM #4 S.W. CORNER CULVERT HEADWALL 110' +/- LI. STA. 19+50 OF FM 2805 AND INTERSECTION OF SH 317 ELEV. 638.77 |      |    |
| 7    | PROJ. NO. CRD. FILE: WND3_STKOUT SCALE: 1"=100.00' AUTHORIZED BY: WBW  |      |    |
| 8    | DRAFT DATE: 3 APRIL 2008 DRAWN BY: BTW APPROVED BY: AWK  |      |    |

AMENDED PRELIMINARY PLAT OF  
WINDMILL FARMS PHASE III  
City of Temple, Bell County, Texas

|   |  |              |
|---|--|--------------|
| W & B DEVELOPMENT, Ltd.<br>3000 ILLINOIS AVE<br>ARLINGTON, TEXAS 76010<br>PHONE: 254-953-5053 FAX: 254-953-5057 | VERA & ASSOCIATES, L.C.<br>3707 Sierra Dr.<br>GEORGETOWN, TEXAS 78627<br>(512) 864-9804 FAX (512) 864-7600 | SHEET 1 OF 1 |
|---|--|--------------|



# PLANNING AND ZONING COMMISSION AGENDA ITEM

04/21/08  
Item #7  
Page 1 of 2

**APPLICANT / DEVELOPMENT:** W&B Development

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** P-FY-08-26 Consider a recommendation to approve the amended preliminary plat of Windmill Farms Phase III, subject to the developer's requested exceptions to Subdivision Regulations Section 33-93(c) requiring extension of stub out streets to adjoining properties and Section 33-93(h)(1) requiring that cul-de-sacs be a maximum of 500 feet in length, located on the along the west side of SH 317 adjacent to the city limit line. (Applicant: W&B Development)

**STAFF RECOMMENDATION:** Staff recommends approval of the preliminary plat with approval of the requested exception to Sec. 33-93(c) of the Subdivision Regulations requiring extension of stub out streets to adjoining properties and with approval of the requested exception to Sec. 33-93(h)(1) requiring that cul-de-sacs be a maximum of 500 feet in length.

**BACKGROUND:** This preliminary plat is being revised because of a significant change in street and lot layout compared to the preliminary plat for the entire subdivision that was reviewed and approved in March 2005.

This revised preliminary plat was reviewed and deemed complete by the Design Review Committee (DRC) on March 31, 2008.

The applicant requests the following exceptions to the Subdivision Regulations.

| Subdivision Regulations Citation | Requirement                                    | Applicant's Justification  | Staff Support?                 |
|----------------------------------|--|--|--------------------------------|
| Sec. 33-93(c)                    | Extension of stub outs to adjoining properties | Stub out would connect with planned commercial development.  | Yes                            |
| Sec. 33-93(h)(1)                 | Cul-de-sac maximum length of 500'              | Exception granted in 2005. Previous administrations measured cul-de-sac length differently. There is a stub out on Orion connecting to the property to the west. | Yes. See Issues section below. |

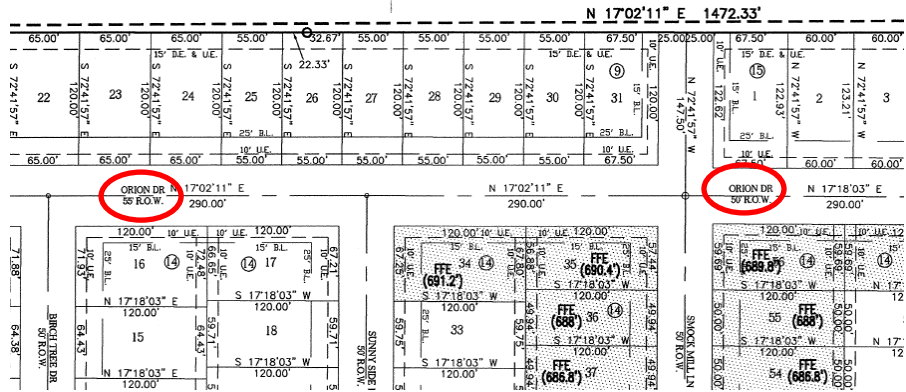
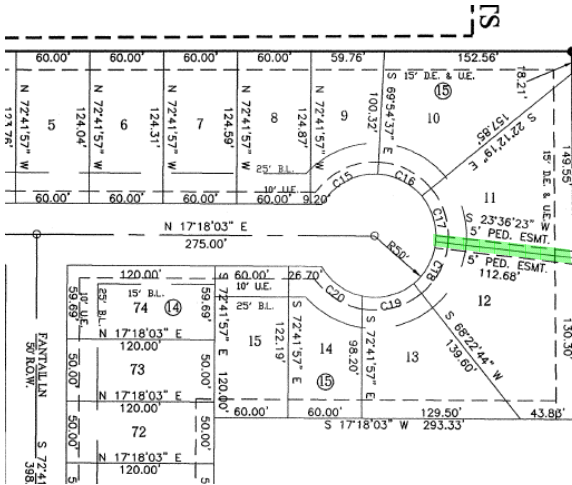
## **ISSUES:**

The Planning and Zoning Commission reviewed this plat at its previous meeting on April 7, 2008. After much discussion and questioning regarding measurement of cul-de-sac length and staff's

**Double Sided**

request to extend Smock Mill Lane to Starlight Drive, the applicant withdrew the plat application and waived the 30-day time limit for automatic approval of the plat.

At a subsequent meeting between staff and the applicant, all parties came to agreement that adding a 10' pedestrian access easement at the end of Orion Drive and widening Orion Drive would help to mitigate staff's concerns about overlength cul-de-sacs. Orion Drive is shown to be widened from its original 50-foot right-of-way and 31-foot paved surface to 55-foot right-of-way and 36-foot paved surface from its intersection with Smock Mill Lane and continuing south.



The pedestrian access easement would allow students to access the future school on the north property and a wider Orion Drive would be able to handle the vehicular traffic from the four cul-de-sacs that feed into it. The plat for Phase II of Windmill Farms will need to be administratively amended to widen Orion Drive in that phase of the development. The applicant is currently working with staff to do this.

The City Council is the final plat authority since exceptions have been requested.

## ATTACHMENTS:

Preliminary Plat



**EXCERPTS FROM THE  
PLANNING & ZONING COMMISSION MEETING  
MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

- Item 5. P-FY-08-26** Consider a recommendation to approve the amended preliminary plat of Windmill Farms Phase III, subject to the developer's requested exceptions to Subdivision Regulations Section 33-93(c) requiring extension of stub out streets to adjoining properties and Section 33-93(h) (1) requiring that cul-de-sacs be a maximum of 500 feet in length, located on the along the west side of SH 317 adjacent to the city limit line. (Applicant: W&B Development)

Mr. Brian Mabry, Senior Planner presented the amended preliminary plat of Windmill Farms. He stated this plat had been presented at the last Planning and Zoning Commission meeting with the applicant withdrawing the plat and the 30-day time limit for approval was waived. He displayed the plat on the screen pointing out the location and number of lots. This preliminary plat is being revised because of a significant change in street and lot layout compared to the preliminary plat for the entire subdivision that was reviewed and approved in March 2005. He said the City Council is the final plat authority because of the requested exceptions regarding stub out streets and cul-de-sac length. The original plat was being revised due to change in lot layout, street layout and then the withdrawal at P&Z. Staff supports these exceptions.

The Planning and Engineering Staff met with the applicant on April 11<sup>th</sup> and agree that adding a 10' pedestrian access easement at the end of Orion Drive and widening Orion Drive would help to mitigate staff's concerns about over length cul-de-sacs. Orion Drive is shown to be widened from its original 50-foot right-of-way and 31-foot paved surface to 55-foot right-of-way and 36-foot. The first revision is the addition of a pedestrian easement between Lots 11 and 12 that will connect to property owned by the Belton Independent School District to the north. The other revision has to do with Orion Drive. The right-of-way has been widened from 50 feet to 55 feet and the actual pavement for Orion east of Smock Mill Lane will go from 30 feet to 35 feet of paved surface. That will allow more room for traffic coming from the cul-de-sac that feed



onto Orion Drive. These are the criteria for exceptions to be considered. Mr. Mabry said Staff recommends approval of the preliminary plat with approval of the requested exception to Sec. 33-93(c) of the Subdivision Regulations requiring extension of stub out streets to adjoining properties and with approval of the requested exception to Sec. 33-93(h)(1) requiring that cul-de-sacs be a maximum of 500 feet in length.

Commissioner Pope made a motion to approve the amended preliminary plat of Windmill Farms Phase III with the exceptions as noted by the Staff recommendation; seconded by Commissioner Carothers.

Motion passed (7/0) Commissioner Talley departed the meeting at the beginning of this item.

**RESOLUTION NO. \_\_\_\_\_**

[ PLANNING NO. P-FY-08-26]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE AMENDED PRELIMINARY PLAT OF WINDMILL FARMS PHASE III, LOCATED ALONG THE WEST SIDE OF SH 317 ADJACENT TO THE CITY LIMIT LINE, WITH EXCEPTIONS TO THE SUBDIVISION ORDINANCE REGARDING STUB OUT STREETS AND CUL-DE-SACS; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on April 21, 2008, the Planning and Zoning Commission approved the amended preliminary plat of Windmill Farms Phase III, located along the west side of SH 317 adjacent to the city limit line, with exceptions to the Subdivision Ordinance regarding stub out streets and cul-de-sacs; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to approve the amended preliminary plat of Windmill Farms Phase III.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves the amended preliminary plat of Windmill Farms Phase III, located along the west side of SH 317 adjacent to the city limit line, more fully shown on the Plat which is on file in the City's Planning Department, incorporated herein and referred to by reference, and including the following exceptions to the Subdivision Ordinance: (a) *[Section 33-93(c)]* requiring extension of stub out streets to adjoining properties; and (b) *[Section 33-93 (h)(1)]* requiring that cul-de-sacs be a maximum of 500 feet in length.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, MAYOR

ATTEST:

APPROVED AS TO FORM:

---

Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(R)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** P-FY-08-27: Consider adopting a resolution approving the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple City limits.

**STAFF AND P&Z COMMISSION RECOMMENDATION:** At its April 21, 2008 meeting, the Planning and Zoning Commission voted 7/0 in accordance with the staff recommendation to approve the final plat in accordance with the approved preliminary plat in case P-FY-08-26.

Commissioners Kjelland and Talley were absent.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case P-FY-08-27, from the Planning and Zoning Commission meeting, April 21, 2008. This plat matches the preliminary plat approved by the P&Z.

**FISCAL IMPACT:** NA

### **ATTACHMENTS:**

Final Plat  
P&Z Staff Report (P-FY-08-27)  
P&Z Minutes (04/21/08)  
Resolution





# PLANNING AND ZONING COMMISSION AGENDA ITEM

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04/21/08  
Item #8  
Page 1 of 1

**APPLICANT / DEVELOPMENT:** W&B Development

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** P-FY-08-27 Consider a recommendation to approve the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple City limits. (Applicant: W&B Development)

**STAFF RECOMMENDATION:** Staff recommends approval of the final plat in accordance with the staff recommendations for modification of the preliminary plat in case P-FY-08-26.

**BACKGROUND:** This final plat was reviewed and deemed complete by the Design Review Committee (DRC) on March 31, 2008.

The City Council is the final plat authority since exceptions have been requested.

**ATTACHMENTS:**

Final Plat

**EXCERPTS FROM THE  
PLANNING & ZONING COMMISSION MEETING**

**MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

6. P-FY-08-27 Consider a recommendation to approve the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple City limits. (Applicant: W&B Development)

Staff recommends approval of the final plat in accordance with the staff recommendations in case P-FY-08-26.

Commissioner Martin made a motion to approve the final plat of P-F-08-27 Windmill Farms Phase III with the requested exceptions; seconded by Commissioner Pilkington. Motion passed (7/0).

**RESOLUTION NO. \_\_\_\_\_**

[ PLANNING NO. P-FY-08-27]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE FINAL PLAT OF WINDMILL FARMS PHASE III, A 145 LOT SUBDIVISION LOCATED ALONG THE WEST SIDE OF SH 317, SOUTH OF THE TEMPLE CITY LIMITS; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on April 21, 2008, the Planning and Zoning Commission approved the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple city limits; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to approve the final plat of Windmill Farms Phase III.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves the final plat of Windmill Farms Phase III, a 145 lot subdivision located along the west side of SH 317, south of the Temple city limits, more fully shown on the Plat which is on file in the City's Planning Department, incorporated herein and referred to by reference.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

---

WILLIAM A. JONES, III, MAYOR

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(S)  
Consent Agenda  
Page 1 of 1

### **DEPT. /DIVISION SUBMISSION & REVIEW:**

Tim Dolan, AICP, Planning Director

**ITEM DESCRIPTION:** P-FY-08-29: Consider adopting a resolution approving the Final Plat of Airport Park at Central Pointe, Phase 1, nine (9) commercial lots on 63.8± acres west of Old Howard Road, on both sides of Central Pointe Parkway, subject to the applicant's requested exception to the Subdivision Regulations Sections 33-93(h) (1) requiring that cul-de-sacs be a maximum of 500 feet in length,

**STAFF AND P&Z COMMISSION RECOMMENDATION:** The Planning & Zoning Commission by a vote of 8-0, and Staff recommend approval of the final plat with the following exception requested by the applicant:

1. Recommend allowing a cul-de-sac for Central Pointe Parkway length of 1,110 linear feet, with an exception to the 500 linear feet noted in the Subdivision Regulations 33-93(h) (1), and
2. The construction of temporary turn around locations to allow emergency vehicle maneuverability at the end of the cul-de-sac and the stub out streets.

**ITEM SUMMARY:** Please refer to the draft minutes from the meeting April 21<sup>st</sup>. The plat is for nine commercial lots on 63± acres (lot size varies from 2 to 6 acres) on both sides of Central Pointe Parkway with access from Old Howard Road. The Commission upon the request of Staff recommends approval of the over length cul-de-sac for Central Pointe Parkway considering the over length cul-de-sac of Central Pointe Parkway is due to phasing and it will be extended to the west and connect to the north to Mouser Road for future development, eliminating the over length measurement, and the construction of temporary turn around locations allowing emergency vehicle maneuverability at the cul-de-sac and the stub out streets.

### **ATTACHMENTS:**

PZ Staff Report  
PZ Excerpts  
Resolution



# PLANNING AND ZONING COMMISSION AGENDA ITEM

---

04/21/08  
Item# 7  
Page 1 of 1

**APPLICANT / DEVELOPMENT:**

Temple Economic Development Corporation and the City of Temple.

**CASE MANAGER:** Tim Dolan, AICP, Planning Director

**ITEM DESCRIPTION:**

P-FY-08-29-Consider a recommendation to approve the Final Plat of Airport Park at Central Pointe, Phase 1, nine (9) commercial lots subject to the applicant's requested exception to the Subdivision Regulations Sections 3393(h) (1) requiring that cul-de-sacs be a maximum of 500 feet in length, on 63.8± acres west of Old Howard Road, on both sides of Central Pointe Parkway. Zoned LI.

**STAFF RECOMMENDATION:**

The plat is for nine commercial/industrial lots (lot size varies from 2 to 4 acres) with access from Old Howard Road and from Central Pointe Parkway. The subdivision is under construction now. Central Pointe Parkway will eventually extend to the west and then north, east of the Airport and intersection Willow Grove Road. The temporary over length cul-de-sac of Central Pointe Parkway is due to phasing and it will be extended to the west for future development. Its measurement from Old Howard Road west is 1,000± linear feet, 500' longer than the maximum allowed in the Subdivision Ordinance. Staff recommends approval this exception with the final plat.

**BACKGROUND:**

The Design Review Committee (DRC) considered this project administratively complete on April 14th. Besides the over length cul-de-sac, due to phasing, it meets the requirements of the Subdivision Ordinance.

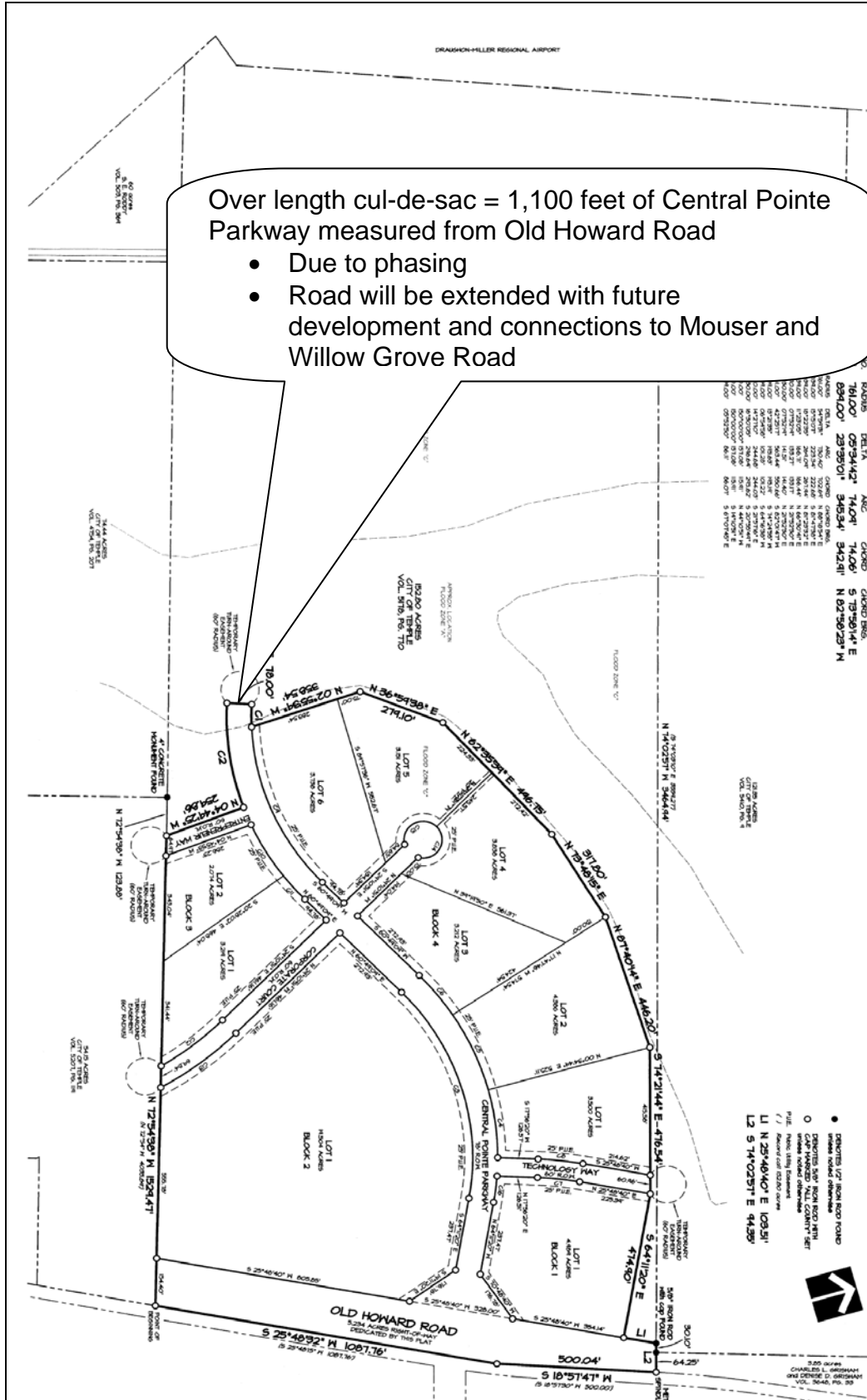
The City Council is the final plat authority since the over length cul-de-sac has been requested.

**ATTACHMENTS:**

Plat

Over length cul-de-sac = 1,100 feet of Central Pointe Parkway measured from Old Howard Road

- Due to phasing
- Road will be extended with future development and connections to Mouser and Willow Grove Road



**EXCERPTS FROM THE**  
**PLANNING & ZONING COMMISSION MEETING**  
**MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

7. P-FY-08-29 Consider a recommendation to approve the Final Plat of Airport Park at Central Pointe, Phase 1, nine (9) commercial lots subject to the applicant's requested exception to the Subdivision Regulations Sections 3393(h) (1) requiring that cul-de-sacs be a maximum of 500 feet in length, on 63.8± acres west of Old Howard Road, on both sides of Central Pointe Parkway. Zoned LI.

Mr. Tim Dolan, Planning Director, presented the final plat of Airport Park at Central Pointe; Phase 1 has been described for nine commercial/industrial lots (lot size varies from 2 to 4 acres) with access from Old Howard Road and from Central Pointe Parkway. The subdivision is under construction now. Central Pointe Parkway will eventually extend to the west and then north, east of the Airport and intersection Willow Grove Road. The temporary over length cul-de-sac of Central Pointe Parkway is due to phasing and it will be extended to the west for future development. Its measurement from Old Howard Road west is 1,000± linear feet, 500' longer than the maximum allowed in the Subdivision Ordinance. Staff recommends approval this exception with the final plat. The same criteria noted for exceptions focus on three items. (1) There are special circumstances affect the land involved; (2) granting to an exception will not be detrimental to the public health, safety, and welfare of the area; and (3) granting the exception would not have the effect of preventing any orderly subdivision of any other land in the area. Mr. Dolan said the Staff recommends approval of the final plat with the cul-de-sac exception to allow the cul-de-sac for the nine commercial lots and due to the phasing it would be extended and be eliminated in the future and also the temporary turn around for the fire truck apparatus.

Commissioner Pilkington made a motion to approve P-FY-08-29 as presented including the exception requiring cul-de-sacs be a maximum of 500 feet in length; seconded by Vice-Chair Pope.

Motion passed (7/0).

**RESOLUTION NO. \_\_\_\_\_**

[ PLANNING NO. P-FY-08-29]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE FINAL PLAT OF AIRPORT PARK AT CENTRAL POINTE, PHASE 1, 9 COMMERCIAL LOTS ON APPROXIMATELY 63.8 ACRES WEST OF OLD HOWARD ROAD, ON BOTH SIDES OF CENTRAL POINTE PARKWAY, WITH AN EXCEPTION TO THE SUBDIVISION ORDINANCE REGARDING CUL-DE-SAC LENGTH; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on April 21, 2008, the Planning and Zoning Commission approved the final plat of Airport Park at Central Pointe, Phase 1, 9 commercial lots on approximately 63.8 acres west of Old Howard Road, on both sides of Central Pointe Parkway, with an exception to the Subdivision Ordinance regarding cul-de-sac length; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to approve the final plat of Airport Park at Central Pointe, Phase 1.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves the final plat of Airport Park at Central Pointe, Phase 1, 9 commercial lots on approximately 63.8 acres west of Old Howard Road, on both sides of Central Pointe Parkway, more fully shown on the Plat which is on file in the City's Planning Department, incorporated herein and referred to by reference, and including the following exception to the Subdivision Ordinance: *[Section 33-93 (h)(1)]* requiring that cul-de-sacs be a maximum of 500 feet in length.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, MAYOR

ATTEST:

APPROVED AS TO FORM:

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Clydetta Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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### **DEPT./DIVISION SUBMISSION & REVIEW:**

Belinda Mattke, Director of Purchasing

**ITEM DESCRIPTION:** Consider adopting a resolution allowing for a 5% local preference on all formal bids over \$25,000 where applicable by law.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** Based on a law enacted in 1999, on November 4, 1999, Council authorized a 3% local preference on the purchase of vehicles and construction equipment. Based on changes in the law, on March 4, 2004, Council authorized an expansion to this 3% local preference to include all formal bids for real and personal property over \$25,000. Construction contracts and service contracts were precluded from this policy.

Effective September 1, 2005, State law was enacted allowing municipalities with a population less than 250,000 to endorse a local preference of 5%, and to expand the scope of the applicable bids to include services (Local Government Code §271.9051). Accordingly, this change in the law allows construction contracts and service contracts to be considered under the Local Preference guidelines.

Since originally enacted, local preference law allows for the following:

If a local government received one or more bids from a bidder whose principal place of business is in the local government (i.e. a store front), and whose bid is within X% of the lowest bid price received, the local government may enter into a contract with:

- a. the lowest bidder; or
- b. the local vendor, if the local government determines, in writing, that the local vendor offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents and increase tax revenues.

The total effect of the City's current 3% local preference policy has been minimal because of three reasons: (1) the low bidder is local; (2) the local business is not within 3% of the low bid; or (3) either there is no local bidder that provides the commodity or the local bidder did not participate in the bid. Had the local preference policy been increased to 5% and the coverage expanded to include construction and service contracts in FY2007 and thus far in FY2008, two construction contracts would have been impacted totaling \$548,034, with a total incremental local preference expenditure effect of \$3,593.44.

At this time, Staff would recommend that we expand the local preference policy to include services, including construction and service contracts, and to increase the local preference from 3% to 5%. While we are not recommending application of the local preference policy to informal bids, we continue to recommend that we encourage the departments to buy local when possible while still meeting the requirement of the purchasing ordinance in obtaining the required number of quotes.

**FISCAL IMPACT:** Based on historical information, the impact will be minimal.

**ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ALLOWING FOR A 5% LOCAL PREFERENCE ON ALL FORMAL BIDS OVER \$25,000 WHERE APPLICABLE BY LAW; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, on November 4, 1999, the City Council authorized a 3% local preference on the purchase of vehicles and construction equipment;

**Whereas**, based on changes in the law, on March 4, 2004, the City Council authorized an expansion to this 3% local preference to include all formal bids for real and personal property over \$25,000 – construction contracts and service contracts were precluded from this policy;

**Whereas**, effective September 1, 2005, State law was enacted allowing municipalities with a population less than 250,000 to endorse a local preference of 5%, and to expand the scope of the applicable bids to include services – this allows construction contracts and service contracts to be considered under the Local Preference guidelines;

**Whereas**, the Staff recommends expanding the local preference policy to include to include services, including construction and service contracts, and to increase the local preference from 3% to 5%; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes a 5% local preference on all formal bids over \$25,000 where applicable by law.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of May, 2008.



THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #6(U)  
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### **DEPT./DIVISION SUBMISSION & REVIEW:**

Ken Cicora, Director of Parks and Leisure Services

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing the transfer of the Business Rail Car to the Arizona Railroad Museum in Chandler, Arizona.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** The Business Rail Car was donated by Lewis Perry to the Railroad and Heritage Museum (RRHM) and the City of Temple in December 2001. Since its donation it has been parked in the BNSF rail yard in an unusable condition. It has been the target of vandals over the years and is in need of major restoration.

Since there are currently no funds available from the Railroad and Heritage Museum or the City to repair the Business Rail Car, the RRHM would like to donate the car to the Arizona Railroad Museum in Chandler Arizona. The BNSF is willing to transport the car via freight train once the necessary repairs, funded by Mr. Fred Springer of Salado, are made to make it road worthy. The Business Rail Car will then be restored by the Arizona Railroad Museum and put into service for private usage at which time the Railroad and Heritage Museum will have annual usage for mutually agreed upon special events.

The Arizona Railroad Museum is a privately funded not-for-profit organization that specializes in restoring, maintaining and operating railroad cars. It is an ideal climate to house railroad stock and has a covered shelter to protect rail cars from various climactic conditions. They have a large staff dedicated to restoring railcars as well as raising the necessary funding to support major restoration projects.

The Board of the Railroad and Heritage Museum and the Parks and Leisure Services staff recommend City Council approve the transfer of the railroad car to the Arizona Railroad Museum.

**FISCAL IMPACT:** None

### **ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE TRANSFER OF THE BUSINESS RAIL CAR TO THE ARIZONA RAILROAD MUSEUM IN CHANDLER, ARIZONA; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas,** the Business Rail Car was donated to the Railroad and Heritage Museum and the City of Temple by Lewis Perry in December, 2001;

**Whereas,** since its donation it has been parked in the BNSF rail yard in an unusable condition, has been the target of vandals over the years, and is in need of major restoration – there are currently no funds available through the City or the Museum to repair the rail car;

**Whereas,** the Board of Directors of the Railroad and Heritage Museum and the Parks and Leisure Services staff recommend transferring the rail car to the Arizona Railroad Museum in Chandler, Arizona, who will restore it and put it into service for private usage at which time the Railroad and Heritage Museum will have annual usage for mutually agreed upon special events;

**Whereas,** the BNSF Railroad is willing to transport the car to the museum in Arizona once the necessary repairs (funded by Mr. Fred Springer of Salado, Texas) are made to make it road worthy; and

**Whereas,** the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council authorizes the transfer of the Business Rail Car to the Arizona Railroad Museum in Chandler, Arizona.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of May, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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### **DEPT./DIVISION SUBMISSION & REVIEW:**

Lonzo Wallace, Jr., Fire Chief

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing funding from the Child Safety Fees for the 2008 Junior Fire Cadet Program in the amount of \$12,970.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description

**ITEM SUMMARY:** Under the authority of the Texas Transportation Code, in 2001, the Bell County Commissioners Court imposed a \$1.50 per vehicle Child Safety registration fee to be collected by our County Tax Assessor-Collector. The City of Temple's allocation is based on population. These funds must be used for a school crossing guard program if the City operates one. Since the City does not operate a crossing guard program, the funds may be spent on programs designed to enhance child safety, health or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.

We are recommending \$12,970 of the child safety fees collected be provided to the 2008 Junior Fire Cadet Program. Firefighters serve as instructors to youngsters between the ages of 9 to 13. The cadets participate in hands-on activities such as confidence building, ladders, fire hose, and CPR/first-aid. Students learn the importance of setting goals, working as a team, ethics, and respect of self and others. The goal of the program is to give kids the opportunity to improve themselves. Guest speakers explain the importance of exercise, proper nutrition, and staying in school. The Temple Independent School District has partnered with the department and has provided a campus for the program since 2002.

The department started the program in the summer of 1999 with 31 boys and girls attending the four-week long class. We quickly learned the value of this program by seeing the young faces in the classroom and feeling the difference firefighter's role models make in their lives. It is impossible to put an exact value on the benefits of this program but we do know that we enrich the lives of all the people participating in the program. The funding will be used for a three and one-half week long class.

**FISCAL IMPACT:** A budget amendment is presented for Council's approval appropriating \$12,970 to account 110-0000-452-0164, from the Child Safety Fees collected by the County on behalf of the City, to Temple Fire and Rescue's overtime account, 110-2200-522-11-19, in the amount of \$9,460; and Contributions and Prizes, account 110-2200-522-25-10 in the amount of \$3,510.

If funding for this expenditure is approved, there will be \$246,323 available in Child Safety Funds for future eligible expenditures.

**ATTACHMENTS:**  
[Budget Amendment](#)  
[Resolution](#)

FY 2007**BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.

**Adjustments should be rounded to the nearest \$1.**

+

-

| ACCOUNT NUMBER     | PROJECT # | ACCOUNT DESCRIPTION                    | INCREASE         |  | DECREASE    |  |
|--------------------|-----------|--|------------------|--|-------------|--|
| 110-0000-452-01-64 |           | Child Safety Fee Revenue               | \$ 12,970        |  |             |  |
| 110-2200-522-11-19 |           | Fire Department Overtime               | 9,460            |  |             |  |
| 110-2200-522-25-10 |           | Fire Department Contributions & Prizes | 3,510            |  |             |  |
|                    |           |  |                  |  |             |  |
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|                    |           |  |                  |  |             |  |
|                    |           |  |                  |  |             |  |
| <b>TOTAL.....</b>  |           |  | <b>\$ 25,940</b> |  | <b>\$ -</b> |  |

**EXPLANATION OF ADJUSTMENT REQUEST-** Include justification for increases AND reason why funds in decreased account are available.

To appropriate Child Safety Fees received from Bell County to fund the Jr. Fire Cadet Program for 2008. The child safety fees must be used on programs designed to enhance child safety, health or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention. The Jr. Fire Cadet Program is a four week long class in which the cadets participate in hands on activities such as confidence building, ladders, fire hose, and CPR/first aid. Students learn the importance of setting goals, working as a team, ethics, and respect of self and others.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒

Yes

☐

No

DATE OF COUNCIL MEETING

5/1/2008

WITH AGENDA ITEM?

☒

Yes

☐

No

\_\_\_\_\_  
Department Head/Division Director\_\_\_\_\_  
Date☐  
☐

Approved

Disapproved

\_\_\_\_\_  
Finance\_\_\_\_\_  
Date☐  
☐

Approved

Disapproved

\_\_\_\_\_  
City Manager\_\_\_\_\_  
Date☐  
☐

Approved

Disapproved

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING FUNDING FROM THE CHILD SAFETY FEES FOR THE 2008 JUNIOR FIRE CADET PROGRAM, IN THE AMOUNT OF \$12,970; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas,** the City of Temple receives an annual allocation of child safety fees from Bell County that are collected on every vehicle registered in Bell County;

**Whereas,** these funds must be used for programs such as school crossing guards, child safety, health or nutrition, child abuse prevention and intervention and drug and alcohol abuse prevention;

**Whereas,** from those funds, the Fire Department requests an amount of \$12,970 for the 2008 Junior Fire Cadet Program;

**Whereas,** an amendment to the FY2007-2008 budget needs to be approved to transfer the funds to the appropriate expenditure account; and

**Whereas,** the City Council has considered the matter and deems it in the public interest to authorize this action;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves providing funding from the Child Safety Fees-Bell County for the 2008 Junior Fire Cadet Program in the amount of \$12,970.

**Part 2:** The City Council approves an amendment to the FY2007-2008 budget, substantially in the form of the copy attached as Exhibit A, for this purpose.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.



PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing certain City employees to conduct investment transactions, transfer funds, and represent the City in other financial transactions.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** This item is to remove the authority for Sara Sadler, the former Senior Accountant, to conduct cash management and investment functions for the City. Sara was serving as secondary for the Treasury Manager's responsibilities.

A new resolution is required any time a change occurs in any of the positions authorized to conduct financial transactions. Approval of this item will remove authorization from Sara Sadler, the former Senior Accountant. The following employees will retain authorization to conduct cash management and investment functions for the City:

David A. Blackburn – City Manager  
Traci L. Barnard – Director of Finance  
Melissa Przybylski – Assistant Director of Finance  
Stacey Reisner – Treasury/Grants Manager  
Clydetta Entzminger – City Secretary

When the Senior Accountant position is filled, another item will be presented for approval to give authority to the new Senior Accountant.

**FISCAL IMPACT:** No fiscal impact.

### **ATTACHMENTS:**

[Resolution](#)

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, GRANTING THE CITY MANAGER AND DIRECTOR OF FINANCE AND DESIGNATED DEPUTIES AUTHORITY TO CONDUCT INVESTMENT TRANSACTIONS, TRANSFER FUNDS, AND REPRESENT THE CITY OF TEMPLE IN OTHER FINANCIAL TRANSACTIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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WHEREAS, the City Council desires to grant City Manager, David A. Blackburn, and Director of Finance, Traci L. Barnard, and certain designated deputies named herein, the authority to conduct investment transactions, transfer funds, and represent the City in other financial transactions; and

WHEREAS, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

**Part 1:** The City Council authorizes David A. Blackburn, City Manager; Traci L. Barnard, Director of Finance; Melissa Przybylski, Assistant Director of Finance; Stacey Reisner, Treasury/Grants Manager; and Clydette Entzminger, City Secretary, full authority and empowers them to take all actions and execute all documents necessary or incidental to such direct security repurchase agreements, reverse security repurchase agreements, U.S. Treasury Securities, and U.S. Government Agency Securities to the full extent they may exercise that authority consistent with the Texas Depository Act and other applicable state and federal laws and regulations. **Their true signatures appear at the bottom of this resolution.**

**Part 2:** The City Council authorizes the above named individuals, on behalf of the City of Temple and as its own act, to sign checks, drafts, notes, bills of exchange, acceptances, or other orders for the payment of money; to endorse any checks, notes, bills, or other instruments owned, held, or endorsed to the City of Temple; to issue instructions regarding deposits, withdrawal, orders for payment or transfer of funds whether oral, by telephone, or electronic means; or to do any other convenient or necessary acts to the opening, maintenance, and closing of the accounts in accordance with the charter and ordinances of the City of Temple.

**Part 3:** Controls will remain in place to assure compliance with the City of Temple Fiscal and Budgetary Policies and Investment Policies to assure that assets are safeguarded against loss from unauthorized use or disposition; and that transactions are executed in accordance with management authorization are recorded properly to permit

the preparation of general purpose financial statements in accordance with generally accepted accounting principles.

**Part 4:** This authority shall remain in full force and effect until written notice revoking or modifying same has been given by the City Council and received by all other parties to this transaction.

**Part 5:** The City Manager and Director of Finance and the deputies herein named shall have an official bond in the sum adequate to protect the City, but of not less than Five Hundred Thousand (\$500,000) Dollars, each which fully meets the bonding requirements of Article 4, Section 4.28 and 4.29 of the City Charter.

**Part 6:** This Resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 7:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney

\_\_\_\_\_  
David A. Blackburn  
City Manager

\_\_\_\_\_  
Traci L. Barnard  
Director of Finance

\_\_\_\_\_  
Melissa Przybylski  
Assistant Director of Finance

\_\_\_\_\_  
Stacey Reisner  
Treasury/Grants Manager

\_\_\_\_\_  
Clydette Entzminger  
City Secretary



## COUNCIL AGENDA ITEM MEMORANDUM

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**DEPT./DIVISION SUBMISSION & REVIEW:**

Traci Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing budget amendments for fiscal year 2007-2008.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** This item is to recommend various budget amendments, based on the adopted FY 2007-2008 budget. The amendments will involve transfers of funds between contingency accounts, department and fund levels.

**FISCAL IMPACT:** The total amount of budget amendments is \$3,267.

**ATTACHMENTS:**

Budget amendments  
Resolution

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2008 BUDGET**  
**May 1, 2008**

| ACCOUNT #  | PROJECT # | DESCRIPTION                                  | APPROPRIATIONS  |                 |
|--|-----------|--|-----------------|-----------------|
|  |           |  | Debit           | Credit          |
| <b>110-2000-521-1119</b>   |           | Warrant Round-up Overtime (Police Dept.)     | \$ 2,216        |                 |
| <b>110-0000-452-0141</b>   |           | Traffic & Criminal Fines                     |                 | \$ 2,216        |
| Reimburse overtime for seven (7) police officers that worked the Warrant Round-up on February 16, 2008. Funds are available from additional revenues received from the Warrant Round-up Program. |           |  |                 |                 |
| <b>110-2000-521-2516</b>   |           | Judgments & Damages (Police Dept.)           | \$ 963          |                 |
| <b>110-1500-515-6531</b>   |           | <b>Contingency - Judgments &amp; Damages</b> |                 | <b>\$ 963</b>   |
| Attorney fees for lawsuit filed against City -- Steven Taylor v. City of Temple  |           |  |                 |                 |
| <b>110-3700-524-2516</b>   |           | Judgments & Damages (Construction Safety)    | \$ 88           |                 |
| <b>110-1500-515-6531</b>   |           | <b>Contingency - Judgments &amp; Damages</b> |                 | <b>\$ 88</b>    |
| Attorney fees for lawsuits filed against the City -- Centex Investments, Inc v. City of Temple (\$44) and Martinson v. City of Temple (\$44)   |           |  |                 |                 |
| <b>TOTAL AMENDMENTS</b>  |           |  | <b>\$ 3,267</b> | <b>\$ 3,267</b> |

**GENERAL FUND**

|   |                   |
|---|-------------------|
| Beginning <b>Contingency</b> Balance                              | \$ -              |
| Added to Contingency Sweep Account                                | \$ -              |
| Carry forward from Prior Year                                     | \$ -              |
| Taken From Contingency  | \$ -              |
| Net Balance of Contingency Account                                | \$ -              |
| Beginning <b>Judgments &amp; Damages</b> Contingency              | \$ 70,000         |
| Added to Contingency Judgments & Damages from Council Contingency | \$ -              |
| Taken From Judgments & Damages                                    | \$ (41,045)       |
| Net Balance of Judgments & Damages Contingency Account            | \$ 28,955         |
| Beginning <b>Master Plan Implementation</b> Contingency           | \$ 250,000        |
| Added to Master Plan Implementation Contingency                   | \$ -              |
| Taken From Master Plan Implementation Contingency                 | \$ (176,334)      |
| Net Balance of Master Plan Implementation Contingency Account     | \$ 73,666         |
| Beginning <b>Performance Pay</b> Contingency                      | \$ 150,000        |
| Added to Compensation Plan Contingency                            | \$ -              |
| Taken From Compensation Plan Contingency                          | \$ (150,000)      |
| Net Balance of Compensation Plan Contingency Account              | \$ -              |
| <b>Net Balance Council Contingency</b>                            | <b>\$ 102,621</b> |
| Beginning Balance <b>Budget Sweep</b> Contingency                 | \$ -              |
| Added to Budget Sweep Contingency                                 | \$ -              |
| Taken From Budget Sweep   | \$ -              |
| Net Balance of Budget Sweep Contingency Account                   | \$ -              |

**WATER & SEWER FUND**

|                                      |              |
|--------------------------------------|--------------|
| Beginning <b>Contingency</b> Balance | \$ 904,672   |
| Added to Contingency Sweep Account   | \$ -         |
| Taken From Contingency               | \$ (169,126) |
| Net Balance of Contingency Account   | \$ 735,546   |

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2008 BUDGET**  
**May 1, 2008**

| ACCOUNT # | PROJECT # | DESCRIPTION   | APPROPRIATIONS |                  |
|-----------|-----------|---|----------------|------------------|
|           |           |   | Debit          | Credit           |
|           |           | Beginning <b>Performance Pay</b> Contingency          | \$             | 30,000           |
|           |           | Added to Compensation Plan Contingency                | \$             | -                |
|           |           | Taken From Compensation Plan Contingency              | \$             | (30,000)         |
|           |           | Net Balance of Compensation Plan Contingency Account  | \$             | -                |
|           |           | Beginning <b>Approach Mains</b> Contingency           | \$             | 500,000          |
|           |           | Added to Approach Mains Contingency                   | \$             | -                |
|           |           | Taken From Approach Mains Contingency                 | \$             | (141,419)        |
|           |           | Net Balance of Approach Mains Contingency Account     | \$             | 358,581          |
|           |           | <b>Net Balance Water &amp; Sewer Fund Contingency</b> | <b>\$</b>      | <b>1,094,127</b> |
|           |           | <b>HOTEL/MOTEL TAX FUND</b>                           |                |                  |
|           |           | Beginning <b>Contingency</b> Balance                  | \$             | 20,126           |
|           |           | Added to Contingency Sweep Account                    | \$             | -                |
|           |           | Taken From Contingency                                | \$             | -                |
|           |           | Net Balance of Contingency Account                    | \$             | 20,126           |
|           |           | Beginning <b>Performance Pay</b> Contingency          | \$             | 8,000            |
|           |           | Added to Compensation Plan Contingency                | \$             | -                |
|           |           | Taken From Compensation Plan Contingency              | \$             | (8,000)          |
|           |           | Net Balance of Compensation Plan Contingency Account  | \$             | -                |
|           |           | <b>Net Balance Hotel/Motel Tax Fund Contingency</b>   | <b>\$</b>      | <b>20,126</b>    |
|           |           | <b>DRAINAGE FUND</b>                                  |                |                  |
|           |           | Beginning <b>Contingency</b> Balance                  | \$             | 1,495            |
|           |           | Added to Contingency Sweep Account                    | \$             | -                |
|           |           | Taken From Contingency                                | \$             | -                |
|           |           | Net Balance of Contingency Account                    | \$             | 1,495            |
|           |           | Beginning <b>Performance Pay</b> Contingency          | \$             | 2,000            |
|           |           | Added to Compensation Plan Contingency                | \$             | -                |
|           |           | Taken From Compensation Plan Contingency              | \$             | (838)            |
|           |           | Net Balance of Compensation Plan Contingency Account  | \$             | 1,162            |
|           |           | <b>Net Balance Drainage Fund Contingency</b>          | <b>\$</b>      | <b>2,657</b>     |
|           |           | <b>FED/STATE GRANT FUND</b>                           |                |                  |
|           |           | Beginning <b>Contingency</b> Balance                  | \$             | -                |
|           |           | Carry forward from Prior Year                         | \$             | 86,477           |
|           |           | Added to Contingency Sweep Account                    | \$             | -                |
|           |           | Taken From Contingency                                | \$             | (51,365)         |
|           |           | Net Balance of Contingency Account                    | <b>\$</b>      | <b>35,112</b>    |

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE,  
TEXAS, APPROVING BUDGET AMENDMENTS TO THE 2007-2008  
CITY BUDGET; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on the 23<sup>rd</sup> day of August, 2007, the City Council approved a budget for the 2007-2008 fiscal year; and

**Whereas**, the City Council deems it in the public interest to make certain amendments to the 2007-2008 City Budget.

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

**Part 1**: The City Council approves amending the 2007-2008 City Budget by adopting the budget amendments which are more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2**: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 1<sup>st</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #7  
Regular Agenda  
Page 1 of 3

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance amending the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2008-2022 to include redesignation of projects within the Project Plan, bond proceeds, and future year bond payments.

**STAFF RECOMMENDATION:** Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for May 15, 2008.

**ITEM SUMMARY:** On February 21, 2008, the Financing Plan was amended to increase the issuance of bonds for additional cost for the Outer Loop Phase II, adjusted tax revenues for years 2012 – 2022 for the revised increment attributed to Gulf States Toyota (GST), added the revenue to be received from GST for the underground storm water improvements in the Rail Park, moved construction funding for the Southeast Industrial Park to FY 2009, and adjusted debt service to reflect the amortization of \$22,395,000 for 15 years at a net interest cost of 4.75%.

On March 20, 2008, the Council awarded the sale of \$16,010,000 Combination Tax and Revenue Certificates of Obligations (CO's) for projects attached in Exhibit A. The sale of the bonds on March 20, 2008, did not include the funding for project cost associated with rail construction or rail improvements. Original plans were to fund rail construction (\$6,185,000) with the issuance of taxable certificates of obligation of which the City would pledge an ad valorem tax but apply Tax Increment revenues.

Following discussions with the City's Bond Counsel, staff recommends to fund the improvements with Revenue Bonds payable solely from the revenues of the Tax Increment Reinvestment Zone. This direction was based on discussions with the Attorney General's Office related to rail improvements qualifying as a "public" work within the meaning of the certificate of obligation act.

The proposed Financing Plan increases the amount of revenue bonds to be issued. The amount was increased to provide additional funding to cover updated project cost, purchase of land, and a project contingency. Rail construction estimates increased due to rising prices of steel. The contingency was added due to the uncertainties in the future cost of steel.

The proposed amendment adjusts the following line items on the Financing Plan:

**Line 25 – Interest Income:** Reduced interest income by \$200,000 to reflect the declining interest rates.

**Line 30 – Bond Proceeds:** Increased the bond issue by \$3,980,000 to fund the purchase of approximately 355 acres (\$2,700,000), to increase the amount of funding needed for the Rail Park Phase II (\$710,000), to add contingencies for the Rail Park Phase II project (\$800,000), and reduced issuance costs (\$230,000).

**Line 71 – Debt Service – 2008 Nontaxable CO issue:** The debt service was adjusted to reflect the actual amortization of \$16,010,000 for 15 years at a net interest cost of 4.08%.

**Line 72 – Debt Service – 2008 Taxable Revenue Bonds:** The debt service was adjusted to reflect the estimated amortization of \$10,365,000 for 15 years at a net interest cost of 5.50%.

**Line 73 – Issuance Costs:** Reduced the amount of issuance costs by \$230,000. Savings realized from issuing bonds through private placement.

**Line 100 – Railroad Spur Improvements:** Added \$1,400,000 for additional funding need for construction of the Rail Park Phase II project. \$710,000 of the funding comes from the increase in Taxable Revenue Bonds and \$690,000 comes from the Northwest Loop funding.

**Line 122 – Land Acquisition:** Added \$2,700,000 for the purchase of approximately 355 acres. Funding for this purchase comes from the increase in Taxable Revenue Bonds.

**Line 221 – Airport Park:** Added \$14,000 to the Airport Park project to fund a change order for the sewer project and fund testing fees for the entire project.

**Line 306 – Bioscience Park:** Reduced by \$14,000 to fund the amount needed for the Airport Park project.

**Line 420 – Northwest Loop:** Reduced by \$690,000 to fund the additional costs of Rail Park Phase II project.

**Line 500 – Zone Projects – Public Improvements:** Adjusted future years allocations (FY 2018 – FY 2022) of project funding to cover future debt service payments.

**Line 501 – Taxable Revenue Bond Contingencies:** Added \$800,000 to the Taxable Revenue Bond issue for project contingency on the Rail Park Phase II project.

**FISCAL IMPACT:** The proposed amendment was funded by increasing the bond issuance by \$3,980,000, the use of fund balance of \$202,303, adjusting future zone project funding and changes in debt service payments for FY 2008- FY 2022, and reallocating \$14,000 to the Airport Park.

**ATTACHMENTS:**

Financing Plan  
Summary Financing Plan with Detailed Project Plan  
Exhibit A – March 2008 Bond Issue Project Detail  
Budget Adjustment  
Ordinance

| DESCRIPTION                                    | Y/E 9/30/07    |                | Y/E 9/30/08    | Y/E 9/30/09    | Y/E 9/30/10    | Y/E 9/30/11    | Y/E 9/30/12    | Y/E 9/30/13    | Y/E 9/30/14    | Y/E 9/30/15    | Y/E 9/30/16    | Y/E 9/30/17    | Y/E 9/30/18    | Y/E 9/30/19    | Y/E 9/30/20    | Y/E 9/30/21    | Y/E 9/30/22    |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
|  | PLAN           | ACTUAL         | Year 26        | Year 27        | Year 28        | Year 29        | Year 30        | Year 31        | Year 32        | Year 33        | Year 34        | Year 35        | Year 36        | Year 37        | Year 38        | Year 39        | Year 40        |
| 1 Appraised Value                              | \$ 119,486,508 | \$ 119,486,508 | \$ 123,405,421 | \$ 131,160,668 | \$ 140,238,368 | \$ 144,626,499 | \$ 212,822,764 | \$ 233,450,991 | \$ 235,785,501 | \$ 238,143,356 | \$ 240,524,790 | \$ 242,930,038 | \$ 245,359,338 | \$ 314,562,931 | \$ 336,208,561 | \$ 339,570,646 | \$ 342,966,353 |
| 5 FUND BALANCE, Begin                          | \$ 12,400,571  | \$ 12,267,431  | \$ 8,788,778   | \$ 1,453,464   | \$ 1,261,644   | \$ 2,406,328   | \$ 2,345,409   | \$ 1,476,477   | \$ 1,389,682   | \$ 1,768,571   | \$ 1,714,506   | \$ 1,723,811   | \$ 1,293,408   | \$ 1,230,604   | \$ 1,468,105   | \$ 1,696,570   | \$ 2,001,011   |
| SOURCES OF CASH:                               |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| 10 Tax Revenues                                | 3,366,807      | 3,529,948      | 3,934,627      | 4,051,439      | 4,592,298      | 4,679,594      | 6,271,181      | 6,789,596      | 6,857,023      | 6,925,124      | 6,993,906      | 7,063,376      | 7,133,540      | 8,749,666      | 9,249,246      | 9,341,269      | 9,434,212      |
| 15 Allowance for Uncoll. Taxes                 | -              | -              | (105,146)      | (108,507)      | (114,341)      | (114,517)      | (115,655)      | (116,801)      | (117,961)      | (118,132)      | (120,314)      | (121,509)      | (122,715)      | (123,934)      | (125,165)      | (126,408)      | (127,663)      |
| 20 Interest Income-Bonds                       | 164,996        | 195,707        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 25 Interest Income-Other                       | 300,000        | 323,864        | 240,000        | 40,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 50,000         | 40,000         | 40,000         | 30,000         | 10,000         |
| 30 Other-Bond Proceeds                         | -              | -              | 26,375,000     | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 33 Miscellaneous Reimbursements (GST)          | -              | -              | 925,000        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 34 Sale of Land                                | -              | 104,292        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 35 Grant Funds                                 | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 40 TOTAL SOURCES                               | 3,831,803      | 4,153,811      | 31,369,481     | 3,982,932      | 4,529,957      | 4,615,077      | 6,205,526      | 6,722,795      | 6,789,062      | 6,855,992      | 6,923,592      | 6,991,867      | 7,060,825      | 8,665,732      | 9,164,081      | 9,244,861      | 9,316,549      |
| USES OF CASH:                                  |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| Operating Expenses                             |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| 50 Prof Svcs/Proj Mgmt                         | 125,740        | 53,400         | 88,434         | 90,202         | 92,007         | 93,847         | 95,724         | 97,638         | 99,591         | 101,583        | 103,615        | 105,687        | 107,801        | 109,957        | 112,156        | 114,399        | 116,687        |
| 51 Legal/Audit                                 | 1,100          | 1,100          | 1,100          | 1,100          | 1,100          | 1,100          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,300          | 1,300          | 1,300          | 1,300          | 1,300          | 1,400          |
| 55 Zone Mtc                                    | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         | 75,000         |
| 60 TEDC  | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        | 100,000        |
| 65 TISD-Joint Use facilities                   | 498,816        | 413,289        | 107,508        | 22,201         | 22,423         | 22,647         | 22,873         | 23,102         | 23,333         | 23,567         | 23,802         | 24,040         | 24,281         | 24,523         | 24,769         | 25,016         | 25,267         |
| 90 Subtotal-Operating Expenses                 | 800,656        | 642,789        | 372,042        | 288,503        | 290,530        | 292,594        | 294,797        | 296,940        | 299,124        | 301,350        | 303,617        | 306,027        | 308,382        | 310,780        | 313,225        | 315,715        | 318,354        |
| Projects (2)                                   |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| 199 North Zone (3)                             | 3,594,348      | 2,838,384      | 19,768,465     | 40,000         | 40,000         | -              | -              | 800,000        | -              | -              | -              | -              | 2,700,000      | -              | -              | -              | -              |
| 299 Western Aviation Zone (3)                  | 877,499        | 600,398        | 3,042,128      | -              | 300,000        | 1,225,150      | 2,175,850      | 1,100,000      | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 399 Western Bio-Science & Medical Zone (3)     | 6,201,150      | 2,298,660      | 10,555,490     | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 400 Southeast Industrial Park Zone (3)         | 185,000        | 111,500        | 73,500         | 1,200,000      | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 405 General Roadway Improvements               | 318,050        | 267,939        | 250,111        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 410 Major Gateway Entrances                    | -              | -              | -              | 400,000        | -              | 400,000        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 415 Downtown Improvements                      | 7,197          | 2,328          | 18,481         | 185,779        | 192,113        | 195,747        | 197,691        | 199,655        | 201,639        | 203,643        | 205,667        | 207,710        | 209,775        | 211,860        | 213,966        | 216,093        | 218,241        |
| 420 Loop 363 Improvements                      | 2,300,000      | -              | 1,610,000      | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 430 Reserve for Acar facility                  | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 500 Zone Projects - Public Improvements        | -              | -              | 1,080,815      | -              | 500,000        | 500,000        | 500,000        | 500,000        | 2,000,000      | 2,500,000      | 2,500,000      | 3,000,000      | -              | 4,000,000      | 4,500,000      | 4,500,000      | 6,874,548      |
| 600 Subtotal-Projects                          | 13,483,244     | 6,119,209      | 36,398,990     | 1,825,779      | 1,032,113      | 2,320,897      | 2,873,541      | 2,599,655      | 2,201,639      | 2,703,643      | 2,705,667      | 3,207,710      | 2,909,775      | 4,211,860      | 4,713,966      | 4,716,093      | 7,092,789      |
| Debt Service                                   |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| 625 2003 Bond Issue                            | 870,166        | 870,166        | 867,935        | 866,385        | 868,545        | 868,420        | 867,035        | 869,055        | 869,855        | 868,930        | 866,530        | 867,440        | 866,753        | 869,240        | 869,640        | 868,070        | 870,070        |
| 626 2008 Bond Issue-Non-taxable (\$16.010 mil) | -              | -              | 623,705        | 635,460        | 635,460        | 635,460        | 1,785,460      | 1,788,540      | 1,784,580      | 1,783,784      | 1,785,948      | 1,785,868      | 1,783,544      | 1,783,976      | 1,786,960      | 1,787,292      | 1,784,972      |
| 627 2008 Bond Issue-Taxable (\$10.365 mil)     | -              | -              | 275,923        | 557,425        | 557,425        | 557,425        | 1,252,425      | 1,254,200      | 1,253,775      | 1,251,150      | 1,251,325      | 1,254,025      | 1,253,975      | 1,251,175      | 1,250,625      | 1,252,050      | 1,250,175      |
| 628 Issuance Costs                             | -              | -              | 165,000        | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 630 Paying Agent Services                      | 1,200          | 300            | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          | 1,200          |
| 635 Subtotal-Debt Service                      | 871,366        | 870,466        | 1,933,763      | 2,060,470      | 2,062,630      | 2,062,505      | 3,906,120      | 3,912,995      | 3,909,410      | 3,905,064      | 3,905,003      | 3,908,533      | 3,905,472      | 3,905,591      | 3,908,425      | 3,908,612      | 3,906,417      |
| 650 TOTAL USES                                 | 15,155,266     | 7,632,464      | 38,704,795     | 4,174,752      | 3,385,273      | 4,675,996      | 7,074,458      | 6,809,590      | 6,410,173      | 6,910,057      | 6,914,287      | 7,422,270      | 7,123,629      | 8,428,231      | 8,935,616      | 8,940,420      | 11,317,560     |
| 660 FUND BALANCE, End                          | 1,077,108      | 8,788,778      | 1,453,464      | 1,261,644      | 2,406,328      | 2,345,409      | 1,476,477      | 1,389,682      | 1,768,571      | 1,714,506      | 1,723,811      | 1,293,408      | 1,230,604      | 1,468,105      | 1,696,570      | 2,001,011      | (0)            |
| 670 Required Debt Reserve                      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | (968,000)      | -              |
| 700 AVAILABLE FUND BALANCE                     | \$ 109,108     | \$ 7,820,778   | \$ 485,464     | \$ 293,644     | \$ 1,438,328   | \$ 1,377,409   | \$ 508,477     | \$ 421,682     | \$ 800,571     | \$ 746,506     | \$ 755,811     | \$ 325,408     | \$ 262,604     | \$ 500,105     | \$ 728,570     | \$ 1,033,011   | \$ (0)         |
|  |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |                |
| 800 FUND BALANCE, Begin                        | 12,400,571     | 12,400,571     | 8,788,778      | 1,453,464      | 1,261,644      | 2,406,328      | 2,345,409      | 1,476,477      | 1,389,682      | 1,768,571      | 1,714,506      | 1,723,811      | 1,293,408      | 1,230,604      | 1,468,105      | 1,696,570      | 2,001,011      |
| Prior period Adjustment-net                    | (133,140)      | (133,140)      | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| 805 Revenue over(under)/expense                | (11,323,463)   | (3,478,653)    | (7,335,314)    | (191,820)      | 1,144,684      | (60,919)       | (868,932)      | (86,795)       | 378,889        | (54,065)       | 9,305          | (430,403)      | (62,804)       | 237,501        | 228,465        | 304,441        | (2,001,011)    |
| 810 FUND BALANCE, End                          | \$ 943,968     | \$ 8,788,778   | \$ 1,453,464   | \$ 1,261,644   | \$ 2,406,328   | \$ 2,345,409   | \$ 1,476,477   | \$ 1,389,682   | \$ 1,768,571   | \$ 1,714,506   | \$ 1,723,811   | \$ 1,293,408   | \$ 1,230,604   | \$ 1,468,105   | \$ 1,696,570   | \$ 2,001,011   | \$ (0)         |

## Summary Financing Plan with Detailed Project Plan

Project Plan - 04/23/08

| SUMMARY FINANCING PLAN                                |               |              |              |              |              |              |              |              |
|---|---------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|   | FY 2008       | FY 2009      | FY 2010      | FY 2011      | FY 2012      | FY 2013      | FY 2014      | FY 2015      |
| 5 Beginning Available Fund Balance, Oct 1             | \$ 8,788,778  | \$ 1,453,464 | 1,261,644    | 2,406,328    | 2,345,409    | 1,476,477    | 1,389,682    | 1,768,571    |
| 40 Revenues, net                                      | 31,369,481    | 3,982,932    | 4,529,957    | 4,615,077    | 6,205,526    | 6,722,795    | 6,789,062    | 6,855,992    |
| 45 Less Required Debt Reserve (increase after FY2006) | -             | -            | -            | -            | -            | -            | -            | -            |
| 49 Net Available for Appropriation                    | 40,158,259    | 5,436,396    | 5,791,601    | 7,021,405    | 8,550,935    | 8,199,272    | 8,178,744    | 8,624,563    |
| 50 General Administrative Expenditures                | 89,534        | 91,302       | 93,107       | 94,947       | 96,924       | 98,838       | 100,791      | 102,783      |
| 55 Zone Maintenance                                   | 75,000        | 75,000       | 75,000       | 75,000       | 75,000       | 75,000       | 75,000       | 75,000       |
| 60 Contractual Payments (TEDC)                        | 100,000       | 100,000      | 100,000      | 100,000      | 100,000      | 100,000      | 100,000      | 100,000      |
| 65 TISD - Joint Use Facilities                        | 107,508       | 22,201       | 22,423       | 22,647       | 22,873       | 23,102       | 23,333       | 23,567       |
| 70 Debt Service - 2003 Issue                          | 869,135       | 867,585      | 869,745      | 869,620      | 868,235      | 870,255      | 871,055      | 870,130      |
| 71 Debt Service - 2008 Issue (\$16.010 mil)           | 623,705       | 635,460      | 635,460      | 635,460      | 1,785,460    | 1,788,540    | 1,784,580    | 1,783,784    |
| 72 Debt Service - 2008 Taxable Issue (\$10.365 mil)   | 275,923       | 557,425      | 557,425      | 557,425      | 1,252,425    | 1,254,200    | 1,253,775    | 1,251,150    |
| 73 Issuance Costs                                     | 165,000       | -            | -            | -            | -            | -            | -            | -            |
| 75 Total Operating & Committed Expenditures           | 2,305,805     | 2,348,973    | 2,353,160    | 2,355,099    | 4,200,917    | 4,209,935    | 4,208,534    | 4,206,414    |
| 99 Net Available for Projects                         | \$ 37,852,454 | \$ 3,087,423 | \$ 3,438,441 | \$ 4,666,306 | \$ 4,350,018 | \$ 3,989,337 | \$ 3,970,210 | \$ 4,418,149 |

| PROJECT PLAN  |              |              |              |              |              |              |              |              |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
|   | FY 2008      | FY 2009      | FY 2010      | FY 2011      | FY 2012      | FY 2013      | FY 2014      | FY 2015      |
| <b><u>NORTH ZONE (including Enterprise Park):</u></b>   |              |              |              |              |              |              |              |              |
| 100 Railroad Spur Improvements                          | 9,717,960    | -            | -            | -            | -            | -            | -            | -            |
| 105 Elm Creek Detention Pond                            | 2,104,500    | -            | -            | -            | -            | -            | -            | -            |
| 110 Railroad Improvements Engineering Analysis          | -            | -            | -            | -            | -            | -            | -            | -            |
| 115 Railroad Repairs/Maintenance based on Analysis      | 295,005      | 40,000       | 40,000       | -            | -            | -            | -            | -            |
| 120 Enterprise Park Water Tank                          | -            | -            | -            | -            | -            | 800,000      | -            | -            |
| 121 ROW Acquisition - Public Improvements               | 950,000      | -            | -            | -            | -            | -            | -            | -            |
| 122 Land Acq-Wendland property (approx 355 acres)       | 2,700,000    | -            | -            | -            | -            | -            | -            | -            |
| 125 Wendland Road Improvements                          | 4,001,000    | -            | -            | -            | -            | -            | -            | -            |
| 199 Total North Zone (including Enterprise Park)        | 19,768,465   | 40,000       | 40,000       | -            | -            | 800,000      | -            | -            |
| <b><u>WESTERN AVIATION ZONE:</u></b>                    |              |              |              |              |              |              |              |              |
| 200 Detention Pond #2 including W 1-A                   | 42,559       | -            | -            | -            | -            | -            | -            | -            |
| 205 Old Howard Road from Ind Blvd to SH36               | -            | -            | -            | -            | -            | -            | -            | -            |
| 210 Old Howard Road Gateway Entrance Project            | 53,583       | -            | -            | -            | -            | -            | -            | -            |
| 215 WWI--Waste Water Ext SH36 to Ind Blvd               | 510,644      | -            | -            | -            | -            | -            | -            | -            |
| 220 R I-B, W I-B--Industrial Blvd Extension             | 1,095,925    | -            | -            | -            | -            | -            | -            | -            |
| 221 Airport Park Infrastructure Construction            | 1,291,017    | -            | -            | -            | -            | -            | -            | -            |
| 225 Airport Study                                       | 48,400       | -            | -            | -            | -            | -            | -            | -            |
| 230 Airport Trail Roadway-Ind Blvd to Pepper Crk (RIII) | -            | -            | -            | 115,500      | 654,500      | -            | -            | -            |
| 235 Airport Trail Utilities (W-V, W II, W III)          | -            | -            | -            | 109,650      | 621,350      | -            | -            | -            |
| 240 Old Howard North (R II)                             | -            | -            | 300,000      | 1,000,000    | 700,000      | -            | -            | -            |
| 245 Airport Trail Roadway-Pepper Crk to Mouser (R V)    | -            | -            | -            | -            | 200,000      | 1,100,000    | -            | -            |
| 299 Total Western Aviation Zone                         | 3,042,128    | -            | 300,000      | 1,225,150    | 2,175,850    | 1,100,000    | -            | -            |
| <b><u>WESTERN BIO-SCIENCE &amp; MEDICAL ZONE:</u></b>   |              |              |              |              |              |              |              |              |
| 300 Greenbelt Development along Pepper Creek            | 1,969,600    | -            | -            | -            | -            | -            | -            | -            |
| 305 Outer Loop Phase 2                                  | 6,665,390    | -            | -            | -            | -            | -            | -            | -            |
| 306 Bio-Science Park Phase 1                            | 1,295,500    | -            | -            | -            | -            | -            | -            | -            |
| 310 Bio-Science Institute                               | 625,000      | -            | -            | -            | -            | -            | -            | -            |
| 399 Total Western Bio-Science & Medical Zone            | 10,555,490   | -            | -            | -            | -            | -            | -            | -            |
| <b><u>OTHER PROJECTS:</u></b>                           |              |              |              |              |              |              |              |              |
| 400 Southeast Ind Park (Lorraine Drive)                 | 73,500       | 1,200,000    | -            | -            | -            | -            | -            | -            |
| 405 Roadway Maintenance/Improvements                    | 250,111      | -            | -            | -            | -            | -            | -            | -            |
| 410 Gateway Entrance Projects (after Old Howard)        | -            | 400,000      | -            | 400,000      | -            | -            | -            | -            |
| 415 Downtown Improvements                               | 18,481       | 185,779      | 192,113      | 195,747      | 197,691      | 199,655      | 201,639      | 203,643      |
| 420 Loop 363 Improvements (TxDOT commitment)            | 1,610,000    | -            | -            | -            | -            | -            | -            | -            |
| 430 Reserve for Acer facility                           | -            | -            | -            | -            | -            | -            | -            | -            |
| 499 Total Other Projects                                | 1,952,092    | 1,785,779    | 192,113      | 595,747      | 197,691      | 199,655      | 201,639      | 203,643      |
| 500 Undesignated Funding-Public Impr-nontaxable bonds   | 280,815      | -            | 500,000      | 500,000      | 500,000      | 500,000      | 2,000,000    | 2,500,000    |
| 501 Undesignated Funding-Public Impr-taxable bonds      | 800,000      | -            | -            | -            | -            | -            | -            | -            |
| 600 Total Planned Project Expenditures                  | 36,398,990   | 1,825,779    | 1,032,113    | 2,320,897    | 2,873,541    | 2,599,655    | 2,201,639    | 2,703,643    |
| 680 Fund Balance at Year End                            | \$ 1,453,464 | \$ 1,261,644 | \$ 2,406,328 | \$ 2,345,409 | \$ 1,476,477 | \$ 1,389,682 | \$ 1,768,571 | \$ 1,714,506 |
| 690 Required Debt Reserve                               | (968,000)    | (968,000)    | (968,000)    | (968,000)    | (968,000)    | (968,000)    | (968,000)    | (968,000)    |
| 700 AVAILABLE FUND BALANCE                              | \$ 485,464   | \$ 293,644   | \$ 1,438,328 | \$ 1,377,409 | \$ 508,477   | \$ 421,682   | \$ 800,571   | \$ 746,506   |

City of Temple, Texas

Reinvestment Zone No. 1 - Bond Issue {Nontaxable}

| Public Improvements:                    | Engineering  | Construction  | Total         | Contract Award |              |  |
|---|--------------|---------------|---------------|----------------|--------------|--|
|   |              |               |               | Engineering    | Construction |  |
| GST - PUBLIC INFRASTRUCTURE:            |              |               |               |                |              |  |
| Wendland Road Improvements-             |              |               |               |                |              |  |
| -(W/WW lines, gas, acc/dec lanes)       | \$ 276,500   | \$ 3,600,000  | \$ 3,876,500  | 20-Sep-07      | 20-Mar-08    |  |
| Underground Storm Water Improvements    | 125,000      | 800,000       | 925,000       |                | 3-Apr-08     |  |
| Wastewater Lift Station                 | 60,000       | 400,000       | 460,000       |                | 20-Mar-08    |  |
| Elm Creek Detention Pond                | 104,500      | 2,000,000     | 2,104,500     | 20-Sep-07      | 3-Apr-08     |  |
| BIOSCIENCE PARK:                        | 284,500      | 1,800,000     | 2,084,500     | 19-Apr-07      | 20-Mar-08    |  |
| AIRPORT PARK:                           | 157,000      | 2,705,285     | 2,862,285     | 19-Apr-07      | 4-Oct-07     |  |
| SOUTHEAST INDUSTRIAL PARK:              | 185,000      | -             | 185,000       | 19-Apr-07      |              |  |
| OUTER LOOP:                             |              |               |               |                |              |  |
| Phase II Construction                   | -            | 2,200,000     | 2,200,000     | 19-Apr-07      | 20-Mar-08    |  |
| ROW Acquisition for Public Improvements | -            | 950,000       | 950,000       |                |              |  |
| PROJECT CONTINGENCIES                   | -            | 280,815       | 280,815       |                |              |  |
| ISSUANCE COST                           | -            | -             | 81,400        |                |              |  |
| TOTAL                                   | \$ 1,192,500 | \$ 14,736,100 | \$ 16,010,000 |                |              |  |

Wendland Road improvements and Wastewater lift station will be bid together.

Underground stormwater improvements and Elm Creek Detention Pond will be bid together.

Bioscience Park will be bid with the Outer Loop Phase II.

Airport Park is currently under construction.

**BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.

**Adjustments should be rounded to the nearest \$1.**

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| ACCOUNT NUMBER     | PROJECT # | ACCOUNT DESCRIPTION              | INCREASE            | DECREASE            |
|--------------------|-----------|----------------------------------|---------------------|---------------------|
| 795-9700-531-68-25 | 100166    | Rail Park Phase II-Bond          | \$ 710,000          |                     |
| 795-9500-531-68-25 | 100166    | Rail Park Phase II-Non Bond      | \$ 690,000          |                     |
| 795-9500-531-65-18 | 100222    | Northwest Loop 363               |                     | 690,000             |
| 795-9700-531-61-10 | 100383    | Land Purchase                    | 2,700,000           |                     |
| 795-9700-531-68-26 | 100257    | Airport Park                     | 14,000              |                     |
| 795-9700-531-68-27 | 100259    | Bioscience Park                  |                     | 14,000              |
| 795-9700-531-65-30 |           | Taxable Revenue Bond Contingency | 800,000             |                     |
|                    |           |                                  |                     |                     |
| 795-9700-531-73-12 |           | Issuance Costs                   |                     | 230,000             |
|                    |           |                                  |                     |                     |
| 795-0000-490-15-16 |           | Bond Proceeds                    | 3,980,000           |                     |
| 795-0000-461-01-11 |           | Interest Income                  |                     | 200,000             |
| 795-0000-358-11-10 |           | Unreserved Fund Balance          |                     | 202,303             |
|                    |           |                                  |                     |                     |
| 795-9500-531-71-10 |           | Bond Principal                   | 205,000             |                     |
| 795-9500-531-72-11 |           | Bond Interest                    |                     | 202,697             |
|                    |           |                                  |                     |                     |
|                    |           | Do not post                      |                     |                     |
| <b>TOTAL.....</b>  |           |                                  | <b>\$ 9,099,000</b> | <b>\$ 1,539,000</b> |

**EXPLANATION OF ADJUSTMENT REQUEST-** Include justification for increases AND reason why funds in decreased account are available.

To appropriate the changes as amended in the TIF RZ#1's financing plan as adopted by the Zone Board on 04/23/08. First reading presented to Council on 05/01/08 and second reading presented to Council on 05/15/08.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒ Yes☐ No

DATE OF COUNCIL MEETING

5/15/2008

WITH AGENDA ITEM?

☒ Yes☐ No

Department Head/Division Director

Date

☐ Approved  
☐ Disapproved

Finance

Date

☐ Approved  
☐ Disapproved

City Manager

Date

☐ Approved  
☐ Disapproved

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING THE TAX INCREMENT FINANCING REINVESTMENT ZONE #1 FINANCING PLAN FOR FY 2008-2022 TO INCLUDE REDESIGNATION OF PROJECTS WITHIN THE PROJECT PLAN, BOND PROCEEDS, AND FUTURE YEAR BOND PAYMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; DECLARING FINDINGS OF FACT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the City Council (the "Council") of the City of Temple, Texas, (the "City") created Reinvestment Zone Number One, City of Temple, Texas (the "Zone") by Ordinance No. 1457 adopted on September 16, 1982;

**Whereas**, the Council adopted a Project Plan and Reinvestment Zone Financing Plan for the Zone by Ordinance No. 1525 adopted on December 22, 1983, and thereafter amended such plans by Ordinance No. 1664 adopted on June 20, 1985, Ordinance No. 1719 adopted on November 21, 1985, Ordinance No. 1888 adopted on December 21, 1987, Ordinance No. 1945 adopted on October 20, 1988; Ordinance No. 1961 adopted on December 1, 1988; Ordinance No. 2039 adopted on April 19, 1990; Ordinance No. 91-2119 adopted on December 5, 1991; Ordinance No. 92-2138 adopted on April 7, 1992; Ordinance No. 94-2260 adopted on March 3, 1994; Ordinance No. 95-2351 adopted on June 15, 1995; Ordinance No. 98-2542 adopted on February 5, 1998; Ordinance No. 98-2582 adopted on November 19, 1998; Ordinance No. 99-2619 adopted on March 18, 1999; Ordinance No. 99-2629 adopted on May 6, 1999; Ordinance No. 99-2631 adopted on May 20, 1999; Ordinance No. 99-2647 adopted on August 19, 1999; Ordinance No. 99-2678 adopted on December 16, 1999; Ordinance No. 2000-2682 adopted on January 6, 2000; Ordinance No. 2000-2729 adopted on October 19, 2000; Ordinance No. 2001-2772 adopted on June 7, 2001; Ordinance No. 2001-2782 adopted on July 19, 2001; Ordinance No. 2001-2793 adopted on September 20, 2001; Ordinance No. 2001-2807 on November 15, 2001; Ordinance No. 2001-2813 on December 20, 2001; Ordinance No. 2002-2833 on March 21, 2002; Ordinance No. 2002-2838 on April 18, 2002; Ordinance No. 2002-3847 on June 20, 2002; Ordinance No. 2002-3848 on June 20, 2002; Ordinance No. 2002-3868 on October 17, 2002; Ordinance No. 2003- 3888 on February 20, 2003; Ordinance No. 2003-3894 on April 17, 2003; Ordinance No 2003-3926 on September 18, 2003; Ordinance No. 2004-3695 on July 1, 2004; Ordinance No. 2004-3975 on August 19, 2004; Ordinance No. 2004-3981 on September 16, 2004; Ordinance No. 2005-4001 on May 5, 2005; Ordinance No. 2005-4038 on September 15, 2005; Ordinance No. 2006-4051 on January 5, 2006; Ordinance No. 2006-4076 on the 18<sup>th</sup> day of May, 2006; Ordinance No. 2006-4118; Ordinance No. 2007-4141 on the 19<sup>th</sup> day of April, 2007; Ordinance No. 2007-4155 on July 19, 2007; Ordinance No. 2007-4172 on the 20<sup>th</sup> day of September, 2007; Ordinance No. 2007-4173 on October 25, 2007; and Ordinance No. 2008-4201 on the 21<sup>st</sup> day of February, 2008;

**Whereas**, the Board of Directors of the Zone has adopted an additional amendment to the Reinvestment Zone Financing Plan for the Zone and forwarded such amendment to the Council for appropriate action;



**Whereas**, the Council finds it necessary to amend the Reinvestment Zone Financing Plan for the Zone to include financial information as hereinafter set forth;

**Whereas**, the Council finds that it is necessary and convenient to the implementation of the Reinvestment Zone Financing Plan, including the additional amendment, to establish and provide for an economic development program within the meaning of Article III, Section 52-a of the Texas Constitution ("Article III, Section 52-a"), Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code to develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone including programs to make grants and loans of Zone assets or from the tax increment fund of the Zone in an aggregate amount not to exceed the amount of the tax increment produced by the City and paid into the tax increment fund for the Zone for activities that benefit the Zone and stimulate business and commercial activity in the Zone as further determined by the City;

**Whereas**, the Council further finds that the acquisition of the land and real property assembly costs as described in the additional amendment to the Reinvestment Zone Financing Plan is necessary and convenient to the implementation of the Reinvestment Zone Financing Plan and will help develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone by providing land for development of future business and commercial activity, attracting additional jobs within the City and attracting additional sales and other taxes within the City; and

**Whereas**, the Council finds that such amendment to the Reinvestment Zone Financing Plan is feasible and conforms to the Comprehensive Plan of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS THAT:

**Part 1: Findings.** The statements contained in the preamble of this ordinance are true and correct and are adopted as findings of fact hereby.

**Part 2: Reinvestment Zone Financing Plan.** The amendment to the Tax Increment Financing Reinvestment Zone No. One Financing Plan, heretofore adopted by the Board of Directors of the Zone and referred to in the preamble of this ordinance, is hereby approved and adopted, as set forth in the Amendment to Reinvestment Zone Number One, City of Temple, Texas, attached hereto as Exhibit A. This expenditure requires an amendment to the 2007-2008 budget, a copy of which is attached as Exhibit B.

**Part 3: Plans Effective.** The Financing Plan for the Zone heretofore in effect shall remain in full force and effect according to the terms and provisions thereof, except as specifically amended hereby.

**Part 4: Copies to Taxing Units.** The City Secretary shall provide a copy of the amendment to the Reinvestment Zone Financing Plan to each taxing unit that taxes real property located in the Zone.

**Part 5: Economic Development Program.** The Council hereby establishes an economic development program for the Zone in accordance with Article III, Section 52-a of the Texas Constitution, Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code to develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone including a program to make grants and loans of Zone assets or from the tax increment fund of the Zone in accordance with the provisions of Article III, Section 52-a, Chapter 311 of the Texas Tax Code and Chapter 380 of the Texas Local Government Code as directed and authorized by the Council. The Council hereby further directs and authorizes the Board of Directors of the Zone to utilize tax increment reinvestment zone bond proceeds to acquire the land and pay other real property assembly costs as set forth in the additional amendment attached hereto to help develop and diversify the economy of the Zone and develop or expand business and commercial activity in the Zone in accordance with Article III, Section 52-a, Chapter 311 of the Texas Tax Code and Chapter 380 of the Texas Local Government Code.

**Part 6: Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

**Part 7: Effective Date.** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 8: Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading on the **1<sup>st</sup>** day of **May**, 2008.

PASSED AND APPROVED on Second and Final Reading on the **15<sup>th</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #8(A)  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance designating the South 1<sup>st</sup> Street corridor (from Adams Avenue to Loop 363) as Tax Abatement Reinvestment Zone Number Thirteen for Commercial/Industrial/ Residential Tax Abatement and authorizing a number of other economic development incentives for property redevelopment.

**STAFF RECOMMENDATION:** Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for May 15, 2008.

**ITEM SUMMARY:** This ordinance is the first of several planned economic incentive ordinances targeted at encouraging redevelopment in the areas of the City designated by the City Council as Strategic Investment Zones (SIZ). This proposed ordinance encourages redevelopment of the area primarily through two means: (1) the availability of tax abatement on the increased value of eligible real and personal property; and (2) matching grant incentives where the City participates with dollars or in-kind services to encourage redevelopment. The proposed ordinance creates enabling authority, but is subject to the availability of funds that may be appropriated from year to year by the City Council as part of the annual budget process.

As the SIZ report recommended, the City is employing a ‘combined-arms’ approach to redevelopment in our Strategic Investment Zones. On one hand we have sought voluntary compliance with existing codes and standards and backed that up with a willingness to require compliance through enforcement proceedings before the City’s Building and Standards Commission. We’ve also tried a “carrot” incentive through a willingness to assist property owners with the demolition of substandard buildings and signs in our corridors. As the report we presented to the City Council in December showed, we’ve demolished a number of high profile buildings and signs this past year, both within and near our SIZs.

The proposed ordinance continues those efforts by offering tax abatement and economic development incentives. The tax abatement we are proposing is similar to what has been successfully offered in the Downtown area for the past decade: 100% tax abatement for five years on the increased value of eligible real and personal property constructed in accordance with a tax abatement agreement.

Eligible property improvements for tax abatement in this SIZ corridor would include primarily commercial redevelopment with some residential redevelopment in a few blocks. The tax abatement area is essentially South 1<sup>st</sup> Street from Adams to South Loop 363, but also includes portions of the streets paralleling South 1<sup>st</sup> Street (South Main Street, South 2<sup>nd</sup>, South 3<sup>rd</sup>, South 5<sup>th</sup> Street, etc.). A detailed map will be provided to the City Council at our meeting. The condition of property adjoining South 1<sup>st</sup> Street (and the adjacent streets) in this area is likely to substantially arrest or impair sound growth because of the number of deteriorating structures, inadequate streets and sidewalks, lack of accessibility or usefulness of lots, unsanitary and unsafe conditions, the deterioration of site or other improvements, and conditions that endanger life or property by fire or other cause.

The matching grants for economic development and in-kind services include funds or services related to façade replacement or upgrading, sign improvements, landscaping improvements, asbestos surveys and abatements, demolitions and sidewalk replacement. Available of these matching funds would be on a first-come/first-served basis for eligible projects. A limited amount of funds (approximately \$75,000) are available in the current fiscal year, and if the City Council approves this ordinance we will seek additional funds in future budget years. A detailed description of the matching grants will be made during our presentation before the City Council.

We anticipate bringing several other incentive ordinances forward to the City Council, if directed to do so by the City Council. Other potential candidates for similar ordinances are Martin Luther King, Jr. Boulevard; North 3<sup>rd</sup> Street, West Avenue G & H, and the Downtown area. Providing adequate funding for the City matching funds will pose a fiscal challenge for the City, but the proposed incentives are tied to private investment in these SIZs that will help the City to recover it's investment.

**FISCAL IMPACT:** The City Council authorized \$85,000 in this fiscal year for economic development incentives in Strategic Investment Zone corridors. This amount remains available for incentives under the economic development incentive portion of this ordinance. Tax abatement agreements, if entered into in the future on property in this corridor, would rebate taxes on the increase value of eligible real and personal property in the area and would not require a financial outlay by the City.

**ATTACHMENTS:**

[Ordinance](#)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, DESIGNATING THE SOUTH 1ST STREET CORRIDOR (FROM ADAMS AVENUE TO LOOP 363) AS TAX ABATEMENT REINVESTMENT ZONE NUMBER THIRTEEN FOR COMMERCIAL, INDUSTRIAL OR RESIDENTIAL TAX ABATEMENT; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATING THERETO; ESTABLISHING CERTAIN ECONOMIC DEVELOPMENT INCENTIVES IN THE SOUTH 1ST STREET CORRIDOR; ESTABLISHING A SUNSET PROVISION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PENALTIES; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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WHEREAS, the City Council of the City of Temple, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by creation of a reinvestment zone for commercial/industrial tax abatement, as authorized by Section 312.201 of the Texas Tax Code;

WHEREAS, the City held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed reinvestment zone;

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the ordinance calling such public hearing should be included in such proposed reinvestment zone, the concept of tax abatement;

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone, and opponents of the reinvestment zone appeared to contest creation of the reinvestment zone; and

WHEREAS, the City finds that the condition of property adjoining South 1st Street corridor (from Adams Avenue to South Loop 363) is likely to substantially arrest or impair the sound growth of the municipality, because of the presence of one or more of the conditions: a substantial number of substandard, slum, deteriorated, or deteriorating structures; the predominance of defective or inadequate sidewalks or streets; faulty size, adequacy, accessibility, or usefulness of lots; unsanitary or unsafe

conditions; the deterioration of site or other improvements; or conditions that endanger life or property by fire or other cause.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS:**

**Part 1:** The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

**Part 2:** (a) **Designation of South 1<sup>st</sup> Street Tax Abatement Reinvestment Zone.** Pursuant to Section 312.201 of the Code, the City hereby creates a reinvestment zone for commercial, industrial or residential tax abatement consisting of property within the area described as follows:

Beginning at the southeast corner of West Adams Avenue and South Third Street and continuing in a southerly direction on the east side of South 3<sup>rd</sup> Street to the southwest corner of the intersection of South 3<sup>rd</sup> Street and West Avenue M;

Continuing in a westerly direction along the south side of West Avenue M to the southeast corner of the intersection of West Avenue M and the alley running between South 5<sup>th</sup> Street and South 7<sup>th</sup> Street;

Continuing in a southerly direction on the east side of the public alley running between South 5<sup>th</sup> Street and South 7<sup>th</sup> Street to the southeast corner of the intersection of the public alley running between South 5<sup>th</sup> Street and South 7<sup>th</sup> Street and West Avenue V;

Continuing in an easterly direction on the south side of West Avenue V to the southwest corner of the intersection of West Avenue V and South 5<sup>th</sup> Street;

Continuing in a southerly direction on the west side of South 5<sup>th</sup> Street to the northeast corner of Lot 7 of Fryers Creek Commercial Phase I;

Continuing in a westerly direction along the north boundary of said Fryers Creek Commercial Phase I to the northwest corner of Lot 8 of the same addition;

Continuing in a southerly direction along the west boundary of said Lot 8 to an ell in Fryers Creek Dr;

Continuing across said Fryers Creek Dr to the northwest corner of Lot 5 of the same addition;

Continuing in a southerly direction along said Lot 5 to the northwest corner of Pittman Commercial Addition;

Continuing along the west side of said Pittman Commercial Addition to a point in the north side of Loop 363 (H.K. Dodgen Loop);

Continuing in an easterly direction along the north side of Loop 363 (H.K. Dodgen Loop) to the northeast corner of the intersection of Loop 363 and South 1<sup>st</sup> Street;

Continuing in a northerly direction along the east boundary of South 1<sup>st</sup> Street to the northeast corner of the intersection of South 1<sup>st</sup> Street and the south line West Avenue O extended, also being the northwest corner of Block 6, Eugenia Terrace Addition;

Continuing in a an easterly direction along the north side of said Block 6, Eugenia Terrace Addition to a point in the west side of South Main Street, extended;

Continuing in a northerly direction along the west boundary of South Main Street to northwest corner of the intersection of South Main Street with West Avenue C;

Continuing in an easterly direction along the north side of West Avenue C to the northwest corner of the intersection of West Avenue C and the public alley running between South Main Street and South 2<sup>nd</sup> Street;

Continuing in a northerly direction along the west side of the public alley running between South Main Street and South 2<sup>nd</sup> Street to the southwest corner of the intersection of that public alley with East Avenue B;

Continuing in an easterly direction along the south side of East Avenue B to the southwest corner of the intersection of the East Avenue B and South 2<sup>nd</sup> Street;

Continuing in a northerly direction along the west side of South 2<sup>nd</sup> Street to the southwest corner of the intersection of South 2<sup>nd</sup> Street and East Avenue A;

Continuing in a westerly direction along the south side of East Avenue A to a point in the south side of East Avenue A and the west side of a public alley running between South Main Street and South 2<sup>nd</sup> Street, extended;

Continuing in a northerly direction along the west side of said public alley to the ~~the~~ south side of East Adams Avenue; and

Continuing in a westerly direction along the south side of Adams Avenue to the southeast corner of West Adams Avenue and South Third Street (the point of origin).

And as depicted in Exhibit "A" attached hereto. Such reinvestment zone is hereby designated and shall hereafter be officially designated as Tax Abatement Reinvestment Zone Number Thirteen, City of Temple, Texas. The City Council specifically finds that the boundaries of the reinvestment zone (hereinafter "SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE") should be the as shown in the map attached hereto as Exhibit "A."

**(b) Findings Relative to Creation of Tax Abatement Reinvestment Zone.**  
The City Council, after conducting a public hearing and hearing evidence and



testimony, makes the following findings and determinations based on the testimony presented to it:

1. That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone;

2. That creation of the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE will result in benefits to the City and to the land included in the zone after the term of any agreement executed hereunder, and the improvements sought are feasible and practical;

3. That the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Code in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City;" and

4. That the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE meets the criteria for the creation of a reinvestment zone as set forth in the City of Temple Guidelines and Criteria for granting tax abatement in reinvestment zones.

(c): The SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE shall take effect on May 15, 2008, and continue in effect until May 15, 2013.

(d) To be considered for execution of an agreement for tax abatement the commercial/industrial or residential project shall:

1. Be located wholly within the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE as established herein;

2. Not include property that is owned or leased by a member of the City Council of the City of Temple, Texas, or by a member of the Planning and Zoning Commission;

3. Conform to the requirements of the City's Zoning Ordinance, all other City codes and regulations, City of Temple Guidelines and Criteria for granting tax abatement in reinvestment zones previously adopted by the City Council, and all other applicable laws and regulations; and

4. Have and maintain all land located within the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE, appraised at market value for tax purposes.

(e) Written agreements with property owners located within the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE shall provide identical terms regarding duration of exemption and share of taxable real property value exempted from taxation.

(f) Written agreements for tax abatement as provided for by Section 312.205 of the Tax Code shall include provisions for:

1. Listing the kind, number and location of all proposed improvements of the property;

2. Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;

3. Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE during the period that property tax exemptions are in effect; and

4. Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement.

(g) Applications. Applications for tax abatement in the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE are available in the City Attorney's Office, Suite 308, Municipal Building, 2 North Main Street, Temple, TX 76504 or from the City's website, [ci.temple.tx.us](http://ci.temple.tx.us).

**Part 3:** (a) **Additional Economic Development Incentives for South 1<sup>st</sup> Strategic Investment Zone.** Pursuant to Article 3, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code, and Section III.B of the City's Economic Development Policy ordinance, the City will consider offering additional economic incentives for development in the South 1<sup>st</sup> Street Strategic Investment Zone as provided below. *To be eligible for any of the grants in Part 3 of this Ordinance, the applicant must propose and complete real property improvements on property located within the SOUTH 1<sup>st</sup> STREET STRATEGIC INVESTMENT ZONE with a minimum investment of not less than \$50,000.*

(1) **Façade Improvement Grants.** The City will consider making grants of up to \$10,000 on a 1:1 matching basis for the replacement of an existing façade with an eligible masonry product to an eligible property, or to remove an existing façade to expose the original façade. Eligible masonry materials for a replacement façade under this subsection include brick, stone, stucco, EIFS, rough-faced block, and such other materials that the City may approve from time to time. A list of eligible materials for the South 1<sup>st</sup> Street Strategic Investment Zone is maintained in the Construction Safety Office, 1<sup>st</sup> Floor, the Municipal Building, 2 North Main Street. Façade improvement costs eligible for reimbursement with a façade improvement grant include demolition costs (including labor), landfill costs, and material and construction (including labor) costs, but specifically *exclude* design costs.

- (2) **Sign Improvement Grants.** The City will consider making grants of up to \$1,500 on a 1:1 matching basis for the installation of new ground-mounted, monument type signs on eligible properties or the replacement of a dilapidated sign. To be eligible, the new or replacement sign must be constructed from the approved masonry material list. Sign improvement costs eligible for reimbursement with a sign improvement grant include demolition costs (including labor), landfill costs, and material and construction (including labor) costs, but specifically *exclude* design costs.
- (3) **Landscaping Improvement Grants.** The City will consider making grants of up to \$2,500 on a 1:1 matching basis for the installation of new or additional landscaping to an eligible property. To be eligible the landscaping must meet or exceed the City's landscaping requirements for the area, as the same may be established from time to time. If an irrigation system is installed, or already exists, and will be maintained by the applicant, the maximum amount of the landscaping grant is \$3,500 on a 1:1 matching basis. Landscaping improvement costs eligible for reimbursement with a landscaping improvement grant include ground preparation costs (including labor), materials (trees, shrubs, soil and amendments thereto and other decorative hardscape such as arbors, art, and walls or fences) and material and construction (including labor) costs, but specifically *exclude* design costs. The City will also consider making grants of trees from the City's tree farm if requested by the applicant as part of a landscaping improvement grant application.
- (4) **Asbestos Survey or Abatement Grants.** The City will consider a grant of up to \$1,000 on a 1:1 matching basis for owner-initiated asbestos survey of a building and up to \$1,500 on a 1:1 matching basis for asbestos abatement for a building on eligible property. Asbestos survey and abatement grant eligible costs include professional fees, labor costs, and replacement materials.
- (5) **Demolition Grants.** The City will consider a grant of up to \$2,500 on a 1:1 matching basis for the demolition of existing buildings, signs, or parking lots on eligible property. In lieu of a cost recovering grant, when requested by an applicant the City will also consider in its sole discretion, demolishing buildings, signs or parking lots, and disposing of the same at the City's cost, when the City has the capacity and equipment to do so. The City will not demolish buildings where the City in its sole discretion determines that there is a reasonable probability that the building contains asbestos, unless the applicant has obtained an asbestos survey and abated asbestos, where necessary, prior to demolition of the structure. Where the applicant is performing the demolition and seeking a demolition grant, eligible costs include the labor and landfill costs, but exclude any design costs.
- (6) **Sidewalk Improvement Grants.** The City will consider grants of up to \$2,500 on a 1:1 matching basis for the construction of new sidewalks, curb and guttering or the replacement of existing sidewalks or curb and guttering on eligible property. Sidewalk improvement costs eligible for

reimbursement with a sidewalk improvement grant include demolition costs (where applicable) (including labor), landfill costs, and material and construction (including labor) costs, but specifically *exclude* design costs.

(b) **Eligible Property.** To be eligible for a grant under Part 3(a)(1)-(6) above, the applicant must be the owner or lessee of property lying within the boundaries of the South 1<sup>st</sup> Street Strategic Investment Zone. Eligible property improvements are as described in Part 3(a)(1)-(6).

(c) **Application Form.** To be eligible for the grants described in Part 3(a), an applicant must submit an application and received approval from the City prior to commencing the work for which a grant or assistance by the City is sought. Applications must be submitted on a form provided by the City, be fully and accurately completed, and signed by the owner(s) (and the lessee(s), where applicable) of the property. Forms are available in the **City Manager's Office** (c/o of the Assistant City Manager) and in the office of **Keep Temple Beautiful**, 100 West Adams, Suite 302, Temple, TX 76501, and must be submitted to the City Manager's office for review and potential approval by the City. A completed application must contain a rendering of all proposed improvements and a written description of the same. Where the proposed scope of work requires professional work by an engineer or architect, the plans must be sealed by an engineer or architect, as applicable.

(d) **Evaluation of Applications.** In evaluating whether to approve an application for a grant under Part 3(a), the City Council will consider: (1) the extent to which the property for which a grant is sought is blighted or fails to meet City codes or regulations in one or more aspect; (2) whether the proposed redevelopment is at a higher level than which exists on other properties in the South 1<sup>st</sup> Street Strategic Investment Zone at the time of adoption of this ordinance; (3) whether the applicant has the financial resources to complete the described in the application; (4) whether the property is unlikely to redevelop without an incentive by the City; (5) if the property for which a grant is sought is on South 1<sup>st</sup> Street, whether the applicant's proposed redevelopment eliminates a continuous curb cut on South 1<sup>st</sup> Street or retains limited access to such street; and (6) whether the proposed use of the property is in keeping with the future uses of property identified in the City's Comprehensive Plan or a master plan adopted by the City Council for the Temple Medical Education District (TMED). Upon receipt of an application for a grant under Part 3(a), the City Manager shall cause the application to be evaluated using the criteria established in Part 3(d) above, and submit the application and the Staff's recommend to approve or deny the request, in whole or part, to the City Council for their consideration.

(e) **Approval of grants.** The City Council may approve a request for a grant under Part 3(a) in whole or in part, or deny the same.

(f) **No Vested Right to Receive a Grant.** The existence of the grant program established in Section 3(a) does not create any vested rights to receive a grant or convey a property interest to any person to receive a grant. The award or denial of a grant under this Ordinance shall be at the sole discretion of the City Council. The City Council shall annually appropriate funds for the administration of the grant program

in this ordinance, and the granting of funds under the programs established by this ordinance are subject to the availability of funds appropriated for that purpose in any given fiscal year.

**(g) Compliance with Terms of a Grant; payment to recipient.** A recipient of a grant from the City must enter into a development agreement with the City prior to receiving any grant funds or in-kind services by the City. The agreement shall provide that the applicant agrees to: (1) complete the work described in the application in a timely fashion; (2) give the City the right to inspect the work described in the development agreement and the financial records associated with the same during reasonable business hours; (3) perform all of the work described in the grant application in accordance with all applicable City codes and regulations; and (4) to maintain those improvements in the future. The failure by an applicant for a grant to satisfy all of the terms and conditions of the development agreement shall relieve the City of any obligation to provide grants funds under this Ordinance or as described in the development agreement. Payment to grantees shall be made within thirty (3) days of the work described in the development agreement being completed, inspected and accepted by the City.

**Part 4: Severance clause.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Part 5: Effective date.** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 6: Sunset provision.** The designation of Tax Abatement Reinvestment Zone Number Eleven shall expire five years from the effective date of this ordinance. The designation of a tax abatement reinvestment zone may be renewed for periods not exceeding five years. The expiration of a reinvestment zone designation does not affect an existing tax abatement agreement authorized by the City Council.

**Part 7: Open Meeting Act.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 1<sup>st</sup> day of **May**, 2008.

PASSED AND APPROVED on Second Reading on the 15<sup>th</sup> day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary

APPROVED AS TO FORM:

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

05/01/08  
Item #8(B)  
Regular Agenda  
Page 1 of 2

### DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance establishing the City's Economic Development Policy, setting out a program for promoting economic development within the City by reestablishing criteria and guidelines for tax abatement, authorizing loans and grants of public money and providing personnel and services of the municipality, to promote local economic development and to stimulate business and commercial activity.

**STAFF RECOMMENDATION:** Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for May 15, 2008.

**ITEM SUMMARY:** The proposed ordinance amends the City's comprehensive economic development ordinance to add new criteria and guidelines for authorizing tax abatement agreements in the proposed South 1<sup>st</sup> Street Corridor tax abatement reinvestment zone. The criteria proposed for the South 1<sup>st</sup> Street Corridor tax abatement reinvestment zone (portions of South 1<sup>st</sup> Street (from Adams to the South Loop 363) and adjacent streets like South 2<sup>nd</sup>, South Main, South 3<sup>rd</sup> and South 5<sup>th</sup>) are essentially the same as those currently in effect for the Downtown area: the project must involve either a minimum increase in property value of one hundred and fifty percent (150%) for construction of a new facility, or twenty-five percent (25%) for expansion of an existing facility, with an overall new investment of at least \$50,000 in taxable assets.

The matrix proposed for the South 1<sup>st</sup> Street Corridor is as follows:

| Percentage of increased value To be abated | Inside the Downtown Development Area <a href="#">or the South 1<sup>st</sup> Street Corridor</a> |                             |              |
|--|--|-----------------------------|--------------|
|  | Eligible Real Property Improvements  | Eligible Personal Property* | Job Creation |
| 100%                                       | \$50,000 or more   | \$100,000 or more           | 5-25 jobs    |

Under the proposed amendment, projects involving an investment in real property in excess of \$250,000, more than \$1,000,000 in eligible personal property, or the creation of more than 25 new full time jobs can be individually negotiated.

**FISCAL IMPACT:** N/A

**ATTACHMENTS:**

[Ordinance](#)



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF TEMPLE, TEXAS, ESTABLISHING A COMPREHENSIVE ECONOMIC DEVELOPMENT POLICY FOR THE CITY OF TEMPLE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the City of Temple is committed to establishing long-term economic vitality, an essential key to the growth of any community, by responding and preparing for challenges and changes in an environment characterized by ongoing competition for sustained economic advantage and identity;

**Whereas**, in an effort to enrich an already substantial diversity of economic activity, the City of Temple desires to establish an *Economic Development Policy* consolidating the City's existing and newly-proposed economic development policies into one comprehensive document;

**Whereas**, the City has established criteria and guidelines governing tax abatement within the City pursuant to Chapter 312 of the Tax Code, and by ordinance has designated two tax abatement reinvestment zones;

**Whereas**, the City has by ordinance created a tax increment financing reinvestment zone pursuant to Chapter 311 of the Tax Code, and used the tax increments accrued in said zone to construct public improvements intended to spur economic development of the zone;

**Whereas**, the City has nominated an area of the City for designation by the State, acting through its Department of Commerce, as an enterprise zone pursuant to Tex. Rev. Civ. Stat. Ann. art 5190.7;

**Whereas**, Article 3, Section 52-a of the State Constitution, authorizes the Legislature to provide for the creation of programs for the making of loans and grants of public money for the public purposes of development and diversification of the economy of the State;

**Whereas**, the Legislature, in Tex. Rev. Civ. Stat. Ann. art. 835s, has authorized home rule cities to acquire land and buildings for the purpose of leasing the land or improvements thereto to private companies for use in manufacturing or other commercial activity;

**Whereas**, the Legislature, in Chapter 380 of the Local Government Code, has authorized home rule cities to establish programs for making loans and grants of public money to promote State or local economic activity within their boundaries; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS:

**Part 1:** That a comprehensive *Economic Development Policy* is hereby adopted by the City of Temple, Texas, to read as follows:

# ECONOMIC DEVELOPMENT POLICY

## FOR THE CITY OF TEMPLE, TEXAS

ADOPTED OCTOBER 18, 2007

### I. Criteria and Guidelines Governing Tax Abatement.

#### A. Definitions.

1. "**Abatement**" means the full or partial exemption from ad valorem taxes of certain real property in a reinvestment zone designated by the City for economic development purposes.

2. "**Agreement**" means a contract between a property owner or lessee and the City.

3. "**Base year value**" means the assessed value of eligible property on January 1st of the year of the execution of the tax abatement Agreement, plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.

4. "**Deferred Maintenance**" means those improvements necessary for continued operation but which do not improve productivity or alter any process technology. Exterior improvements (e.g., painting, installing, repairing, removing or replacing a facade) to the exteriors of buildings in the Downtown Development Area which are designed to improve visual appearance of property are not deferred maintenance.

5. "**Downtown Development Area**" is an approximately 43 block area of downtown Temple as shown by the map and description attached hereto as Exhibit "A."

6. "**Eligible Facilities**" means those new, expanded or modernized buildings and structures, including fixed machinery and equipment, which are reasonably likely as a result of granting abatement, to contribute to the retention or expansion of primary employment or to attract major investment in the reinvestment zone that would be a benefit to the property and that would contribute to the economic development within the City Eligible Facilities in all commercial/industrial tax abatement reinvestment zones include manufacturing, distribution and storage facilities, office buildings, transportation facilities, and entertainment complex. Additional Eligible Facilities in reinvestment zones established in the Downtown Development Area include retail stores, apartment buildings, restaurants and entertainment facilities (excluding sexually oriented businesses) facilities.

7. "**Expansion**" means the addition of buildings, structures, machinery, equipment or payroll for purposes of increasing production capacity.

8. "**Facility**" means property improvements completed or in the process of construction which together comprise an integral whole.

9. "**Modernization**" means a complete or partial demolition of Facilities and the complete or partial reconstruction or installation of a Facility of similar or expanded production capacity.

Modernization may result from the construction, alteration, or installation of buildings, structures, machinery or equipment, or both. Modernization in the Downtown Development area includes painting of exterior walls, restoring, removing or installing a facade and related exterior improvements designed to visually improved the exterior of a building or block.

10. **"New Facility"** means a property previously undeveloped which is placed into service by means other than or in conjunction with Expansion and Modernization.

11. **"Productive Life"** means the number of years a property improvement is expected to be in service for a facility.

12. **"South 1<sup>st</sup> Street Corridor"** is an area comprised of approximately \_\_\_\_ block area, which includes South 1<sup>st</sup> Street from Adams Avenue to South Loop 363 and portions of several adjacent streets including portions of South 2<sup>nd</sup> Street , South 3<sup>rd</sup> Street and South 5<sup>th</sup> Street, as shown by the map and description attached hereto as Exhibit " \_\_\_\_."

## **B. Statement of Purpose.**

The City is committed to the promotion of high quality commercial and industrial development in all parts of the City, and an ongoing improvement of the quality of life of its citizens. These objectives may be served by the enhancement and expansion of the local economy. The City will consider, on a case-by-case basis granting property tax abatement as a stimulus for economic development in accordance with the criteria and guidelines established herein. Nothing herein shall imply or suggest that the City is under any obligation to provide tax abatement to any applicant, that any applicant has a property right or interest in tax abatement, or that the City is precluded from considering other options which may be in the best interest of the City.

## **C. Designation of Tax Abatement Reinvestment Zones.**

The City will consider designating areas within the City limits or extraterritorial jurisdiction of the City as commercial-industrial tax abatement reinvestment zones which meet one or more of the criteria for designation of a reinvestment zone under Section 312.202 of the Tax Code, and where the property owner meets the minimum qualifications to qualify for a tax abatement under Part I.D. 1.b. of this Policy. Designation of an area as a tax abatement reinvestment zone is a prerequisite to entering into a tax abatement agreement with the owner of the property in a particular area. Property located within a City created (and State-approved) Enterprise Zone is eligible for consideration for tax abatement agreements without the necessity of separate designation as a tax abatement reinvestment zone.

## **D. Abatement Authorized.**

1. **Eligible Facilities.** Upon application, the City will consider granting tax abatement on Eligible Facilities as hereinafter provided.

a. Creation of New Value. The City will consider granting tax abatement only for the additional value of eligible property improvements made subsequent to, and specified in, an abatement agreement between the City and the property owner or lessee, subject to such limitations as the City may require.

b. New and Existing Eligible Facilities. The City will consider granting abatement for new Eligible Facilities and for improvements to existing Eligible Facilities for purposes of Modernization and Expansion.

c. Eligible Property. The City will consider granting abatement to the value of real property improvements (buildings, structures, fixed [permanently attached] machinery and equipment, site improvements, related fixed improvements necessary to the operation and administration of the Facility), and personal property (excluding inventory or supplies) with a Productive Life of ten years or more.

d. Ineligible Property. The following types of property shall remain fully taxable and ineligible for tax abatement: land, supplies, inventory, housing, Deferred Maintenance, property to be rented or leased except as provided in subpart (5) below, and other property which has a Productive Life of less than ten years.

e. Owned/Leased Facilities. If a Leased Facility is granted abatement, the agreement shall be executed with the lessor and the lessee.

## **2. Standards for Tax Abatement.**

a. Minimum Standards. The City will consider tax abatement only on eligible facilities which meet at least two of the following criteria.

(1) The project involves a minimum increase in property value of three hundred percent (300%) for construction of a new facility, or fifty percent (50%) for expansion of an existing facility, with an overall new investment of at least \$1 million in taxable assets. For eligible facilities in any reinvestment zone within the Downtown Development Area or within the South 1<sup>st</sup> Street Corridor, the project must involve either a minimum increase in property value of one hundred and fifty percent (150%) for construction of a new facility, or twenty-five percent (25%) for expansion of an existing facility, with an overall new investment of at least \$50,000 in taxable assets.

(2) The project makes a substantial contribution to redevelopment efforts, special area plans, or strategic economic development programs by enhancing either functional or visual characteristics, e.g., historical structures, traffic circulation, parking facades, materials, signs.

(3) The project has high visibility, image impact, or is of a significantly higher level of development quality.

(4) The project is an area which might not otherwise be developed because of constraints of topography, ownership patterns, site configuration, etc.

(5) The project can serve as a prototype and catalyst for other development of a higher standard.

(6) The project stimulates desired concentrations of employment or commercial activity.

(7) The project generates greater employment than would otherwise be achieved, e.g., commercial/industrial versus manufacturing versus warehousing.

(8) For eligible facilities in any reinvestment zone within the Downtown Development Area, the project improves the aesthetic appearance of the neighborhood, brings new jobs to the Downtown area, increases the availability of public parking, or increases the amount of green space (landscaping).

b. **Minimum Required Investment.** An applicant requesting tax abatement shall agree as a condition of any tax abatement ultimately approved by the City Council to expend a certain minimum amount of funds on real or personal property improvements, or to provide a certain number of jobs, as provided below:

| Percentage of increased value to be abated | Minimum Required Real or Personal Property Investment or Job Creation |                                |                           |
|--|---|--------------------------------|---------------------------|
|  | Eligible Real Property Improvements                                   | Eligible Personal Property*    | Job Creation <sup>†</sup> |
| <b>25%</b>                                 | <b>\$250,000-\$400,000</b>  | <b>\$1,000,000-\$1,600,000</b> | <b>25-30 jobs</b>         |
| 30%  | 400,001-550,000   | 1,600,001-2,200,000            | 31-35 jobs                |
| 35%  | 550,001-700,000   | 2,200,001-2,800,000            | 36-40 jobs                |
| 40%  | 700,001-850,000   | 2,800,001-3,400,000            | 41-45 jobs                |
| 45%  | 850,001-1,000,000   | 3,400,001-4,000,000            | 46-50 jobs                |
| <b>50%</b>                                 | <b>1,000,001-1,300,000</b>  | <b>4,000,001-5,200,000</b>     | <b>51-55 jobs</b>         |
| 55%  | 1,300,001-1,600,000   | 5,200,001-6,400,000            | 56-60 jobs                |
| 60%  | 1,600,001-1,900,000   | 6,400,001-7,600,000            | 61-65 jobs                |
| 65%  | 1,900,001-2,200,000   | 7,600,001-8,800,000            | 66-70 jobs                |
| 70%  | 2,200,001-2,500,000   | 8,800,001-10,000,000           | 71-75 jobs                |
| <b>75%</b>                                 | <b>2,500,001-3,500,000</b>  | <b>10,000,001-14,000,000</b>   | <b>76-85 jobs</b>         |
| 80%  | 3,500,001-4,500,000   | 14,000,001-18,000,000          | 86-95 jobs                |
| 85%  | 4,500,001-5,500,000   | 18,000,001-22,000,000          | 96-105 jobs               |
| 90%  | 5,500,001-6,500,000   | 22,000,001-26,000,000          | 106-115 jobs              |
| 95%  | 6,500,001-7,500,000   | 26,000,001-30,000,000          | 116-125 jobs              |
| <b>100%</b>                                | <b>7,500,001-10,000,000</b>   | <b>30,000,001-40,000,000</b>   | <b>126-175 jobs</b>       |

| Percentage of increased value To be abated | Inside the Downtown Development Area <a href="#">or the South 1<sup>st</sup> Street Corridor</a><br>Minimum Required Real or Personal Property Investment or Job Creation |                             |              |
|--|---|-----------------------------|--------------|
|  | Eligible Real Property Improvements   | Eligible Personal Property* | Job Creation |
| 100%                                       | \$50,000 or more  | \$100,000 or more           | 5-25 jobs    |

Projects involving an investment in real property in excess of \$10,000,000 (\$250,000 in the Downtown Development Area [or South 1<sup>st</sup> Street Corridor](#)) in eligible personal property of more than \$40,000,000 (\$1,000,000 in the Downtown Development Area [or South 1<sup>st</sup> Street Corridor](#)), or the creation of more than 175 (25 in the Downtown Development Area [or South 1<sup>st</sup> Street Corridor](#)) new full time jobs, or requests for tax abatement for more than 5 years, will be individually negotiated.

If a request for tax abatement is justified on the basis of the purchase and maintenance of eligible personal property or on the creation of jobs, the applicant must agree to maintain the personal property or jobs for a period of not less than twice the period for which tax abatement is granted. For example, if an applicant requests and receives 75% tax abatement for five years based on the purchase and maintenance of eligible personal property, the applicant must agree in the tax abatement agreement, subject to recapture of all abated taxes, to maintain the personal property on the property tax roll for not less than ten years.

\*Personal property with a useful life of less than ten years is not eligible for tax abatement.

Personal property on site prior to the effective date of the tax abatement agreement is not eligible. Supplies and inventory are ineligible for tax abatement under this policy and State law.

<sup>†</sup> As used herein, the creation of jobs refers to the creation of a job paying not less than \$10 per hour, the approximate median salary for employees in Bell County. To qualify for a level of tax abatement, e.g., 25%, based on the creation of a specific number of jobs, you must commit to hiring the required effective number of employees by the end of year 2 of the agreement. To calculate the effective number of jobs created: (1) calculate the total annual payroll created (based on the number of employees you will hire at various annual salaries); (2) divide this annual payroll by \$20,640 (our calculated annual salary for a \$10/hr employee); and (3) round this figure to the nearest whole integer.

c. Additional or Enhancement Factors. In addition to the minimum investment or job creation criteria listed in (2) above, the following factors, among others, shall be considered in determining whether to grant Tax Abatement, and if so, in what percentage of value to be abated and the duration:

- (1) value of land and existing improvements, if any;
- (2) type and value of proposed improvements;
- (3) productive life of proposed improvements;
- (4) number of existing jobs to be retained by proposed improvements;
- (5) number, salary, and type of new jobs to be created by proposed improvements;
- (6) amount of local payroll to be created;
- (7) whether the new jobs to be created will be filled by persons residing or projected to reside within the City;
- (8) amount of local sales taxes to be generated directly;

- (9) the costs, if any, to be incurred by the City to provide facilities or services directly resulting from the new improvements;
- (10) the amount of ad valorem taxes to be paid the City during the Abatement period considering the existing values, the percentage of new value abated, the Abatement period, and the projected property value after expiration of the Abatement period;
- (11) population growth that occurs directly as a result of new improvements;
- (12) the types and value of public improvements, if any, to be constructed and paid for by the applicant seeking Abatement;
- (13) the extent to which the proposed improvements compete with existing businesses;
- (14) the positive or negative impact on the opportunities of existing businesses;
- (15) the attraction of other new businesses to the area;
- (16) the overall compatibility with the City's zoning and subdivision regulations, and over-all comprehensive plan; and
- (17) whether the project is environmentally compatible with the community (no appreciable negative impact on quality-of-life perceptions).

**Each Eligible Facility shall be reviewed on its merits utilizing the factors provided above. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after full evaluation.**

**3. Abatement barred in certain circumstances.** Neither a reinvestment zone nor an abatement agreement shall be authorized, if the City Council determines that:

- a. there would be a substantial adverse effect on the provision of government service or tax base;
- b. the applicant has insufficient financial capacity to meet the requirements of the proposed abatement agreement;
- c. planned or potential use of the property would constitute a hazard to public safety, health, or morals;
- d. approval of a reinvestment zone or abatement agreement would violate State or Federal laws or regulations; or
- e. there exists any other valid reason for denial deemed appropriate by the City.

**4. Property subject to Taxation.** From the execution of an Abatement Agreement to the end of the effective abatement period under the Agreement, taxes shall be payable as follows:

- a. the value of ineligible property (Part I.D.1.d.) shall be fully taxable;
- b. the base year value of existing eligible property as determined each year shall be fully taxable;
- c. the additional value of new eligible property shall be taxed in the manner and for the period provided for in the Abatement Agreement; and
- d. the additional value of new, eligible property shall be fully taxable at the end of the Abatement period.

## **5. Application for Tax Abatement.**

a. Any present or potential owner of taxable property in the City of Temple, Texas, may request the creation of a tax abatement reinvestment zone and tax abatement by filing a written request with the City. The application shall then be forwarded to the City Manager for review. After processing the application, the City Manager shall make a recommendation to the City Council of the City for final disposition.

b. The application shall consist of a completed application form, which shall provide detailed information on the items described in Part I.D.2. above; a map and property description; and a time schedule for undertaking and completing the planned improvements. In the case of Modernization, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately proceeding the application. The application form may require such financial and other information as may be deemed appropriate for evaluating the financial capacity and other factors of the applicant.

c. The City shall give notice as provided by the Tax Code, i.e., written notice to the presiding officer of the governing body of each taxing unit in which the property to be subject to the agreement is located, no later than the seventh day before the date the City Council considers approval of a tax abatement agreement.

d. The City shall not establish a reinvestment zone for the purpose of Abatement if it finds that the request for the abatement was filed after the commencement of construction of a New Facility, or alteration, Modernization, Expansion of an existing Facility.

## **6. Tax Abatement Agreements**

a. After preliminary approval of an application, the City shall formally pass a resolution authorizing an Agreement with the owner (and lessee, where applicable) of the Facility, which Agreement shall include, but not be limited to:

- (1) The kind, number, and location of all proposed improvements of the property;
- (2) A provision for access to and authorize inspection of the property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the Agreement;
- (3) Limits for the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period the property tax exemptions are in effect;
- (4) Provide for recapturing property tax revenue lost as a result of the Agreement if the owner of the property fails to make the improvements or repairs as provided by the Agreement;
- (5) Each term agreed to by the owner of the property;



- (6) A requirement that the owner of the property annually certify to the governing body of each taxing unit that the owner is in compliance with each applicable term of the Agreement;
- (7) Provide that the City Council may cancel or modify the Agreement if the property fails to comply with the Agreement;
- (8) The percentage of value to be abated each year; and
- (9) The commencement date and the termination date of Abatement.

b. To be effective, a tax abatement agreement must be approved by the affirmative vote of a majority of the members of the City Council at a regularly scheduled meeting of the City Council.

c. Agreements shall normally be approved or disapproved within sixty (60) days from the date the applicant filed a properly completion application for tax abatement with the City Manager.

## **7. Recapture of Abated Taxes Upon Default.**

a. In the event that the company or individual:

- (1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest or contest, or
- (2) violates any of the terms and conditions of the Abatement Agreement, and fails to cure during the Cure Period hereinafter described,
- (3) the Agreement then may be terminated, and the company or individual whose Agreement is terminated shall repay, as liquidated damages, all taxes previously abated by virtue of the Agreement to the City within thirty (30) days of the termination.

b. Should the City determine that the company or individual is in default according to the terms and conditions of its Agreement, the City shall notify the company or individual of such default in writing at the address stated in the Agreement, and if such is not cured within thirty (30) days from the date of such notice ("Cure Period"), then the Agreement may be terminated.

## **8. Administration.**

a. The Chief Appraiser of the Bell County Appraisal District will annually determine an assessment of the real and personal property comprising the reinvestment zone. Each year, the company or individual receiving abatement shall furnish the Appraiser with such information as may be necessary for the Abatement. Once value has been established, the Chief Appraiser will notify the City of the amount of the assessment.

b. An abatement agreement shall stipulate that employees or designated representatives of the City will have access to the reinvestment zone during the term of the Abatement to inspect the Facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction or operation of the Facility. All inspections will

be made with one or more representatives of the company or individual and in accordance with its safety standards.

c. Upon completion of construction, the designated representative of the City shall annually evaluate each Facility receiving Abatement to insure compliance with the agreement, and a formal report shall then be made to the City Council of Temple regarding the findings of the evaluation.

## **9. Assignment of Tax Abatement Agreements.**

Abatement may be transferred and assigned by the holder to a new owner or lessee of the same Facility upon the approval by resolution of the City subject to the financial capacity of the assignee and provided that all conditions and obligations in the Abatement Agreement are guaranteed by the execution of a new contractual Agreement with the City. No assignment or transfer shall be approved if the parties to the existing Agreement, the new owner or new lessee, are liable to any jurisdiction for outstanding taxes or other obligations. Approval of assignments will not be unreasonably withheld.

## **10. Sunset Provision.**

These tax abatement criteria and guidelines are effective upon the date of their adoption and will remain in force for two years, unless amended by three-quarters vote of the City Council, at which time all reinvestment zones and tax abatement agreements created pursuant to these provisions will be reviewed to determine whether the goals have been achieved. Based on that review, the criteria and guidelines may be modified, renewed or eliminated.

# **II. Availability of Tax Increment Financing of Public Improvements.**

## **A. Existence of tax increment financing district.**

The City of Temple has previously created Tax Increment Financing District Number One. To be designated as a tax increment financing reinvestment zone (TIFRZ), an area must meet the criteria established for reinvestment zones under Section 311.005 of the Tax Code. Designation of an area of the City as an enterprise zone under Tex. Rev. Civ. Stat. Ann. art. 5190.7, the Texas Enterprise Zone Act, qualifies an area automatically for designation as a tax increment financing reinvestment zone.

## **B. Development agreements.**

The City will consider entering into development agreements with the owners of property within a TIFRZ where construction of a public improvement(s), e.g., a street, sewer or water line, bridge, railroad spur, or drainage project, using tax increment funds is likely to result in the significant expansion or modernization of an existing facility, the construction of a major new facility, the creation of a significant number of new jobs, or otherwise accomplishes one of the major goals of Chapter 311 of the Tax Code. The City Council may by ordinance or resolution, with the advise and recommendation of the Board of Directors of Tax Increment Financing Reinvestment Zone Number One, may establish minimum criteria for consideration of development agreements.

# **III. Additional Economic Incentives within the City**

## **A. Designation of Enterprise Zone.**

The City has nominated an area of the City for designation as an enterprise zone by the State of Texas, acting through its Department of Commerce, under Tex. Rev. Civ. Stat. Ann. art. 5190.7 (the Texas Enterprise Zone Act). Pending approval of the area as an enterprise zone by the State, the City will consider granting several types of economic incentives with the enterprise zone.

## **1. Sales and use tax refunds.**

a. Minimum qualifications. To encourage development of the Enterprise Zone, the City will consider granting sales and use tax rebates to businesses within the Enterprise Zone which:

- (1) meet the definition of "qualified businesses" for purposes of Section 3(a)(11) of the Enterprise Zone Act;
- (2) meet the qualifications for, and receive designation by the State as an enterprise project as an enterprise project as provided for in Section 10 of the Enterprise Zone Act.

b. Eligible taxes. The City may agree to a refund of its sales and use taxes paid by qualified business designated as a enterprise project on the purchase, lease, or rental of equipment or machinery for use in an enterprise zone or on the purchase of material for use in remodeling, rehabilitating, or constructing a structure in the Enterprise Zone.

c. Agreement required. The City will, by development agreement, consider refunding up to one-half (1/2) of the *eligible* sales and use tax paid by a qualified business and enterprise project for a period of up to three (3) years.

d. Documentation required. A qualified business and enterprise project entitled to a refund of sales and use tax under this Section by agreement shall pay the entire amount of State and local sales and use taxes at the time of purchase. A qualified business and enterprise project entitled to a refund of sales and use tax by agreement may request a refund once each year in writing. A qualified business and enterprise project entitled to a refund of sales and use tax by agreement must provide documentation necessary to support a refund claim in a form prescribed by the City's Director of Finance.

## **2. Waiver of permit fees.**

By resolution, the City Council may adopt a policy to waive certain building, permit, license or development fees to qualified businesses which have been designated as enterprise projects within the Enterprise Zone.

## **B. Other economic incentives within the City.**

1. Pursuant to authority delegated by the Legislature to cities under Chapter 380 of the Local Government Code, and as authorized by Article 3, Section 52-a of the Texas Constitution, the City will consider making loans or grants of public funds or property, or the selling or leasing City property at or below the fair market value of said property, to promote State or local economic development and to stimulate business and commercial activity within the City.

2. Upon application, the City may consider one or more of the following economic tools to encourage economic development:

- (a) The City may purchase tracts of land in the City to encourage economic development if it determines that assembly of smaller tracts into larger tracts will promote the sale or development of property over the long term. The City may also purchase land to sell or lease to a qualified business in the City, if it determines that a qualified business meets the minimum requirements for additional incentives set out below
- (b) As further authorized by Tex. Rev. Civ. Stat. Ann. art. 5190.7 § 20(b), the City may sell or lease City-owned property to private developers, if the City Council determines that the property is not needed for any other public purpose, and that sale of the property to a private developer will result in capital improvements or the creation of new jobs within the City. The City will generally sell or lease public property at its fair market value, but will consider making a one-time grant to an applicant, or selling or leasing property at less than fair market value, according to the following formula:

| <b>Additional Incentives within the City</b>                          |  |                            |
|---|--|----------------------------|
| Value of grant, or value of reduction in lease payments or sale price | To qualify for additional incentive, a qualified business must agree to the following minimum investment in <b><u>both</u></b> improvements to real property (new construction or expansion of existing facility) <b><u>and</u></b> the creation of new jobs |                            |
| Not to exceed \$150,000   | Not less than \$7.5 million  | Not less than 125 new jobs |
| Not to exceed \$300,000   | Not less than \$15 million   | Not less than 250 new jobs |
| Not to exceed \$450,000   | Not less than \$22.5 million   | Not less than 375 new jobs |
| Not to exceed \$600,000   | Not less than \$28 million   | Not less than 500 new jobs |

*Incentives under Chapter 380 of the Local Government Code where the investment and number of jobs exceed the chart above will be individually negotiated.*

### **C. Additional economic incentives in Downtown Development Area.**

1. Pursuant to authority delegated by the Legislature to cities under Chapter 380 of the Local Government Code, and as authorized by Article 3, Section 52-a of the Texas Constitution, the City will consider making loans or grants of public funds or property, or the selling or leasing City property at or below the fair market value of said property, to promote State or local economic development and to stimulate business and commercial activity in the Downtown Development Area (as shown on Exhibit "A").

2. Upon application, the City of Temple will consider one or more of the following economic tools to encourage economic development in the Downtown Development Area:

- (a) The City may purchase tracts of land in the Downtown Development Area to encourage economic development if it determines that assembly of smaller tracts into larger tracts will promote the sale or development of property over the long term. The City may also purchase land to sell or lease to a qualified business in the Downtown Development Area, if it determines that a qualified business meets the minimum requirements for additional incentives set out below.
- (b) As further authorized by Tex. Rev. Civ. Stat. Ann. art. 5190.7 § 20(b), the City may sell or lease City-owned property to private developers, if the City Council determines that the property is not needed for any other public purpose, and that sale of the property to a private developer will result in capital improvements or the creation of new jobs in the Downtown Development Area. The City will generally sell or lease public property at its fair market value, but will consider making a one-time grant to an applicant, or selling or leasing property at less than fair market value, according to the following formula:

| <b>Additional Incentives in the Downtown Development Area</b>                             |  |                           |
|---|--|---------------------------|
| Value of grant, or value of reduction in lease payments or sale price or surplus property | To qualify for additional incentive, a qualified business must agree to the following minimum investment in <b><u>either</u></b> improvements to real property (new construction or expansion of existing facility) <b><u>or</u></b> the creation of new jobs (25% of the holders of which must be residents of zone or economically disadvantaged). |                           |
| Not to exceed \$6,000   | Not less than \$70,000   | Not less than 3 new jobs  |
| Not to exceed \$8,000   | Not less than \$100,000  | Not less than 5 new jobs  |
| Not to exceed \$10,000  | Not less than \$175,000  | Not less than 10 new jobs |
| Not to exceed \$15,000  | Not less than \$225,000  | Not less than 15 new jobs |
| Not to exceed \$18,000  | Not less than \$300,000  | Not less than 20 new jobs |

3. In order for a proposal to be considered for the Additional Incentives under this subsection, an applicant is required to submit a Business Plan detailing sufficient information to evaluate the development and the opportunities for success. A development agreement will provide clauses that insure the return of monetary or real incentives granted for a project in the event that the project is not undertaken within a specified time.

**Part 2:** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Part 3:** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 4:** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **4<sup>th</sup>** day of **October**, 2007.

PASSED AND APPROVED on Second on the **18<sup>th</sup>** day of **October**, 2007.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #9(A)  
Regular Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING - Z-FY-08-20-A: Consider adopting an ordinance amending the West Temple Comprehensive Plan to reflect retail uses on 6.05 ± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One.

**STAFF AND P&Z COMMISSION RECOMMENDATION:** The Planning and Zoning Commission voted 8/0 in accordance with the staff recommendation to recommend approval of a Future Land Use Map amendment from residential to retail at its meeting on April 21, 2008, for the following reasons:

1. The request complies the Future Land Use Plan;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public facilities will serve the site.

Commissioner Kjelland was absent.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-08-20-A, from the Planning and Zoning meeting, April 21, 2008. This request tracks with Z-FY-08-020-B, a zone change request from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District.

The West Temple Plan, prepared in 1999, shows Moderate/Medium Density Residential and Retail future land use categories for the subject property and for property to the west. Land to the north of the subject property (across FM 2305) has the Office future land use category. Land to the south and east is designated as Moderate/Medium Density Residential.

The request complies with the Future Land Use Plan and the Thoroughfare Plan and adequate public facilities will serve the property after it is platted.

The Commission did not raise any issues requiring additional staff attention.

Public Notice

18 notices for the Planning and Zoning Commission hearing were sent out. As of April 16 at 2 PM, no notices were returned in favor of and one notice was returned in opposition to the request. The newspaper printed notice of the public hearing on April 12, 2008 in accordance with state law and local ordinance

**FISCAL IMPACT:** NA

**ATTACHMENTS:**

Future Land Use Map  
P&Z Staff Report (Z-FY-08-20-A)  
P&Z Minutes (04/21/08)  
Ordinance





Z-FY-08-20-A

Part of OB# 1104-C

6.05 Acres

### CLUP

#### Agricultural

- AGRICULTURE

#### Residential

- LOW DENSITY (UE)
- MOD DENSITY (SF1, SF2, SF3, MH, 2F)
- MED DENSITY (MH, 2F, TH, MF1)
- HIGH DENSITY (MF2)

#### Commercial

- OFFICE (O1, O2)
- RETAIL (NS, GR)
- COMMERCIAL (C, CA)

#### Mixed Use

- MIXEDUSE (MU)

#### Industrial

- INDUSTRIAL (LI, HI)
- Warehouse/Distribution
- Manufacturing/Distribution
- Bio-Science/Technology
- Corporate Campus & Office
- Aviation Industrial Dvmt
- Fwy Com/Tech/Indust
- Intermodal

#### Community Facilities

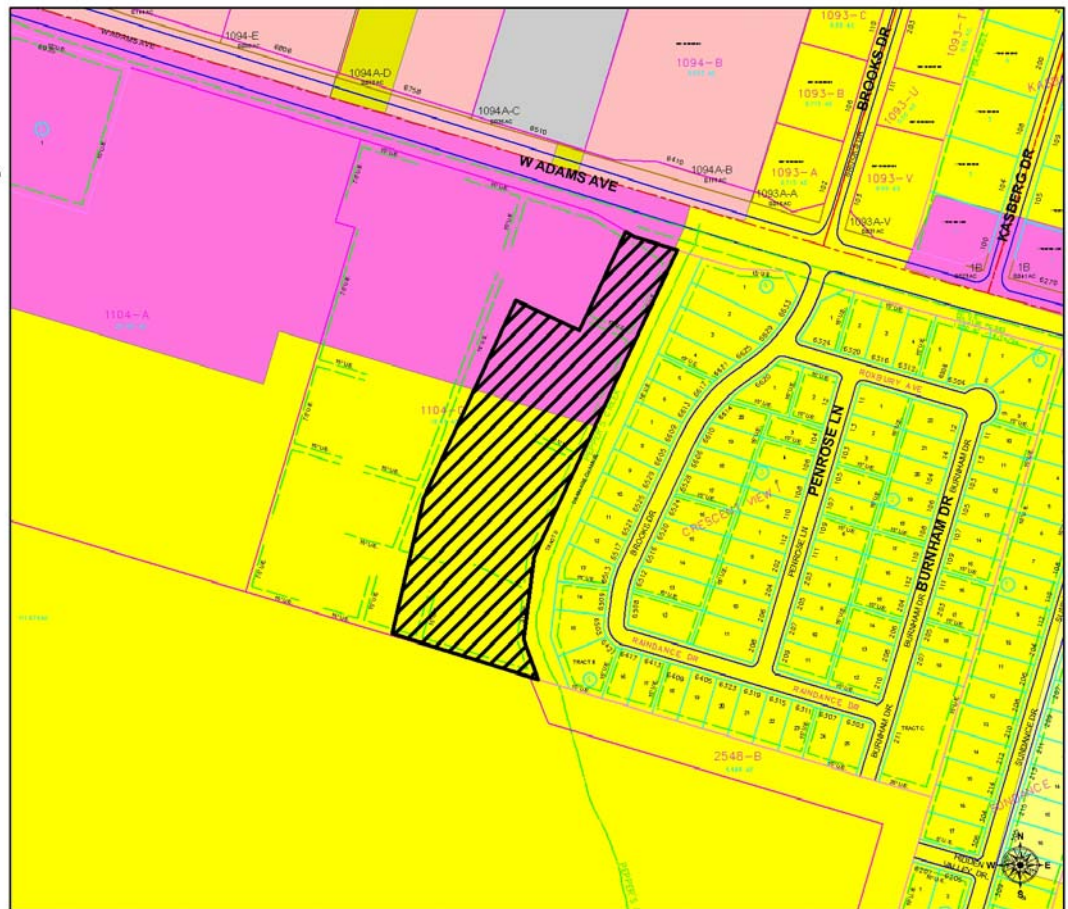
- COMMUNITYFACILITY
- CF-E (EDUCATIONAL)
- CF-G (GENERAL)
- CF-R (RESIDENTIAL)
- CF-M (MEDICAL)

#### Park Land

- PROPOSED FLOATING PARK
- PARKS

#### Downtown

- DOWNTOWN



SF2 & PD(GR) to PD(GR)

1 inch equals 300 feet

J Stone 03.27.08



# PLANNING AND ZONING COMMISSION AGENDA ITEM

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04/21/08  
Item #4A  
Page 1 of 2

**APPLICANT:** Bob Mitchell for Ansley Corporation

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** Z-FY-08-20-A Hold a public hearing to consider amending the West Temple Comprehensive Plan to reflect retail uses on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)

**BACKGROUND:** This request tracks with Z-FY-08-020-B, a zone change request from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District.

The West Temple Plan, prepared in 1999, shows Moderate/Medium Density Residential and Retail future land use categories for the subject property and for property to the west. Land to the north of the subject property has the Office future land use category. Land to the south and east is designated as Moderate/Medium Density Residential.

#### Future Land Use Plan

The requested Retail future land use category accommodates the GR, General Retail and NS, Neighborhood Services zoning districts. The West Temple Plan amendment request complies with the Future Land Use Plan.

#### Thoroughfare Plan

The property fronts on FM 2305 which is designated as a major arterial on the Thoroughfare Plan. The West Temple Plan amendment complies with the Thoroughfare Plan.

#### Adequacy of Public Facilities

An 18" sewer line runs along the FM 2305 frontage of the property. A 14" water line runs along FM 2305 across the street from the subject property. The plat for the property, which will be presented to the Planning and Zoning Commission at its next meeting on May 5, 2008, shows that the applicant proposes to bore under FM 2305 and tap onto this water line. Adequate public facilities will serve the property.

#### Public Notice

18 notices for the P&Z hearing were sent out. As of April 16 at 2 PM, no notices were returned in favor of and one notice was returned in opposition to the request. The newspaper printed notice of the public hearing on April 12, 2008 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of the future land use map amendment request for the following reasons.

1. The request complies the Future Land Use Plan;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public facilities will serve the site.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

Land Use Map

**EXCERPTS FROM THE**  
**PLANNING & ZONING COMMISSION MEETING**  
**MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

Chair Luck stated that Item 4A, Z-FY-08-20A and Item 4B, Z-FY-08-20B, would be presented together and then have separate motions and votes on each item.

- 4A.** Z-FY-08-20-A Hold a public hearing to consider amending the West Temple Comprehensive Plan to reflect retail uses on 6.1± acres out of land commonly known as outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)
- 4B.** Z-FY-08-20B Z-FY-08-20-B Hold a public hearing to consider a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)

Mr. Brian Mabry, Senior Planner, began with Item 4A, Z-FY-08-20A, as presented in the Planning and Zoning Agenda Item. He said the applicant is Mitchell and Associates. He said the Future Land Use Plan being amended is the West Temple Plan, which was adopted in 1999. He said the future land use plan amendment and the zone change request were reviewed by the Development Review Committee (DRC) on April 14, 2008. Mr. Mabry shows Moderate/Medium Density Residential and Retail future land use categories for the subject property and for property to the west. Land to the north of the subject property has the Office future land use category. Land to the south and east is designated as Moderate/Medium Density Residential. He said there is an 18" sewer line runs along the FM 2305 frontage of the property. A 14" water line runs along FM 2305 across the street from the subject property. The plat for the property, which will be presented to the Planning and Zoning Commission at its next meeting on May 5, 2008, shows that the applicant proposes to bore under FM 2305 and tap onto this water line. At that time adequate public facilities will serve the property. The property fronts on FM 2305 which is designated as a major arterial on the Thoroughfare Plan which accommodates non-residential uses such as this request. The West Temple Plan amendment complies with the Thoroughfare Plan. Staff recommends approval of the future land use map amendment request from residential to retail because the request complies with

the Future Land Use Plan, the Thoroughfare Plan, and adequate public facilities serve this site.

Mr. Mabry concluded with zone change Z-FY-08-20B. He said the zoning portion of the case is to have a Planned Development with General Retail as a base zoning district so that a mini-storage facility can be built. The property currently has a Planned Development (PD) designation that allows mini-storage. However, contrary to generally accepted planning practice, it was approved in 2005 so that review and approval of a binding development plan by the Planning and Zoning Commission and City Council could take place at some point after approval of the PD zoning designation. All PDDs should be reviewed concurrently with a binding development plan. Therefore, staff recommends removal of the old PD designation with this new PD designation. In accordance with PD submittal requirements, the applicant has submitted a binding development plan showing storage unit locations and dimensions, parking areas, access point, and general landscaping. The applicant stated that limestone exterior for facades facing FM 2305 will be used but no bay doors will face FM 2305 and automatic irrigation for landscaping would also be provided. Mr. Mabry showed an aerial of the property and drainage channels which runs between existing homes and the subject property. Mr. Mabry stated the Subdivision Ordinance requires that some form of screening or buffering take place when a non-residential use abuts a residential subdivision which can be a six foot fence or masonry wall or landscaping screening at the property line. In addition to these voluntary amenities, staff recommends the following features in order to mitigate potential impacts on Crescent View Phase I and the developing FM 2305 corridor:

- 1 canopy tree per 40 linear feet on east lot line
- 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berms
- Maximum 8' tall, 80 square foot monument sign
- Pitched roofs for units along the east property line

Mr. Mabry pointed out the landscaping buffer along the east property line is 5' in width. Normally a 10' setback would be required in the GR, General Retail zoning district, along the east property line because it abuts a residential zoning district. However, the PD mechanism allows flexibility so that in exchange for a narrower setback (5' instead of the normally required 10') a prescribed amount of plantings (1 canopy tree per 40 linear feet) can be provided.

Mr. Mabry stated all the elements of the zone change comply with the future land use plan, thoroughfare plan and adequate public facilities. He displayed a map showing is Single Family Two and General Retail zoning on both sides of the property and agriculturally zoned land to the rear of the property. A General Retail zoning district allows residential sales, retail sales, restaurants, and grocery stores. The Zoning Ordinance indicates it should be located at the intersection of major arterial streets. Not permitted would be pawn shops or

industrial uses and mini-storage warehouses but in this case the PD would allow a non general retail use that would be permitted on this property. If mini-storage is unable to be developed then only general retail uses would be permitted on the property. Mini-storage warehouses would be the more intense level of non residential use that would be permitted there. He said 18 notices of the P&Z hearing were sent out to surrounding property owners. As of today no notices were returned in favor of the request and two notices were returned in opposition to the request shown by a red "D" on the map on the screen. The newspaper printed notice of the public hearing on April 12, 2008 in accordance with state law and local ordinance. Mr. Mabry stated the Staff recommends approval of the zone change from Single-Family Two and PD-GR, Planned Development General Retail to a new PD-GR, Planned Development General Retail District; and the Staff recommends Development Plan with the following features:

1. Limestone exterior for facades facing FM 2305;
2. No bay doors facing FM 2305;
3. Automatic irrigation for landscaping;
4. 1 canopy tree per 40 linear feet on east lot line;
5. 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berms;
6. Maximum 8' tall, 80 square foot monument sign; and
7. Pitched roofs for units along the east property line.

Mr. Mabry stated the request complies with the requested amendment to the Future Land Use Plan of the West Temple Plan; the Thoroughfare Plan; and adequate public facilities will serve the site.

Commissioner Martin stated he had received only one denial to the request.

Mr. Mabry responded that in addition to Ms. Sylvia Odenwald, Ms. Dretchen Dye suggested denial of the request but did not give a comment.

Commissioner Norman asked whether the houses along the east side now have wood fences.

Mr. Mabry displayed a picture of the area on the screen depicting a wooden fence on the residential property. The screening requirement is the non-residential use would also need to supply a fence as well. He pointed out the fence and as well as the drainage channel which is about 60' wide. He said there would be a 5' landscaped strip, the trees, and then the storage units would start.

Commissioner Carothers asked whether the drainage ditch is part of the original subdivision or is it part of this property—who is supposed to maintain it because it does not appear to be maintained by anyone.

Mr. Mabry said it was part of the residential development—Crescent View Phase One and deeded to the City.

Commissioner Pope asked Mr. Mabry to show the locations of the two properties that were turned in as denials.

Mr. Mabry showed on the screen—6609 Brooks Drive and 6613 Brooks Drive.

Commissioner Pope asked whether the north portion of the property was general retail.

Mr. Mabry responded that the north portion was approved for general retail in 2005 with the thought that it would be a mini-storage use. He said the applicant in 2005 had originally requested commercial zoning but either the Commission or the Council asked the applicant to change the request to planned development which was approved. He also stated the two individuals submitting denials probably did not know there could be additional screening along the property line.

Commissioner Pilkington asked whether the part already zoned general retail could have already had mini-storage?

Mr. Mabry responded that mini-storage is not allowed in a plain General Retail District that does not have a PD attached but this particular property with the GR & PD designation was originally passed to allow mini-storage.

Commissioner Pope asked even if it hadn't been planned development it still was general retail there.

Mr. Mabry responded, yes.

Commissioner Pope asked to be shown the drainage ditch and the width of the ditch.

Mr. Mabry responded it was 60 feet.

Chair Luck asked whether the flow is a drainage problem area.

Mr. Mabry responded that when the property was platted the drainage for the subdivision would comply with City standards and with the City's Drainage Criteria Manual.

Commissioner Pilkington stated he did know the project that is fixing to go for drainage in that area extends down and catches the end of that channel.

Mr. Mabry stated the plat of this property will show a detention or retention pond that will also help with drainage on this property.

Chair Luck opened the public hearing for item Z-FY-08-20A, an amendment to the West Temple Comprehensive Plan to reflect commercial uses.

Mr. Bob Mitchell, Mitchell & Associates, 102 North College Street, Killeen, Texas, addressed the Commission speaking in favor of the request. He stated zoning was in effect in the Comprehensive Land Use Plan did have the general retail with the PD for mini-storage in that particular area. He said the sketches show the Plan change and the zoning case comes down to the property line approximately 320' in depth of that will be storm retention facility. When the plat comes forth at the next meeting the P&Z will see all the designs.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-20A.

Ms. Colette Marshall, applicant, provided her address as 22932 FM 2484, Killeen, Texas. She is the person under contract to buy the property if zoning is approved. She has two other storage facilities in the area. She said the mini-storage warehouses will have surveillance and indirect lighting and are very conscientious neighbors and will build the best facility possible to help the citizens of Temple have a nice storage facility. She said the Company's name is Big Red Barn—that's the reason for the red.

Mr. Pat Patterson, 2116 West Avenue H asked whether the entire mini-storage have to be 70% masonry in keeping with the newly passed Masonry Ordinance.

Mr. Mabry responded that projects submitted after the passing of the Masonry Ordinance would apply. He stated this project had been submitted early enough that the Ordinance would not apply to it.

Chair Luck stated she understood Mr. Mabry say the project was in submission prior to the masonry standards being passed.

Mr. Patterson said surely they have not already applied for a building permit.

Mr. Mabry stated vesting in Texas can be accomplished with a sketch plan or a general conceptual plan before a building permit is applied for.

Commissioner Norman asked if it's a planned development they could require compliance with the newly-passed masonry standards.

Mr. Mabry stated the Commission could add to or deletes from the staff recommendations as they pleased, including requiring compliance with the masonry standards.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-20A. Chair Luck closed the public hearing.



Commissioner Talley asked whether traffic would be affected on FM 2305.

Mr. Mabry responded that the development plan indicated several car length spaces so he did not believe it would have a major impact on backing up traffic on FM 2305.

Commissioner Pilkington asked whether the Commission would be approving the planned development portion or it would be approved with the zone change.

Mr. Mabry stated the Commission would be approving the zone change and a development plan and the Staff recommendations. There would be three things to be approved—the future land use map amendment, Item 4B includes the change in zoning and approving the development plan.

Commissioner Martin asked what is being required for the sides if the front facing FM 2305 will be 100% limestone.

Commissioner Secrest asked Ms. Marshall if it's discovered that the Masonry Ordinance does apply how this would affect her plans.

Ms. Marshall replied that the project would not be feasible.

Commissioner Pope asked Ms. Marshall whether she knew there is an appeal process through the City Planner for specific use.

Before Ms. Marshall answered, Mr. Mabry stated the Masonry Ordinance does not apply to the property.

Chair Luck asked if the Planning and Zoning Commission feels that is a needed item then it can be addressed in a motion for Item 4B?

Mr. Mabry responded yes.

Ms. Colette Marshall stated that if the red metal wall is offensive they would pull the buildings in, have the fire lane there, and have the privacy fence.

Commissioner Martin stated he might have a problem with the huge red metal barn on FM 2305 right next door to the subdivision.

Ms. Colette Marshall stated she had another option which are metal panels sprayed with something that has a stucco look.

Commissioner Martin stated his issue was not to have limestone but it's the red color.

Commissioner Pope asked if it would be possible that the east/west long walls could be something other than red metal.

Ms. Marshall stated there would be no problem to that.

Commissioner Pilkington asked whether she would have a problem doing the stucco metal on the outside.

Ms. Marshall stated no, no problem.

Chair Luck asked whether the stucco spray or the materials that appear to be stucco spray on the east/west wall would meet the masonry standards that were set for materials to be used.

Mr. Mabry responded that if the masonry standards did apply to this project stucco would be one of the acceptable materials in the standards.

Commissioner Carothers stated he did not believe the material to be actual stucco.

Ms. Marshall stated she had shown a sample to the City Staff and had met with their approval. She said it's just a cream color and looks like stucco.

Mr. Tim Dolan, Planning Director, addressed the Commission, stating the material palette brought in by Ms. Marshall is a material with a stucco finish. Mr. Dolan asked the Commission to consider the material on the eastern, western and portions of the northern sides of the proposed units.

A discussion followed with Ms. Marshall showing the Commission how the proposed units will be screened and detailed on the development plan.

Motion to recommend approval of Z-FY-08-20A, amendment to the West Temple Comprehensive Plan to reflect commercial uses on 6.1 acres by Commissioner Carothers; seconded by Commissioner Secrest.

Motion passed (8/0).

Commissioner Carothers asked whether this is the only time the Commission has to set parameters for the Planned Development and not during the platting process?

Mr. Mabry stated the plat would deal with the boundaries of the lot, the drainage facilities, easements and things of that nature.

Commissioner Pope asked whether the Masonry Ordinance did not affect this project.

Mr. Mabry responded, yes, it does not apply.

A discussion followed regarding the east/west elevation, color, screening, the stucco materials known as Stucco Tech, and percentage of limestone facing FM 2305.

Motion to recommend approval of Z-FY-08-20B, a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail District) on the 6.1 acres with Staff recommendations as written with the amendments under # 2 for 100% limestone exterior for the façade facing FM 2305 with the caramel and cream color spray on metal adhesive 100% of the east, west and all sides except for the south; motion seconded by Commissioner Pilkington.

Motion passed (8/0).

ORDINANCE NO. \_\_\_\_\_

[PLANNING NO. Z-FY-08-20-A]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING AN AMENDMENT TO THE WEST TEMPLE COMPREHENSIVE PLAN TO REFLECT RETAIL USES ON APPROXIMATELY 6.5 ACRES OUT OF LAND COMMONLY KNOWN AS OUTBLOCK 1104-C, LOCATED ON THE SOUTH SIDE OF WEST ADAMS AVENUE, EAST OF THE RESIDENTIAL SUBDIVISION OF CRESCENT VIEW PHASE ONE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves an amendment to the West Temple Comprehensive Plan to reflect retail uses on approximately 6.05 acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One, in the City of Temple, Texas, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2:** The City Council directs the Director of Planning to make the necessary changes to the Future Land Use Plan accordingly.

**Part 3:** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

**Part 4:** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 5:** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 1<sup>st</sup> day of May, 2008.

PASSED AND APPROVED on Second Reading on the **15<sup>th</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #9(B)  
Regular Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING - Z-FY-08-20-B: Consider adopting an ordinance authorizing a zoning change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District on 6.05 ± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One.

**STAFF AND P&Z COMMISSION RECOMMENDATION:** The Planning and Zoning Commission voted 8/0 to recommend approval of the “Development Plan – Staff & P&Z Recommendation” and a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District at its meeting on April 21, 2008 with the following conditions shown on the Development Plan:

1. Exterior walls facing FM 2305 shall be 100% limestone (see Development Plan – Staff & P&Z Recommendation);
2. Exterior walls facing neighboring properties to the east and west shall be composed of Stucco-Tech material of a camel and cream color (see Development Plan – Staff & P&Z Recommendation);
3. No bay doors shall face FM 2305;
4. Automatic irrigation shall be installed for all landscaping;
5. 1 canopy tree (2” caliper, minimum 5’ tall) per 40 linear feet shall be provided on east lot line;
6. A continuous hedgerow or berm and 1 canopy tree (2” caliper, minimum 5’ tall) per 40 linear feet shall be provided on north lot line;
7. A monument sign a maximum 8 feet in height and 80 square feet in area shall be permitted; and
8. Pitched roofs shall be provided for units along the east property line.

For the following reasons:

1. The request complies with the requested amendment to the Future Land Use Map;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public facilities will serve the site.

Commissioner Kjelland was absent.

**ITEM SUMMARY:** Please refer to the Staff Report and draft minutes of case Z-FY-08-20B, from the Planning and Zoning meeting, April 21, 2008. The staff and P&Z recommendations have the desired outcomes of reducing negative impacts on the neighboring subdivision to the east and maintaining and improving the character of the FM 2305 strategic corridor.

If the PD zone change is approved, the site plan that will accompany any future building permit applications on the site will be checked for consistency with the binding development plan. Any significant deviation from the approved development plan will require additional review from the Planning and Zoning Commission and City Council.

This project does not fall under the requirements of the masonry standards adopted on April 17, 2008, because the project was submitted before that date.

The Stucco-Tech material referenced in recommendation #2 above refers to a metal panel with a permanently baked on stucco finish. The applicant plans to have a sample of the material at the City Council hearing for the Council members to inspect.

**FISCAL IMPACT:** NA

**ATTACHMENTS:**

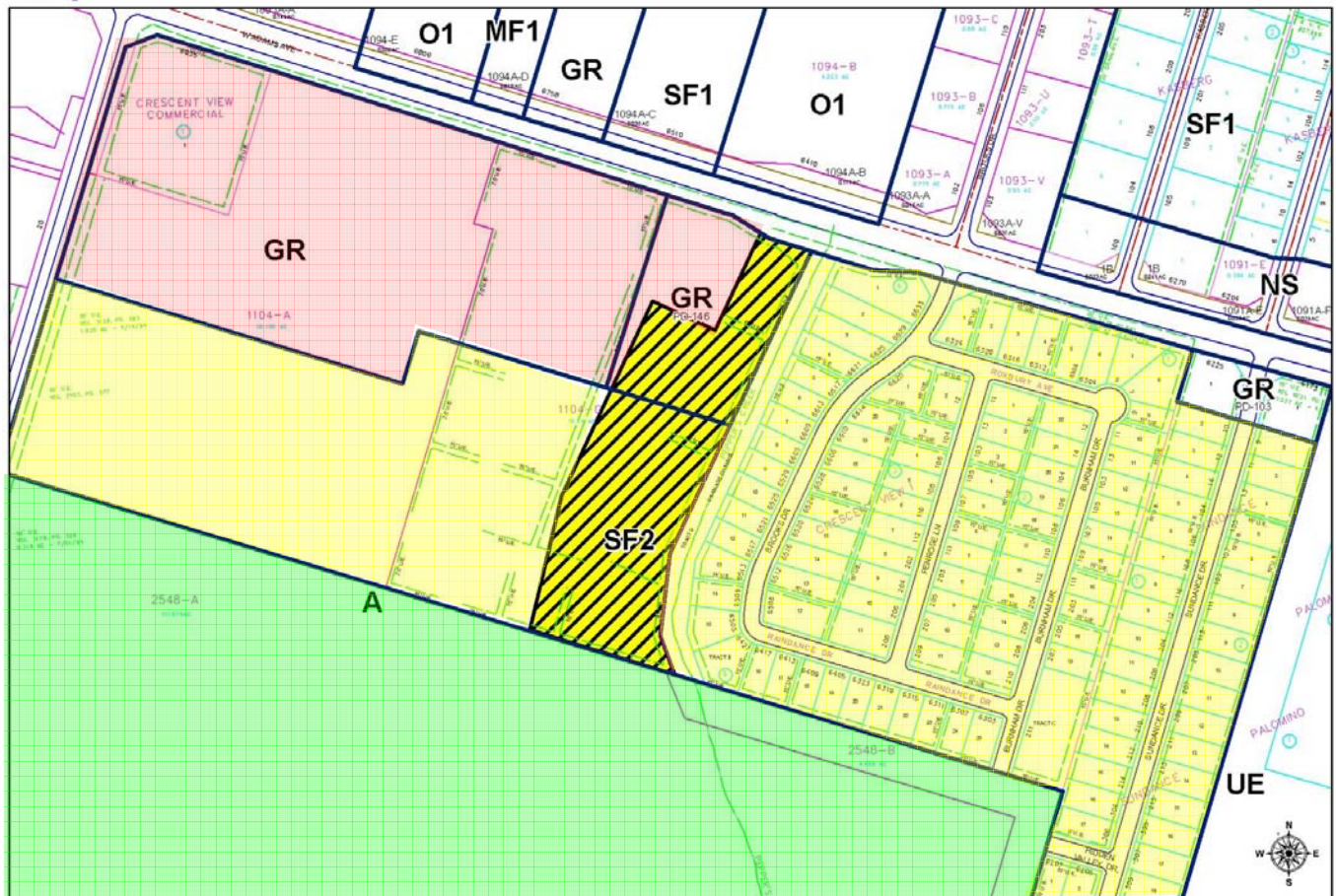
[Zoning Map](#)  
[Land Use Map](#)  
[Aerial](#)  
[Development Plan – Applicant’s Submittal](#)  
[Development Plan – Staff & P&Z Recommendation](#)  
[List of Canopy Trees](#)  
[P&Z Staff Report \(Z-FY-08-20-B\)](#)  
[P&Z Minutes \(04/21/08\)](#)  
[Ordinance](#)



**Z-FY-08-20-B**

Part of OB# 1104-C

6.05 Acres



 ZFY0820

SF2 & PD(GR) to PD(GR)

1 inch equals 300 feet  
J Stone 03.27.08





Z-FY-08-20-A

Part of OB# 1104-C

6.05 Acres

**CLUP**

**Agricultural**

AGRICULTURE

**Residential**

- LOW DENSITY (UE)
- MOD DENSITY (SF1, SF2, SF3, MH, 2F)
- MED DENSITY (MH, 2F, TH, MF1)
- HIGH DENSITY (MF2)

**Commercial**

- OFFICE (O1, O2)
- RETAIL (NS, GR)
- COMMERCIAL (C, CA)

**Mixed Use**

- MIXEDUSE (MU)

**Industrial**

- INDUSTRIAL (LI, HI)
- Warehouse/Distribution
- Manufacturing/Distribution
- Bio-Science/Technology
- Corporate Campus & Office
- Aviation Industrial Dvmt
- Fwy Com/Tech/Indust
- Intermodal

**Community Facilities**

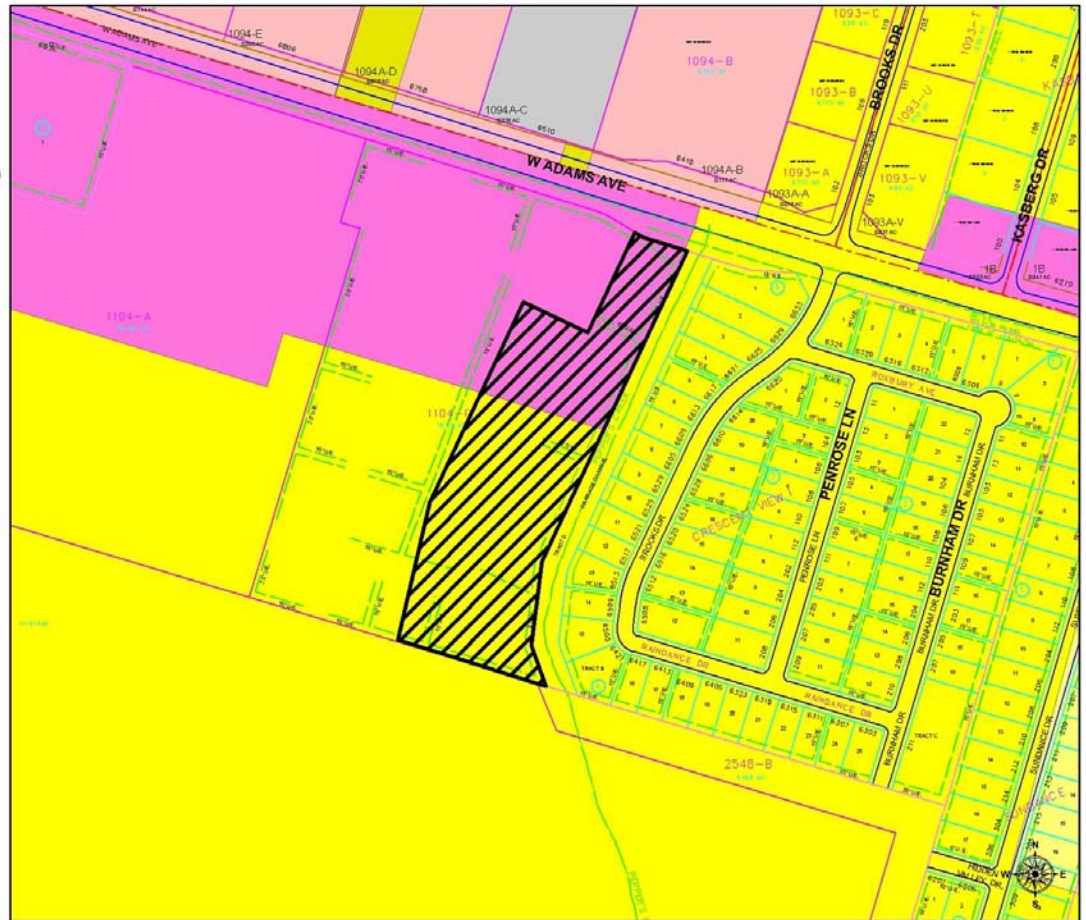
- COMMUNITY FACILITY
- CF-E (EDUCATIONAL)
- CF-G (GENERAL)
- CF-R (RESIDENTIAL)
- CF-M (MEDICAL)

**Park Land**

- PROPOSED FLOATING PARK
- PARKS

**Downtown**

- DOWNTOWN



SF2 & PD(GR) to PD(GR)

1 inch equals 300 feet  
J Stone 03.27.08



**Z-FY-08-20-B**

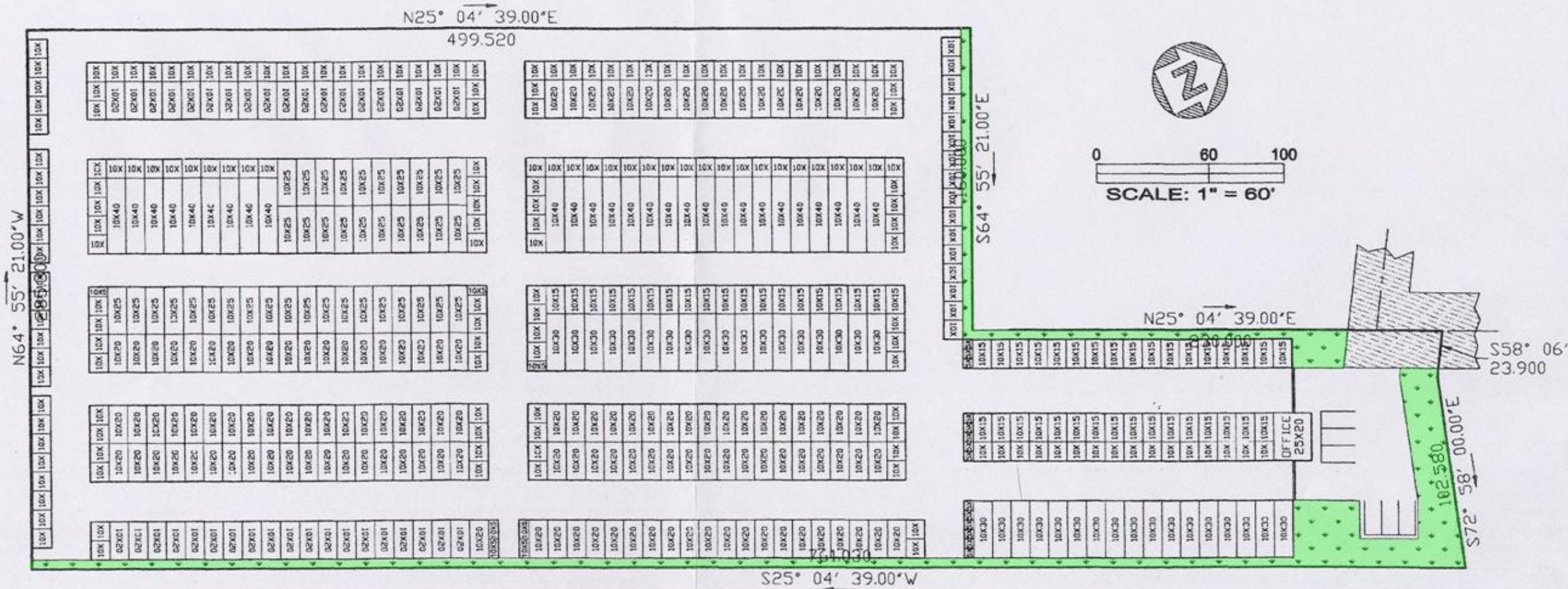
Part of OB# 1104-C

6.05 Acres





# Development Plan - Applicant's Submittal



| UNIT TALLY |        |     |        |        |        |
|------------|--------|-----|--------|--------|--------|
| SIZE       | NUMBER | SF  | TOT-SF | UNIT % | SF %   |
| 5X5        | 14     | 25  | 350    | 2.6%   | 0.4%   |
| 10X5       | 7      | 50  | 350    | 1.3%   | 0.4%   |
| 10X10      | 188    | 100 | 18,800 | 35.3%  | 20.2%  |
| 10X15      | 52     | 150 | 7,800  | 9.8%   | 8.4%   |
| 10X20      | 170    | 200 | 34,000 | 31.9%  | 36.6%  |
| 10X25      | 39     | 250 | 9,750  | 7.3%   | 10.5%  |
| 10X30      | 35     | 300 | 10,500 | 6.6%   | 11.3%  |
| 10X40      | 27     | 400 | 10,800 | 5.1%   | 11.6%  |
| OFFICE     | 1      | 500 | 500    | 0.2%   | 0.5%   |
|            | 533    |     | 92,850 | 100.0% | 100.0% |

| AREA TALLY |            |            |         |
|------------|------------|------------|---------|
| SURFACE    | AREA SF    | AREA ACRES | PERCENT |
| TOTAL      | 174,244.38 | 4.000      | 100.00% |
| LANDSCAPE  | 9,451.47   | 0.217      | 5.42%   |
| SLAB       | 92,084.32  | 2.114      | 52.85%  |
| PAVING     | 72,709     | 1.669      | 41.73%  |

NOTE: THIS SCHEMATIC IS BASED ON A SURVEY BY PROVIDED BY SELLER. ENGINEER DOES NOT WARRANT THE ACCURACY OF THE SURVEY. GEOTECHNICAL, STRUCTURAL, GRADING, AND DRAINAGE DESIGN BY OTHERS.



John Hart Bandas  
3/13/08

| NO. | DATE | REVISION | BY |
|-----|------|----------|----|
|     |      |          |    |
|     |      |          |    |
|     |      |          |    |

**BANDAS ENGINEERING COMPANY**  
CIVIL ENGINEERING  
PO BOX 3217  
TEMPLE, TEXAS 76505  
(254) 778-8728  
bandas-civil@hotmail.com

PROJECT: **BIG RED BARN # 3**  
6603 WEST ADAMS AVENUE  
TEMPLE, TEXAS

**BARNES BUILDING CORPORATION**  
UNIT SCHEMATIC STUDY & DIAGRAM  
(NOT FOR CONSTRUCTION)

|              |          |
|--------------|----------|
| DATE:        | 03/13/08 |
| DESIGNED BY: | JHB      |
| DRAWN BY:    | JHB      |
| CHECKED BY:  | JHB      |
| OWG. NO.     | X        |
| SHT. #       | XX OF X  |

- Limestone exterior for facades facing FM 2305
- No bay doors will face FM 2305
- Automatic irrigation for landscaping



# Development Plan – Staff & P&Z Recommendation



UNIT TALLY

| SIZE   | NUMBER | SF  | TOT-SF | UNIT % | SF %   |
|--------|--------|-----|--------|--------|--------|
| 5X5    | 14     | 25  | 350    | 2.6%   | 0.4%   |
| 10X5   | 7      | 50  | 350    | 1.3%   | 0.4%   |
| 10X10  | 188    | 100 | 18,800 | 35.3%  | 20.2%  |
| 10X15  | 52     | 150 | 7,800  | 9.8%   | 8.4%   |
| 10X20  | 170    | 200 | 34,000 | 31.9%  | 36.6%  |
| 10X25  | 39     | 250 | 9,750  | 7.3%   | 10.5%  |
| 10X30  | 35     | 300 | 10,500 | 6.6%   | 11.3%  |
| 10X40  | 27     | 400 | 10,800 | 5.1%   | 11.6%  |
| OFFICE | 1      | 500 | 500    | 0.2%   | 0.5%   |
|        | 533    |     | 92,850 | 100.0% | 100.0% |

AREA TALLY

| SURFACE   | AREA SF    | AREA ACRES | PERCENT |
|-----------|------------|------------|---------|
| TOTAL     | 174,244.38 | 4.000      | 100.00% |
| LANDSCAPE | 9,451.47   | 0.217      | 5.42%   |
| SLAB      | 92,084.32  | 2.114      | 52.85%  |
| PAVING    | 72,709     | 1.669      | 41.73%  |

NOTE: THIS SCHEMATIC IS BASED ON A SURVEY BY PROVIDED BY SELLER. ENGINEER DOES NOT WARRANT THE ACCURACY OF THE SURVEY. GEOTECHNICAL, STRUCTURAL, GRADING, AND DRAINAGE DESIGN BY OTHERS.

=Stucco-tech façade facing neighboring properties

=100% limestone façade facing FM 2305



John Hart Bandas  
3/13/08

| NO. | DATE | REVISION | BY |
|-----|------|----------|----|
|     |      |          |    |
|     |      |          |    |
|     |      |          |    |
|     |      |          |    |

**BANDAS ENGINEERING COMPANY**  
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PROJECT: **BIG RED BARN # 3**  
6603 WEST ADAMS AVENUE  
TEMPLE, TEXAS

**BARNES BUILDING CORPORATION**  
UNIT SCHEMATIC STUDY & DIAGRAM  
(NOT FOR CONSTRUCTION)

DATE: 03/13/08  
DESIGNED BY: JHB  
DRAWN BY: JHB  
CHECKED BY: JHB  
DWG. NO. X  
SHT. # XX OF X

**Additional conditions listed in PD ordinance shall apply to this project**



# List of Canopy Trees

| Common Name                        | Scientific Name        |
|------------------------------------|------------------------|
| Canopy Trees                       |                        |
| Ash, Green                         | Fraxinus pennsylvanica |
| Ash, Texas                         | Fraxinus texensis      |
| Cypress, Arizona                   | Cupressus arizonica    |
| Cypress, Bald                      | Taxodium distichum     |
| Elm, American                      | Ulmus americana        |
| Elm, Cedar                         | Ulmus crassifolia      |
| Eve's Necklace                     | Sophora affinis        |
| Holly, American                    | Ilex opaca             |
| Laurelcherry, Carolina             | Prunus caroliniana     |
| Maple, Bigtooth                    | Acer grandidentatum    |
| Oak Shumard                        | Quercus shumardii      |
| Oak, Blackjack                     | Quercus marilandica    |
| Oak, Bur                           | Quercus macrocarpa     |
| Oak, Chinquapin                    | Quercus muhlenbergii   |
| Oak, Durand                        | Quercus sinuate        |
| Oak, Live                          | Quercus virginiana     |
| Oak, Post                          | Quercus stellata       |
| Oak, Shumard                       | Quercus shumardii      |
| Pecan                              | Carya drummondii       |
| Sycamore                           | Platanus occidentalis  |
| Texas Ash                          | Fraxinus texensis      |
| Texas Pistache                     | Pistacia texana        |
| Walnut, Arizona                    | Juglans major          |
| Walnut, Eastern                    | Juglans nigra          |
| Other similar species or varieties | NA                     |



# PLANNING AND ZONING COMMISSION AGENDA ITEM

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04/21/08  
Item #4B  
Page 1 of 3

**APPLICANT / DEVELOPMENT:** Bob Mitchell for Ansley Corporation

**CASE MANAGER:** Brian Mabry, AICP, Senior Planner

**ITEM DESCRIPTION:** Z-FY-08-20-B Hold a public hearing to consider a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)

**BACKGROUND:** This application tracks with a requested amendment to the West Temple Plan, Z-FY-08-20A. The purpose of the zone change request is to establish a mini-storage facility in close proximity to a single-family residential development, Crescent View Phase I. The desire to mitigate the impacts of the mini-storage facility is the driving force behind the staff recommendations for this case.

The property currently has a Planned Development (PD) designation that allows mini-storage. However, contrary to generally accepted planning practice, it was approved in 2005 so that review and approval of a binding development plan by the Planning and Zoning Commission and City Council could take place at some point *after* approval of the PD zoning designation. All PDs should be reviewed concurrently with a binding development plan. Therefore, staff recommends removal of the old PD designation with this new PD designation.

In accordance with PD submittal requirements, the applicant has submitted a binding development plan showing storage unit locations and dimensions, parking areas, access point, and general landscaping. Notable features of the applicant's development plan (see attached) also include:

- Limestone exterior for facades facing FM 2305
- No bay doors facing FM 2305
- Automatic irrigation for landscaping

In addition to these voluntary amenities, staff recommends the following features in order to mitigate potential impacts on Crescent View Phase I and the developing FM 2305 corridor:

- 1 canopy tree per 40 linear feet on east lot line
- 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berm
- Maximum 8' tall, 80 square foot monument sign
- Pitched roofs for units along the east property line

Normally a 10' setback would be required in the GR, General Retail zoning district, along the east property line because it abuts a residential zoning district. However, the PD mechanism allows flexibility so that in exchange for a narrower setback (5' instead of the normally required 10') a prescribed amount of plantings (1 canopy tree per 40 linear feet) can be provided.

**Double Sided**

If the PD zone change is approved, the site plan that will accompany any future building permit applications on the site will be checked for consistency with the binding development plan. Any significant deviation from the approved development plan will require additional review from the Planning and Zoning Commission and City Council.

#### Surrounding Property and Uses

The following table shows the existing zoning and current land uses surrounding the subject property.

| Direction | Zoning | Current Land Use                             |
|-----------|--------|--|
| North     | O1     | Vacant                                       |
|           | SF-1   | Vacant                                       |
| East      | SF-2   | Drainage ditch and Single-family subdivision |
| South     | A      | Vacant                                       |
| West      | PD-GR  | Vacant                                       |
|           | SF-2   | Vacant                                       |

A zoning request should be reviewed for compliance with the Comprehensive Plan.

#### Future Land Use Plan

The requested Retail future land use category accommodates the GR, General Retail and NS, Neighborhood Services zoning districts. The zone change request complies with the requested amendment to the Future Land Use Plan.

#### Thoroughfare Plan

The property fronts on FM 2305 which is designated as a major arterial on the Thoroughfare Plan. The zone change request complies with the Thoroughfare Plan.

#### Adequacy of Public Facilities

An 18" sewer line runs along the FM 2305 frontage of the property. A 14" water line runs along FM 2305 across the street from the subject property. The plat for the property, which will be presented to the Planning and Zoning Commission at its next meeting on May 5, 2008, shows that the applicant proposes to bore under FM 2305 and tap onto this water line. Adequate public facilities will serve the property.

#### Development Regulations

The purpose of the GR, General Retail district is intended to serve larger service areas than neighborhoods. This district should be located at the intersection of major arterials and should provide total on-site traffic maneuvering such that traffic entering and exiting the facility should have room to turn, queue for parking areas, and park within the confines of the retail facility. This is the standard retail district and allows most retail uses including retail sales, fuel sales, restaurants, grocery stores, or offices and residential uses except apartments.

The purpose of the PD, Planned Development overlay district is to accommodate unique development proposals with special design considerations.

Minimum lot area and setback requirements for the GR, General Retail district are as follows.

| <b>GR, General Retail<br/>(nonresidential uses)</b> |                                     |
|---|-------------------------------------|
| <b>Min. Lot Area (sq. ft.)</b>                      | None                                |
| <b>Min. Lot Width (ft.)</b>                         | None                                |
| <b>Min. Lot Depth (ft.)</b>                         | None                                |
| <b>Max. Height (stories)</b>                        | 3 stories                           |
| <b>Min. Yard (ft)</b>                               |                                     |
| Front   | 30 from street centerline           |
| Side  | 10 adjacent to residential district |
| Rear  | 10 adjacent to residential district |

#### Public Notice

18 notices for the P&Z hearing were sent out. As of April 16 at 2 PM, no notices were returned in favor of and one notice was returned in opposition to the request. The newspaper printed notice of the public hearing on April 12, 2008 in accordance with state law and local ordinance

#### **STAFF RECOMMENDATION:** Staff recommends approval of the:

1. Zone change from SF-2, Single-Family 2 and PD-GR, Planned Development General Retail to PD-GR, Planned Development General Retail District; and
2. Staff Recommended Development Plan with:
  1. Limestone exterior for facades facing FM 2305;
  2. No bay doors facing FM 2305;
  3. Automatic irrigation for landscaping;
  4. 1 canopy tree per 40 linear feet on east lot line;
  5. 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berm;
  6. Maximum 8' tall, 80 square foot monument sign; and
  7. Pitched roofs for units along the east property line.

For the following reasons:

1. The request complies with the requested amendment to the Future Land Use Plan of the West Temple Plan;
2. The request complies with the Thoroughfare Plan; and
3. Adequate public facilities will serve the site.

**FISCAL IMPACT:** Not Applicable

#### **ATTACHMENTS:**

Zoning Map  
 Land Use Map  
 Aerial  
 Development Plan – Applicant's Submittal  
 Development Plan – Staff recommendation  
 List of Canopy Trees  
 Response Letters



**EXCERPTS FROM THE**  
**PLANNING & ZONING COMMISSION MEETING**  
**MONDAY, APRIL 21, 2008**

**ACTION ITEMS**

Chair Luck stated that Item 4A, Z-FY-08-20A and Item 4B, Z-FY-08-20B, would be presented together and then have separate motions and votes on each item.

- 4A.** Z-FY-08-20-A Hold a public hearing to consider amending the West Temple Comprehensive Plan to reflect retail uses on 6.1± acres out of land commonly known as outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)
- 4B.** Z-FY-08-20B Z-FY-08-20-B Hold a public hearing to consider a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail) District on 6.1± acres out of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One. (Applicant: Ansley Corporation)

Mr. Brian Mabry, Senior Planner, began with Item 4A, Z-FY-08-20A, as presented in the Planning and Zoning Agenda Item. He said the applicant is Mitchell and Associates. He said the Future Land Use Plan being amended is the West Temple Plan, which was adopted in 1999. He said the future land use plan amendment and the zone change request were reviewed by the Development Review Committee (DRC) on April 14, 2008. Mr. Mabry shows Moderate/Medium Density Residential and Retail future land use categories for the subject property and for property to the west. Land to the north of the subject property has the Office future land use category. Land to the south and east is designated as Moderate/Medium Density Residential. He said there is an 18" sewer line runs along the FM 2305 frontage of the property. A 14" water line runs along FM 2305 across the street from the subject property. The plat for the property, which will be presented to the Planning and Zoning Commission at its next meeting on May 5, 2008, shows that the applicant proposes to bore under FM 2305 and tap onto this water line. At that time adequate public facilities will serve the property. The property fronts on FM 2305 which is designated as a major arterial on the Thoroughfare Plan which accommodates non-residential uses such as this request. The West Temple Plan amendment complies with the Thoroughfare Plan. Staff recommends approval of the future land use map amendment request from residential to retail because the request complies with

the Future Land Use Plan, the Thoroughfare Plan, and adequate public facilities serve this site.

Mr. Mabry concluded with zone change Z-FY-08-20B. He said the zoning portion of the case is to have a Planned Development with General Retail as a base zoning district so that a mini-storage facility can be built. The property currently has a Planned Development (PD) designation that allows mini-storage. However, contrary to generally accepted planning practice, it was approved in 2005 so that review and approval of a binding development plan by the Planning and Zoning Commission and City Council could take place at some point after approval of the PD zoning designation. All PDDs should be reviewed concurrently with a binding development plan. Therefore, staff recommends removal of the old PD designation with this new PD designation. In accordance with PD submittal requirements, the applicant has submitted a binding development plan showing storage unit locations and dimensions, parking areas, access point, and general landscaping. The applicant stated that limestone exterior for facades facing FM 2305 will be used but no bay doors will face FM 2305 and automatic irrigation for landscaping would also be provided. Mr. Mabry showed an aerial of the property and drainage channels which runs between existing homes and the subject property. Mr. Mabry stated the Subdivision Ordinance requires that some form of screening or buffering take place when a non-residential use abuts a residential subdivision which can be a six foot fence or masonry wall or landscaping screening at the property line. In addition to these voluntary amenities, staff recommends the following features in order to mitigate potential impacts on Crescent View Phase I and the developing FM 2305 corridor:

- 1 canopy tree per 40 linear feet on east lot line
- 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berms
- Maximum 8' tall, 80 square foot monument sign
- Pitched roofs for units along the east property line

Mr. Mabry pointed out the landscaping buffer along the east property line is 5' in width. Normally a 10' setback would be required in the GR, General Retail zoning district, along the east property line because it abuts a residential zoning district. However, the PD mechanism allows flexibility so that in exchange for a narrower setback (5' instead of the normally required 10') a prescribed amount of plantings (1 canopy tree per 40 linear feet) can be provided.

Mr. Mabry stated all the elements of the zone change comply with the future land use plan, thoroughfare plan and adequate public facilities. He displayed a map showing is Single Family Two and General Retail zoning on both sides of the property and agriculturally zoned land to the rear of the property. A General Retail zoning district allows residential sales, retail sales, restaurants, and grocery stores. The Zoning Ordinance indicates it should be located at the intersection of major arterial streets. Not permitted would be pawn shops or

industrial uses and mini-storage warehouses but in this case the PD would allow a non general retail use that would be permitted on this property. If mini-storage is unable to be developed then only general retail uses would be permitted on the property. Mini-storage warehouses would be the more intense level of non residential use that would be permitted there. He said 18 notices of the P&Z hearing were sent out to surrounding property owners. As of today no notices were returned in favor of the request and two notices were returned in opposition to the request shown by a red "D" on the map on the screen. The newspaper printed notice of the public hearing on April 12, 2008 in accordance with state law and local ordinance. Mr. Mabry stated the Staff recommends approval of the zone change from Single-Family Two and PD-GR, Planned Development General Retail to a new PD-GR, Planned Development General Retail District; and the Staff recommends Development Plan with the following features:

1. Limestone exterior for facades facing FM 2305;
2. No bay doors facing FM 2305;
3. Automatic irrigation for landscaping;
4. 1 canopy tree per 40 linear feet on east lot line;
5. 1 canopy tree per 40 linear feet on north lot line with continuous hedgerow or berms;
6. Maximum 8' tall, 80 square foot monument sign; and
7. Pitched roofs for units along the east property line.

Mr. Mabry stated the request complies with the requested amendment to the Future Land Use Plan of the West Temple Plan; the Thoroughfare Plan; and adequate public facilities will serve the site.

Commissioner Martin stated he had received only one denial to the request.

Mr. Mabry responded that in addition to Ms. Sylvia Odenwald, Ms. Dretchen Dye suggested denial of the request but did not give a comment.

Commissioner Norman asked whether the houses along the east side now have wood fences.

Mr. Mabry displayed a picture of the area on the screen depicting a wooden fence on the residential property. The screening requirement is the non-residential use would also need to supply a fence as well. He pointed out the fence and as well as the drainage channel which is about 60' wide. He said there would be a 5' landscaped strip, the trees, and then the storage units would start.

Commissioner Carothers asked whether the drainage ditch is part of the original subdivision or is it part of this property—who is supposed to maintain it because it does not appear to be maintained by anyone.

Mr. Mabry said it was part of the residential development—Crescent View Phase One and deeded to the City.

Commissioner Pope asked Mr. Mabry to show the locations of the two properties that were turned in as denials.

Mr. Mabry showed on the screen—6609 Brooks Drive and 6613 Brooks Drive.

Commissioner Pope asked whether the north portion of the property was general retail.

Mr. Mabry responded that the north portion was approved for general retail in 2005 with the thought that it would be a mini-storage use. He said the applicant in 2005 had originally requested commercial zoning but either the Commission or the Council asked the applicant to change the request to planned development which was approved. He also stated the two individuals submitting denials probably did not know there could be additional screening along the property line.

Commissioner Pilkington asked whether the part already zoned general retail could have already had mini-storage?

Mr. Mabry responded that mini-storage is not allowed in a plain General Retail District that does not have a PD attached but this particular property with the GR & PD designation was originally passed to allow mini-storage.

Commissioner Pope asked even if it hadn't been planned development it still was general retail there.

Mr. Mabry responded, yes.

Commissioner Pope asked to be shown the drainage ditch and the width of the ditch.

Mr. Mabry responded it was 60 feet.

Chair Luck asked whether the flow is a drainage problem area.

Mr. Mabry responded that when the property was platted the drainage for the subdivision would comply with City standards and with the City's Drainage Criteria Manual.

Commissioner Pilkington stated he did know the project that is fixing to go for drainage in that area extends down and catches the end of that channel.

Mr. Mabry stated the plat of this property will show a detention or retention pond that will also help with drainage on this property.

Chair Luck opened the public hearing for item Z-FY-08-20A, an amendment to the West Temple Comprehensive Plan to reflect commercial uses.

Mr. Bob Mitchell, Mitchell & Associates, 102 North College Street, Killeen, Texas, addressed the Commission speaking in favor of the request. He stated zoning was in effect in the Comprehensive Land Use Plan did have the general retail with the PD for mini-storage in that particular area. He said the sketches show the Plan change and the zoning case comes down to the property line approximately 320' in depth of that will be storm retention facility. When the plat comes forth at the next meeting the P&Z will see all the designs.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-20A.

Ms. Colette Marshall, applicant, provided her address as 22932 FM 2484, Killeen, Texas. She is the person under contract to buy the property if zoning is approved. She has two other storage facilities in the area. She said the mini-storage warehouses will have surveillance and indirect lighting and are very conscientious neighbors and will build the best facility possible to help the citizens of Temple have a nice storage facility. She said the Company's name is Big Red Barn—that's the reason for the red.

Mr. Pat Patterson, 2116 West Avenue H asked whether the entire mini-storage have to be 70% masonry in keeping with the newly passed Masonry Ordinance.

Mr. Mabry responded that projects submitted after the passing of the Masonry Ordinance would apply. He stated this project had been submitted early enough that the Ordinance would not apply to it.

Chair Luck stated she understood Mr. Mabry say the project was in submission prior to the masonry standards being passed.

Mr. Patterson said surely they have not already applied for a building permit.

Mr. Mabry stated vesting in Texas can be accomplished with a sketch plan or a general conceptual plan before a building permit is applied for.

Commissioner Norman asked if it's a planned development they could require compliance with the newly-passed masonry standards.

Mr. Mabry stated the Commission could add to or deletes from the staff recommendations as they pleased, including requiring compliance with the masonry standards.

Chair Luck asked if anyone else wished to speak for or against Z-FY-08-20A. Chair Luck closed the public hearing.

Commissioner Talley asked whether traffic would be affected on FM 2305.

Mr. Mabry responded that the development plan indicated several car length spaces so he did not believe it would have a major impact on backing up traffic on FM 2305.

Commissioner Pilkington asked whether the Commission would be approving the planned development portion or it would be approved with the zone change.

Mr. Mabry stated the Commission would be approving the zone change and a development plan and the Staff recommendations. There would be three things to be approved—the future land use map amendment, Item 4B includes the change in zoning and approving the development plan.

Commissioner Martin asked what is being required for the sides if the front facing FM 2305 will be 100% limestone.

Commissioner Secrest asked Ms. Marshall if it's discovered that the Masonry Ordinance does apply how this would affect her plans.

Ms. Marshall replied that the project would not be feasible.

Commissioner Pope asked Ms. Marshall whether she knew there is an appeal process through the City Planner for specific use.

Before Ms. Marshall answered, Mr. Mabry stated the Masonry Ordinance does not apply to the property.

Chair Luck asked if the Planning and Zoning Commission feels that is a needed item then it can be addressed in a motion for Item 4B?

Mr. Mabry responded yes.

Ms. Colette Marshall stated that if the red metal wall is offensive they would pull the buildings in, have the fire lane there, and have the privacy fence.

Commissioner Martin stated he might have a problem with the huge red metal barn on FM 2305 right next door to the subdivision.

Ms. Colette Marshall stated she had another option which are metal panels sprayed with something that has a stucco look.

Commissioner Martin stated his issue was not to have limestone but it's the red color.

Commissioner Pope asked if it would be possible that the east/west long walls could be something other than red metal.

Ms. Marshall stated there would be no problem to that.

Commissioner Pilkington asked whether she would have a problem doing the stucco metal on the outside.

Ms. Marshall stated no, no problem.

Chair Luck asked whether the stucco spray or the materials that appear to be stucco spray on the east/west wall would meet the masonry standards that were set for materials to be used.

Mr. Mabry responded that if the masonry standards did apply to this project stucco would be one of the acceptable materials in the standards.

Commissioner Carothers stated he did not believe the material to be actual stucco.

Ms. Marshall stated she had shown a sample to the City Staff and had met with their approval. She said it's just a cream color and looks like stucco.

Mr. Tim Dolan, Planning Director, addressed the Commission, stating the material palette brought in by Ms. Marshall is a material with a stucco finish. Mr. Dolan asked the Commission to consider the material on the eastern, western and portions of the northern sides of the proposed units.

A discussion followed with Ms. Marshall showing the Commission how the proposed units will be screened and detailed on the development plan.

Motion to recommend approval of Z-FY-08-20A, amendment to the West Temple Comprehensive Plan to reflect commercial uses on 6.1 acres by Commissioner Carothers; seconded by Commissioner Secrest.

Motion passed (8/0).

Commissioner Carothers asked whether this is the only time the Commission has to set parameters for the Planned Development and not during the platting process?

Mr. Mabry stated the plat would deal with the boundaries of the lot, the drainage facilities, easements and things of that nature.

Commissioner Pope asked whether the Masonry Ordinance did not affect this project.

Mr. Mabry responded, yes, it does not apply.

A discussion followed regarding the east/west elevation, color, screening, the stucco materials known as Stucco Tech, and percentage of limestone facing FM 2305.

Motion to recommend approval of Z-FY-08-20B, a zone change from Single Family Two District and Planned Development (General Retail District) to Planned Development (General Retail District) on the 6.1 acres with Staff recommendations as written with the amendments under # 2 for 100% limestone exterior for the façade facing FM 2305 with the caramel and cream color spray on metal adhesive 100% of the east, west and all sides except for the south; motion seconded by Commissioner Pilkington.

Motion passed (8/0).



ORDINANCE NO. \_\_\_\_\_

[PLANNING NO. Z-FY-08-20-B]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM TWO FAMILY DISTRICT AND PLANNED DEVELOPMENT (GENERAL RETAIL) DISTRICT TO PLANNED DEVELOPMENT (GENERAL RETAIL) DISTRICT ON APPROXIMATELY 6.05 ACRES OUT OF LAND COMMONLY KNOWN AS OUTBLOCK 1104-C, LOCATED ON THE SOUTH SIDE OF WEST ADAMS AVENUE, EAST OF THE RESIDENTIAL SUBDIVISION OF CRESCENT VIEW PHASE ONE, IN ACCORDANCE WITH SECTIONS 7-500 THROUGH 7-509 OF THE COMPREHENSIVE ZONING ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the owner of the property consisting of approximately 6.05 acres of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One, has requested that the property be rezoned from Single Family Two District and Planned Development (General Retail) District to Planned Development (General Retail) District; and

**Whereas**, the City Council, after notice and a public hearing, finds that it is in the public interest to authorize this action.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council approves a zoning change from Single Family Two District and Planned Development (General Retail) District to Planned Development (General Retail) District on approximately 6.05 acres of land commonly known as Outblock 1104-C, located on the south side of West Adams Avenue, east of the residential subdivision of Crescent View Phase One, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2:** In accordance with Sections 7-500 through 7-509 of the Comprehensive Zoning Ordinance of the City of Temple, Texas, Ordinance No. 91-2101, is amended by changing the zoning classification of the property described in Part 1 above, to Planned Development (General Retail) District, and shall comply with all applicable sections of the Code of Ordinances of the City of Temple, Texas, and all local, State and Federal laws and regulations as they may now read or hereafter be amended, including but not limited to the following conditions:

- (a) Except as shown on the site plan attached hereto as Exhibit B, the use and development standards of the property shall conform to the requirements of the General Retail District;
- (b) Development of the property will be in accordance with the site plan, attached hereto as Exhibit B;
- (c) Exterior walls facing FM 2305 shall be 100% limestone;
- (d) Exterior walls facing neighboring properties to the east and west shall be composed of Stucco-Tech material of a camel and cream color;
- (e) No bay doors shall face FM 2305;
- (f) Automatic irrigation shall be installed for all landscaping;
- (g) 1 canopy tree (2 inch caliper, minimum 5 feet tall) per 40 linear feet shall be provided on east lot line;
- (h) A continuous hedgerow or berm and 1 canopy tree (2 inch caliper, minimum 5 feet tall) per 40 linear feet shall be provided on north lot line;
- (i) A monument sign a maximum 8 feet in height and 80 square feet in area shall be permitted; and
- (j) Pitched roofs shall be provided for units along the east property line.

These conditions shall be expressed conditions of any building permit issued for construction on the property which may be enforced by the City of Temple by an action either at law or in equity, including the right to specifically enforce the requirements of the ordinance, and these requirements shall run with the land.

**Part 4:** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

**Part 5:** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

**Part 6:** This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 7:** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **1<sup>st</sup>** day of **May**, 2008.

PASSED AND APPROVED on Second Reading on the **15<sup>th</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #10  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Jonathan Graham, City Attorney

**ITEM DESCRIPTION:** Consider adopting a resolution confirming the appointment of the Assistant City Attorney.

**STAFF RECOMMENDATION:** Adopt resolution as presented in item description.

**ITEM SUMMARY:** There is currently one open position for an attorney in the City Attorney's Office. This position is the newly authorized position that was created for this budget year. After receiving applications and interviewing a number of qualified applicants for the job of assistant city attorney, I have extended a job offer to Robin Houston, subject to the confirmation by the City Council. Her duties as assistant city attorney will include serving as legal advisor to city departments as assigned by the City Attorney, advising department heads on issues of law, and responding to private inquiries within assigned subject areas.

Ms. Houston has been employed as an assistant general counsel for the Texas Comptroller's Office since September, 2000. While there she has conducted administrative hearings on complex cases – including work in sales tax cases. She has 4 years of experience working for the Texas Natural Resource Commission (now the Texas Commission on Environmental Quality). While there she had extensive litigation experience and worked with municipal and county entities related to environmental regulations. She also received advanced training in water rights, which would be beneficial to the Legal Department.

Section 4.31 of the City Charter provides that the City Attorney “shall have the power to appoint such assistants as may be deemed necessary by him, subject to the approval of the City Council, at such compensation to be fixed by the City Council.” After reviewing a number of qualified applicants, I am honored to recommend Robin Houston to you for confirmation as an assistant city attorney.

**FISCAL IMPACT:** Annual salary is recommended at \$57,990. Funds for the remainder of the year are available in Account No. 110-1600-512-1111.

### **ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, CONFIRMING THE APPOINTMENT OF ROBIN HOUSTON AS AN ASSISTANT CITY ATTORNEY; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, there is currently one unfilled position for an attorney in the City Attorney's Office;

**Whereas**, after receiving applications and interviewing a number of qualified applicants for the job of assistant city attorney, the City Attorney has extended a job offer to Robin Houston, subject to conformation by the City Council;

**Whereas**, Ms. Houston is an experienced attorney who is licensed to practice law in the State of Texas, and the City Attorney recommends her for confirmation as a assistant city attorney; and

**Whereas**, the City Council has considered the matter and deems it in the public interest to authorize this action.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1:** The City Council confirms the appointment of Robin Houston as Assistant City Attorney for the City of Temple, Texas, and sets her annual salary at \$57,990.

**Part 2:** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **1<sup>st</sup>** day of **May**, 2008.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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05/01/08  
Item #11  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Kim Foutz, Assistant City Manager

**ITEM DESCRIPTION:** Consider adopting a resolution appointing four at-large members to the Temple Medical Education District Coordinating Group.

**STAFF RECOMMENDATION:** Adopt resolution as presented in the item description.

**ITEM SUMMARY:** The purpose of the TMED is to jointly facilitate and promote the services and activities offered on the Scott & White, Central Texas Veterans Health Care, Temple College, and the Texas A & M College of Medicine campuses and to promote the redevelopment and revitalization of residential and commercial neighborhoods surrounding those campuses.

In order to carry out this purpose, the sponsoring entities are to create a nine member Coordinating Group to include:

- S&W – Dr. Al Knight
- Temple College – Dr. Marc Nigliazzo
- VA – Bruce Gordon
- College of Medicine – Don Wesson
- Bioscience District – Wendell Williams
- **City Council – 4 representatives to include one appointed at large (David Blackburn) and three residents or individuals who have or maintain a commercial property interest within the TMED boundary.**

Staff will provide a list of qualified and interested individuals at the meeting. The Letter of Understanding is for a term of three years, and the appointees will serve the full duration of that time period. The Group will meet on a called basis with their first project being a conceptual design for the area.

**FISCAL IMPACT:** None

**ATTACHMENTS:** None