



**MEETING OF THE  
TEMPLE CITY COUNCIL**

**TEMPLE PUBLIC LIBRARY  
100 WEST ADAMS AVENUE  
3<sup>rd</sup> FLOOR – McLANE ROOM**

**THURSDAY, JUNE 18, 2020**

**2:30 P.M.**

**AGENDA**

**CITY COUNCIL WORKSHOP AGENDA:**

**I. WORK SESSION**

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, June 18, 2020.
2. Discuss proposed amendments to Chapter 12, Fire Code.
3. Discuss possible amendments to the City's Declaration of Local State of Disaster Due to Public Health Emergency.
4. Receive a briefing from the City Attorney on the draft TEDC Funding and Operating Agreement, and a proposed downtown parking garage.  
*Pursuant to Texas Government code sec. 551.071 – the City Council will meet in executive session to discuss, and receive advice regarding, a matter of attorney-client privilege. No final action will be taken.*

**5:00 P.M.**

**MUNICIPAL BUILDING  
2 NORTH MAIN STREET  
CITY COUNCIL CHAMBERS – 2<sup>ND</sup> FLOOR  
TEMPLE, TX**

**TEMPLE CITY COUNCIL  
REGULAR MEETING AGENDA**

**For members of the public wishing to view the meeting, or participate in the public hearings, instructions will be available on the home page of the City of Temple website ([www.templetx.gov](http://www.templetx.gov)) at least 24 hours before the meeting time.**

**I. CALL TO ORDER**

1. Invocation
2. Pledge of Allegiance

**II. BOND ITEMS**

3. [2020-5031](#): FIRST & FINAL READING – PUBLIC HEARING: Consider adopting an ordinance authorizing the issuance of City of Temple, Texas General Obligation Refunding Bonds in one or more series; Approving Official Statements, agreements related to the sale and issuance of the bonds, and the forms of paying agent/registrar agreements, bond purchase agreements and escrow agreements; Establishing the procedures for selling and delivering one or more series of the bonds; and Authorizing other matters relating to the bonds.

**III. 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.

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

**Minutes**

- (A) [June 2, 2020 Special Called Meeting](#)
- (B) [June 8, 2020 Special Called Meeting](#)

**Contracts, Leases, & Bids**

- (C) [2020-0091-R](#): Consider adopting a resolution authorizing a lease agreement with Chris and Vicki Avants for lease of T-Hangar #23 at the Draughon-Miller Central Texas Regional Airport.

- (D) [2020-0092-R](#): Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick, & Associates, LP, of Temple for preliminary design services required for the Avenue G Pump Station Improvement Project, in the amount of \$76,930.
- (E) [2020-0093-R](#): Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick and Associates, LP, for services required to develop a schematic and final design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street, in an amount not to exceed \$191,600.
- (F) [2020-0094-R](#): Consider adopting a resolution authorizing a contract with Brockway, Gersbach, Franklin and Niemeier, P.C. to perform the annual City of Temple audit for an amount not to exceed \$79,900.
- (G) [2020-0095-R](#): Consider adopting a resolution authorizing a three year term contract for bank depository services with BBVA USA of Temple.
- (H) [2020-0096-R](#): Consider adopting a resolution authorizing change order #6 to the construction contract with Archer Western Construction, LLC, of Irving, to construct Phase 1 of the Temple-Belton Wastewater Treatment Plant Expansion, in the amount of \$87,662.06.

#### **Misc.**

- (I) [2020-0097-R](#): Consider adopting a resolution establishing the City's Zoning Board of Adjustment as the body that will hear and render judgment on requests for variances from the requirements of Chapter 13, Flood Damage Prevention, of the City's Code of Ordinances.
- (J) [2020-0098-R](#): Consider adopting a resolution authorizing budget amendments for fiscal year 2019-2020.

#### **Ordinances – Second & Final Readings**

- (K) [2020-5029](#): SECOND & FINAL READING – FY-20-8-ANX: Consider adopting an ordinance authorizing the voluntary annexation of two tracts of land, totaling approximately 40.093 +/- acres, upon petition of the landowner, Daniel Three Forks Farm LTD, said tracts being generally located south of FM 93 and east of Hartrick Bluff Road.

### **IV. REGULAR AGENDA**

#### **ORDINANCES**

- 5. [2020-5032](#): FIRST READING – PUBLIC HEARING – FY-20-21-ZC: Consider an ordinance adopting a site development plan and rezoning from Two-Family to Planned Development-Temple Medical Educational District T5-E Neighborhood Edge Zone for a restaurant parking lot expansion at 1216 South Main Street.

6. [2020-5030](#): SECOND READING: Consider adopting an ordinance amending City Code of Ordinances, Chapter 12, Fire Prevention and Protection.

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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 published to the City of Temple's website at 11:00 AM, June 12, 2020.

A handwritten signature in blue ink, appearing to read "Stephanie Hulse".

Interim City Secretary

**SPECIAL ACCOMMODATIONS:** *Persons with disabilities who have special communication or accommodation needs and desire to participate in this meeting should notify the City Secretary's Office by mail or telephone 48 hours prior to the meeting date.*





## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #3  
Regular Agenda  
Page 1 of 2

### DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** FIRST & FINAL READING – PUBLIC HEARING: Consider adopting an ordinance authorizing the issuance of City of Temple, Texas General Obligation Refunding Bonds in one or more series; Approving Official Statements, agreements related to the sale and issuance of the bonds, and the forms of paying agent/registrar agreements, bond purchase agreements and escrow agreements; Establishing the procedures for selling and delivering one or more series of the bonds; and Authorizing other matters relating to the bonds.

**STAFF RECOMMENDATION:** Conduct public hearing and adopt ordinance as presented in item description on first and final reading.

**ITEM SUMMARY:** The City currently has outstanding bond issues that have met contractual and market criteria for favorable refunding/'refinancing' or could possibly meet the criteria in the next year. The table below includes twelve outstanding bond issues that could potentially meet the criteria for refunding during the next year.

Issue	Series	Callable/ Refunded Par	Parameter Par	Last Maturity	Net Present Value Savings	
					\$	%
General Obligation Refunding	Series 2011A	\$ 4,720,000	\$ 4,767,200	8/1/20		
Combination Tax & Revenue Certificate of Obligations	Series 2012	13,995,000	14,694,750	8/1/26		
<b>General Obligation Refunding Bonds/Pass-Through Toll</b>	<b>Series 2012</b>	<b>655,000</b>	<b>674,650</b>	<b>8/1/31</b>	<b>\$ 32,660.65</b>	<b>4.74%</b>
Combination Tax & Revenue Certificate of Obligations	Series 2012	6,375,000	6,693,750	8/1/33		
Combination Tax & Revenue Certificate of Obligations - Taxable	Series 2012	3,475,000	3,648,750	8/1/32		
<b>Combination Tax &amp; Revenue Certificate of Obligations - [RZ#1]</b>	<b>Series 2013</b>	<b>18,075,000</b>	<b>18,978,750</b>	<b>8/1/33</b>	<b>\$ 849,041</b>	<b>5.40%</b>
General Obligation Refunding	Series 2014	5,045,000	5,549,500	8/1/26		
Combination Tax & Revenue Certificate of Obligations	Series 2014	15,595,000	17,154,500	8/1/34		
General Obligation Refunding and Improvement Bonds	Series 2015	23,800,000	27,370,000	8/1/35		
Combination Tax & Revenue Certificate of Obligations	Series 2016	13,370,000	15,375,500	8/1/36		
General Obligation Refunding	Series 2016	4,025,000	4,628,750	8/1/29		
Limited Tax Notes	Series 2016	585,000	590,850	2/1/23		
<b>TOTAL</b>		<b>\$ 109,715,000</b>	<b>\$ 120,126,950</b>		<b>\$ 881,702</b>	

This ordinance will designate the Director of Finance or in her absence, the City Manager as the pricing officer to execute pricing certificates and finalize pricing within parameters defined in the ordinance. The Bonds will be issued in one or more Series in the aggregate principal amount not to exceed \$120,000,000 for the purpose of providing funds for (i) refunding the Refunded Obligations and (ii) paying the costs of issuing the Bonds.

Based on current market conditions, the two issues highlighted in yellow meet criteria for favorable refunding. Staff will begin the process to issue the refunding bonds for these two issues.

Ratings for the bonds will be applied for with Standard & Poors. The ratings will be published prior to the pricing and sale of the bonds. The date and method by which the refunded obligations will be issued, sold, and delivered will be determined to achieve the most advantageous borrowing costs for the City. Based on current market conditions, the timeline is to price the bonds on June 29, 2020 through a negotiated sale and close on the bonds on July 22, 2020.

**FISCAL IMPACT:** Based on current market conditions, the net present value savings (NPV) for the two outstanding issues that meet refunding criteria are estimated as follows:

**Total refunding:**

- NPV savings of \$881,702 or 5.36%

**General Obligation Refunding/Pass -Through Toll portion only (2020-2031):**

- NPV savings of \$32,661 or 4.74%

**Combination Tax & Revenue Certificate of Obligations - RZ #1 Revenue supported portion only (2020-2033)**

- NPV savings of \$849,040.60 or 5.40%

**ATTACHMENTS:**

[Ordinance](#)

**ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF TEMPLE, TEXAS  
GENERAL OBLIGATION REFUNDING BONDS IN ONE OR MORE SERIES;  
APPROVING OFFICIAL STATEMENTS, AGREEMENTS RELATED TO THE SALE  
AND ISSUANCE OF THE BONDS, AND THE FORMS OF PAYING  
AGENT/REGISTRAR AGREEMENTS, BOND PURCHASE AGREEMENTS AND  
ESCROW AGREEMENTS; ESTABLISHING THE PROCEDURES FOR SELLING AND  
DELIVERING ONE OR MORE SERIES OF THE BONDS; AND AUTHORIZING  
OTHER MATTERS RELATING TO THE BONDS**

**Adopted June 18, 2020**

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**ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF TEMPLE, TEXAS  
GENERAL OBLIGATION REFUNDING BONDS IN ONE OR MORE SERIES;  
APPROVING OFFICIAL STATEMENTS, AGREEMENTS RELATED TO THE SALE  
AND ISSUANCE OF THE BONDS, AND THE FORMS OF PAYING  
AGENT/REGISTRAR AGREEMENTS, BOND PURCHASE AGREEMENTS AND  
ESCROW AGREEMENTS; ESTABLISHING THE PROCEDURES FOR SELLING AND  
DELIVERING ONE OR MORE SERIES OF THE BONDS; AND AUTHORIZING  
OTHER MATTERS RELATING TO THE BONDS**

**WHEREAS**, the City of Temple, Texas (the "City") has previously issued and has outstanding several series of obligations payable from ad valorem taxes, water and sewer utility system revenues or a combination thereof; and

**WHEREAS**, Chapter 1207, Texas Government Code, as amended ("Chapter 1207") authorizes the City to issue refunding bonds and to deposit the proceeds from the sale thereof together with any other available funds or resources, directly with a place of payment (paying agent) for the Refunded Obligations or with a trust company or commercial bank that does not act as depository for the City, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

**WHEREAS**, the Escrow Agreement hereinafter authorized, constitutes an agreement of the kind authorized and permitted by said Chapter 1207; and

**WHEREAS**, all the Refunded Obligations mature or are subject to redemption prior to maturity within 20 years of the date of the bonds hereinafter authorized: and

**WHEREAS**, the Bonds authorized by this Ordinance are being issued and delivered pursuant to the City Charter and Chapters 1207 and 1371 of the Texas Government Code, as amended, and other applicable laws: and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, Texas Government Code.

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

**Section 1.     RECITALS.** The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

**Section 2.     DEFINITIONS.** For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in Exhibit "A" to this Ordinance have the meanings assigned to them in Exhibit "A".

**Section 3.     AMOUNT, NAME, PURPOSE, AND AUTHORIZATION.** One or more Series of the Bonds entitled "**CITY OF TEMPLE, TEXAS GENERAL OBLIGATION REFUNDING BONDS**", are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, particularly Chapters 1207 and 1371, Texas Government Code, as amended, and the Charter of the City. The Bonds shall be issued in one or more Series in the aggregate principal amount not to exceed \$120,000,000 for the purpose of providing funds for (i) refunding the Refunded Obligations and (ii) paying the costs of issuing the Bonds.

**Section 4.     DATE, DENOMINATION, MATURITIES, NUMBERS, INTEREST AND REDEMPTION.** (a) Initially there shall be issued, sold, and delivered hereunder fully registered bonds, without interest coupons, which may be in the form of Current Interest Bonds or Premium Compound Interest Bonds, numbered consecutively from R-1 upward, in the case of Current Interest Bonds, and from PC-1 upward, in the case of Premium Compound Interest Bonds (except the Initial Bond delivered to the Attorney General of the State of Texas which shall be numbered T-1 and TPC-1 respectively) payable to the respective initial Registered Owners thereof, or to the registered assignee or assignees of said Bonds or any portion or portions thereof, in Authorized Denominations, maturing not later than August 1, 2036, serially or otherwise on the dates, in the years and in the principal amounts, respectively, and dated, as all set forth in the Pricing Certificate to be executed and delivered by the Pricing Officer pursuant to subsection (b) of this section. The Pricing Certificate is hereby incorporated in and made a part of this Ordinance. The Bonds shall be designated by the year in which they are awarded. The authority of the Pricing Officer to execute a Pricing Certificate shall expire at 5:00 p.m. C.D.T. on June 18, 2021. Bonds priced on or before 5:00 p.m. C.D.T. on June 18, 2021 may be delivered to the initial purchaser after such date.



(b) As authorized by Chapters 1207 and 1371, Texas Government Code, as amended, the Pricing Officer is hereby authorized to act on behalf of the City in selling and delivering one or more Series of the Bonds, determining if a Series of Bonds is a Taxable Series or a Tax-Exempt Series, which of the Refundable Obligations shall be refunded and constitute one or more Series of Refunded Obligations under this Ordinance and carrying out the other procedures specified in this Ordinance, including determining the date of the Bonds, any additional or different designation or title by which a Series of the Bonds shall be known, the price at which each Series of the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of Current Interest Bonds and Premium Compound Interest Bonds, if any, the rate or rates of interest to be borne by each such maturity, the interest payment periods, the dates, price, and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, and all other matters relating to the issuance, sale, and delivery of the Bonds and the refunding of the Refunded Obligations, all of which shall be specified in each Pricing Certificate; provided that (i) the price to be paid for each Series of the Bonds shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest thereon from its date to its delivery, (ii) none of the Bonds of a Series shall bear interest at a rate, or yield in the case of Premium Compound Interest Bonds, greater than the maximum authorized by law and (iii) the refunding must produce a net present value debt service savings of at least 3.00% of the principal amount of the Refunded Obligations, net of any City contribution. In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not to exceed the amount authorized in Section 3, which shall be sufficient to provide for the purposes for which the Bonds are authorized and to pay the costs of issuing the Bonds.

(c) To achieve advantageous borrowing costs for the City, the Bonds shall be sold on a negotiated, placement or competitive basis as determined by the Pricing Officer in the Pricing Certificate. In determining whether to sell the Bonds by negotiated, placement or competitive sale, the Pricing Officer shall take into account any material disclosure issues which might exist at the time, the market conditions expected at the time of the sale and any other matters which, in the judgment of the Pricing Officer, might affect the net borrowing costs on the Bonds.

If the Pricing Officer determines that a Series of the Bonds should be sold at a competitive sale, the Pricing Officer shall cause to be prepared a notice of sale and official statement in such manner as the Pricing Officer deems appropriate, to make the notice of sale and official statement available to those institutions and firms wishing to submit a bid for the Bonds, to receive such bids, and to award the sale of the Bonds to the bidder submitting the best bid in accordance with the provisions of the notice of sale.

If the Pricing Officer determines that a Series of the Bonds should be sold by a negotiated sale or placement, the Pricing Officer shall designate the placement purchaser or the senior managing underwriter for the Bonds and such additional investment banking firms as the Pricing Officer deems appropriate to assure that the Bonds are sold on the most advantageous terms to the City. The Pricing Officer, acting for and on behalf of the City, is authorized to enter into and carry out a Bond Purchase Agreement or other agreement for the Bonds to be sold by negotiated sale or

placement, with the underwriters or placement purchasers at such price, with and subject to such terms as determined by the Pricing Officer pursuant to Section 4(b) above. Each Bond Purchase Agreement or other agreement shall be substantially in the form and substance previously approved by the City in connection with the authorization of ad valorem tax debt with such changes as are acceptable to the Pricing Officer.

In satisfaction of Section 1201.022(a)(3), Texas Government Code, the City hereby determines that the delegation of the authority to the Pricing Officer to approve the final terms and conditions of each Series of the Bonds as set forth in this Ordinance and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated in each Pricing Certificate will be, in the best interests and shall have the same force and effect as if such determination were made by the Pricing Officer and the Pricing Officer is hereby authorized to make and include in each Pricing Certificate an appropriate finding to that effect.

(d) The Current Interest Bonds shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM OF BONDS set forth in this Ordinance to their respective dates of maturity or redemption at the rates per annum set forth in the Pricing Certificate.

The Premium Compound Interest Bonds shall bear interest from the Issuance Date, calculated on the basis of a 360-day year composed of twelve 30-day months (subject to rounding to the Compounded Amounts thereof), compounded on the Compounding Dates as set forth in each Pricing Certificate, and payable, together with the principal amount thereof, in the manner provided in the FORM OF BOND at the rates set forth in each Pricing Certificate. Attached to each Pricing Certificate, if Premium Compound Interest Bonds are to be issued, shall be the Accretion Table. The Accreted Value with respect to any date other than a Compounding Date is the amount set forth on the Accretion Table with respect to the last preceding Compounding Date, plus the portion of the difference between such amount and the amount set forth on the Accretion Table with respect to the next succeeding Compounding Date that the number of days (based on 30-day months) from such last preceding Compounding Date to the date for which such determination is being calculated bears to the total number of days (based on 30-day months) from such last preceding Compounding Date to the next succeeding Compounding Date.

**Section 5. REDEMPTION.** (a) Right of Redemption. The City reserves the right, at its option, to redeem any Series of the Bonds as set forth in the FORM OF BOND and each Pricing Certificate. The City, at least thirty (30) days before the date of any optional redemption, shall notify the Paying Agent/Registrar of such redemption date and of the amount and maturity of the Bonds to be redeemed.

(b) Notice of Redemption to Bondholder. The Paying Agent/Registrar shall give notice of any redemption of the Bonds by sending notice by first class United States mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Bondholder at the address shown in the Register. The notice shall state among other things, the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and that the Bonds so called for redemption shall cease to bear interest after the redemption date. Any notice

given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Bondholder receives such notice.

(c) Effect of Redemption. Notice of redemption having been given as provided in this Section, the Bonds called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the principal thereof or accrued interest thereon, such Bonds thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bond is presented and surrendered for payment on such date. If the Bonds thereof called for redemption are not so paid upon presentation and surrender thereof for redemption, such Bonds thereof shall continue to bear interest at the rate stated on the Bond until paid or until due provision is made for the payment of same.

(d) Conditional Notice of Redemption. With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of the premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

**Section 6. CHARACTERISTICS OF THE BONDS.** (a) Registration, Transfer, Conversion and Exchange; Authentication. The Pricing Officer shall designate the Paying Agent/Registrar for each series of Bonds in the Pricing Certificate. The Paying Agent/Registrar shall keep the books or records for the registration of the transfer, conversion and exchange of the Bonds (the "Register"), and the Paying Agent/Registrar shall serve as the City's registrar and transfer agent to keep such Bonds or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Register the address of the Registered Owner of each Bond to which payments with respect to the Bond shall be mailed, as herein provided; but it shall be the duty of each Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The City shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Register confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Paying Agent/Registrar shall make a copy of the Register available in the State of Texas. The City shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Bond. Registration of assignments, transfers, conversions and exchanges of Bonds shall be made in the manner provided

and with the effect stated in the FORM OF BOND set forth in this Ordinance. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond.

Except as provided in subsection (c) hereof, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign the Bond, and no such Bond shall be deemed to be issued or outstanding unless such Bond is so executed. The Paying Agent/Registrar promptly shall cancel all paid Bonds and Bonds surrendered for conversion and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bond in the manner prescribed herein, and the Bonds shall be of type composition printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to Chapter 1201, Texas Government Code, as amended, and particularly Subchapter D thereof, the duty of conversion and exchange of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the Bonds, the converted and exchanged Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bond which initially was issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(b) Payment of Principal and Interest. The Paying Agent/Registrar shall further act as the paying agent for paying the principal of and interest on the Bonds, all as provided in this Ordinance and in the Pricing Certificate. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Bonds, and of all conversions and exchanges of Bonds, and all replacements of Bonds, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) Business Days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) In General. The Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the Registered Owner, (ii) may be transferred and assigned, (iii) may be converted and exchanged for another Bond, (iv) shall have the characteristics, (v) shall be signed, sealed, executed and authenticated, (vi) shall be payable as to principal and interest and (vii) shall be administered and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Bonds, all as provided, and in the manner and to the effect as required or indicated, in the Pricing Certificate and the FORM OF BONDS set forth in this Ordinance. The Bond initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Bond issued in exchange for any Bond issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF BONDS.

(d) Substitute Paying Agent/Registrar. The City covenants with the Registered Owners of the Bonds that at all times while the Bonds are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 30 days written notice to the Paying Agent/Registrar, to be effective at such time which will not disrupt or delay payment on the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Register (or a copy thereof), along with all other pertinent Bonds and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each Registered Owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) Book-Entry-Only System. The Bonds issued in exchange for the Bonds initially issued as provided in Section 6(i) shall be issued in the form of a separate single fully registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of the Depository Trust Company of New York ("DTC") and except as provided in subsection (f) hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC participants (the "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. Or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner, as shown on the Registration Books, of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any person, other than a Registered Owner, as shown in the Registration Books of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, but to the extent permitted by law, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person whose name each Bond is registered in the registration Books as the absolute owner of such Bond for the purpose of payment of principal of and interest, with respect to such Bond, for the purposes of registering transfers with respect to such Bond, and for all other purposes of registering transfers

with respect to such Bonds, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective Registered Owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Bond evidencing the obligation of the City to make payments of principal, and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record Date the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(f) Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the City determines to discontinue the book-entry system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bonds, the City shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but shall be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the Registered Owner transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

(g) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Letter of Representations of the City to DTC.

(h) DTC Blanket Letter of Representations. The City confirms execution of a Blanket Letter of Representations with DTC establishing the Book-Entry-Only System which will be utilized with respect to any Series of the Bonds.

(i) Cancellation of Initial Bond. On the Closing Date, one initial Bond representing the entire principal amount of the Bonds, payable in stated installments to the order of the underwriter of the Bonds or its designee, executed by manual or facsimile signature of the Mayor and City Secretary, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such underwriter or its designee. Upon payment for the initial Bond, the Paying Agent/Registrar shall cancel the initial Bond and deliver to DTC or the Paying Agent/Registrar on behalf of such underwriter one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all the Bonds for such maturity.

**Section 7. FORM OF BOND.** The form of the Bonds, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment, and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Bonds initially issued and delivered pursuant to this Ordinance shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance.

**FORM OF BOND**

(All blanks and any appropriate or necessary insertions or deletions, to be completed as determined by the Pricing Officer in the Pricing Certificate)

<b>R-</b>	<b>UNITED STATES OF AMERICA STATE OF TEXAS CITY OF TEMPLE, TEXAS GENERAL OBLIGATION REFUNDING BONDS SERIES _____*</b>	<b>PRINCIPAL AMOUNT \$ _____</b>
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**[FORM OF FIRST PARAGRAPHS OF CURRENT INTEREST BONDS]**

<b><u>INTEREST RATE</u></b>	<b><u>MATURITY DATE</u></b>	<b><u>ISSUANCE DATE</u></b>	<b><u>CUSIP NO.</u></b>
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**REGISTERED OWNER:**

<b>PRINCIPAL AMOUNT:</b>	<b>DOLLARS</b>
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**ON THE MATURITY DATE** specified above, the **CITY OF TEMPLE, TEXAS** (the "City"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), the Principal Amount specified above, and to pay interest thereon (calculated on the basis of a 360-day year of twelve 30-day months) from \_\_\_\_\_, \_\_\_\_\_\* at the Interest Rate per annum specified above, payable on \_\_\_\_\_, \_\_\_\_\_\*, and semiannually on each \_\_\_\_\_\* and \_\_\_\_\_\* thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on

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\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the City and the securities depository.

**THE PRINCIPAL OF AND INTEREST ON** this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity or upon the date fixed for its redemption prior to maturity, at the designated office for payment of \_\_\_\_\_\* which is the "Paying Agent/Registrar" for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the Ordinance authorizing the issuance of this Bond (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered Owner hereof, at its address as it appeared on the \_\_\_\_\_\* business day of the month next preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date" which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Registered Owner appearing on the Registration Books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice. Any accrued interest due upon the redemption of this Bond prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Bond for redemption and payment at the principal office for payment of the Paying Agent/Registrar (unless the redemption date is a regularly scheduled interest payment date, in which case accrued interest on such redeemed Bonds shall be payable in the regular manner described above). The City covenants with the Registered Owner of this Bond that on or before each principal payment date, interest payment date, and accrued interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" referred to in and maintained by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due. Terms used in this Bond and not otherwise defined shall have the meaning given in the Bond Ordinance.

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\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.



**DURING ANY PERIOD** in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

**[FORM OF FIRST PARAGRAPHS  
OF PREMIUM COMPOUND INTEREST BOND]**

**NO. PC-**

**MATURITY  
AMOUNT**  
\$\_\_\_\_\_

**INTEREST RATE**

**ISSUANCE DATE**

**DATE OF BOND**

**CUSIP NO.**

**REGISTERED OWNER:**

**MATURITY AMOUNT:**

**ON THE MATURITY DATE SPECIFIED ABOVE, CITY OF TEMPLE, TEXAS** (the "City"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the "Registered Owner") the Maturity Amount set forth above, representing the principal amount hereof and accrued and compounded interest hereon. Interest shall accrue on the principal amount hereof from the Issuance Date at the interest rate per annum specified above, calculated on the basis of a 360 day year comprised of twelve 30 day months, compounded semiannually on \_\_\_\_\_\* and \_\_\_\_\_\* of each year commencing \_\_\_\_\_. For convenience of reference a table of the "Accreted Value" per \$5,000 Maturity Amount is printed on the reverse side of this Bond. The term "Accreted Value" as set forth in the table on the reverse side hereof shall mean the original principal amount plus initial premium per \$5,000 Maturity Amount compounded semiannually on \_\_\_\_\_\* and \_\_\_\_\_\* at the yield shown on such table.

**THE MATURITY AMOUNT** of this Bond is payable in lawful money of the United States of America, without exchange or collection charges. The Maturity Amount of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity, at the designated office for payment of \_\_\_\_\_\*, which is the "Paying Agent/Registrar" for this Bond, and shall be drawn by the Paying Agent/Registrar on, and solely from, funds of the City required by the ordinance authorizing the issuance of the Bonds (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided, payable to the Registered Owner hereof, as it appears on the Registration Books kept by \_\_\_\_\_

\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

the Paying Agent/Registrar, as hereinafter described. The City covenants with the Registered Owner of this Bond that on or before the Maturity Date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds of the Maturity Amount, when due. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the City and the securities depository.

#### **[FORM OF REMAINDER OF EACH BOND]**

**IF THE DATE** for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the principal office for payment of the Paying Agent/Registrar is located are authorized by law or executive order to close, or the United States Postal Service is not open for business (each a "Non-Business Day"), then the date for such payment shall be the next succeeding day which is not a Non-Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

**THIS BOND** is one of a series of Bonds dated as of \_\_\_\_\_, \_\_\_\_\_\* and authorized to be issued pursuant to the Bond Ordinance adopted by the City Council of the City in the principal amount of \$\_\_\_\_\_ \* [constituting \$\_\_\_\_\_ Current Interest Bonds and \$\_\_\_\_\_ Premium Compound Interest Bonds].\*\*

**ON \_\_\_\_\_ \*** **OR ON ANY DATE THEREAFTER**, the Bonds maturing on and after \_\_\_\_\_ may be redeemed prior to their scheduled maturities, at the option of the City, with funds derived from any available and lawful source, at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption as a whole, or from time to time in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, and if less than all of a maturity is to be redeemed the Paying Agent/Registrar shall determine by lot the Bonds, or portions thereof within such maturity to be redeemed (provided that a portion of a Bond may be redeemed only in integral multiples of \$5,000 of principal amount).

**[THE BONDS MATURING ON \_\_\_\_\_ \*** are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts on the following dates and at a price of par plus accrued interest to the redemption date ("Term Bonds").

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\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

\*\* To be included only if Current Interest Bonds and Premium Compound Interest Bonds are both issued and completed as determined in the Pricing Certificate.

\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

**Term Bonds Maturing \_\_\_\_\_, 20\_\_\***

<b>Redemption Date</b>	<b>Principal Amount</b>
_____, 20__	\$
_____, 20__	\$

\_\_\_\_\_  
\*Final Maturity

**THE PRINCIPAL AMOUNT** of the Term Bonds required to be redeemed pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option of the City by the principal amount of any Term Bonds of the stated maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with monies in the Interest and Sinking Fund at a price not exceeding the principal amount of the Term Bonds plus accrued interest to the date of purchase thereof, or (3) shall have been redeemed pursuant to the optional redemption provisions and not theretofore credited against a mandatory sinking fund redemption requirement.]\*

**AT LEAST 30** days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity, a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, to the Registered Owner of each Bond to be redeemed at its address as it appeared on the Registration Books maintained by the Paying Agent/Registrar on the day such notice of redemption is mailed. By the date fixed for any such redemption, due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof which are to be so redeemed. If such written notice of redemption is mailed and if due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Bond Ordinance.

**ALL BONDS OF THIS SERIES** are issuable solely as fully registered Bonds, without interest coupons, in the denomination of any integral multiple of \$5,000 (an "Authorized Denomination"). As provided in the Bond Ordinance, this Bond, or any unredeemed portion hereof, may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred and exchanged for a like aggregate principal amount of fully registered Bonds, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case

may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Bond may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for transferring and exchanging any Bond or portion thereof shall be paid by the City, but any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer or exchange as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date; provided, however, such limitation of transfer shall not be applicable to an exchange by the Registered Owner of an unredeemed balance of a Bond called for redemption in part.

**WHENEVER** the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

**IN THE EVENT** any Paying Agent/Registrar for the Bonds is changed by the City, resigns or otherwise ceases to act as such, the City has covenanted in the Bond Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Bonds.

**IT IS HEREBY** certified, recited and covenanted that this Bond has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance and delivery of this Bond have been performed, existed and been done in accordance with law; that this Bond is payable from ad valorem taxes, within the limits prescribed by law.

**BY BECOMING** the Registered Owner of this Bond, the Registered Owner thereby acknowledges all of the terms and provisions of the Bond Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Bond Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City and agrees that the

terms and provisions of this Bond and the Bond Ordinance constitute a contract between each Registered Owner hereof and the City.

**IN WITNESS WHEREOF**, the City has caused this Bond to be signed with the manual or facsimile signature of the Mayor of the City, and countersigned with the manual or facsimile signature of the City Secretary of the City and the official seal of the City has been duly impressed, or placed in facsimile, on this Bond.

\_\_\_\_\_  
City Secretary, City of Temple, Texas

\_\_\_\_\_  
Mayor, City of Temple, Texas

(CITY SEAL)

**FORM OF REGISTRATION CERTIFICATE  
OF THE COMPTROLLER OF PUBLIC ACCOUNTS:**

**COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.** \_\_\_\_\_

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

(COMPTROLLER'S SEAL)

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

**FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE**

**PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE**

*(To be executed if this Bond is not accompanied by an executed Registration  
Certificate of the Comptroller of Public Accounts of the State of Texas)*

It is hereby certified that this Bond has been issued under the provisions of the Bond Ordinance described in the text of this Bond; and that this Bond has been issued in exchange for a bond or bonds, or a portion of a bond or bonds of a series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_,  
Paying Agent/Registrar

By \_\_\_\_\_  
Authorized Representative

**FORM OF ASSIGNMENT:**

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned Registered Owner of this Bond, or duly authorized representative or attorney thereof, hereby sells, assigns and transfers this Bond and all rights hereunder unto \_\_\_\_\_

\_\_\_\_\_  
/\_\_\_\_\_/\_\_\_\_\_  
(Assignee's Social Security or  
Taxpayer Identification Number)

\_\_\_\_\_  
(Please print or typewrite Assignee's name and address,  
including zip code)

and hereby irrevocably constitutes and appoints \_\_\_\_\_  
attorney to transfer the registration of this Bond on the Paying Agent/Registrar's Registration Books  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by  
a member firm of the New York Stock  
Exchange or a commercial bank or trust  
company.

\_\_\_\_\_  
NOTICE: The signature above must  
correspond with the name of the Registered  
Owner as it appears upon the front of this  
Bond in every particular, without alteration or  
enlargement or any change whatsoever.

**INSERTIONS FOR THE INITIAL BONDS**

(i) The initial Current Interest Bond shall be in the form set forth in this FORM OF BOND,  
except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and  
"MATURITY DATE" shall both be completed with the words "As shown below" and  
"CUSIP NO." shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

**"ON THE MATURITY DATE SPECIFIED ABOVE**, the City of Temple, Texas (the  
"City"), being a political subdivision, hereby promises to pay to the Registered Owner specified

above, or registered assigns (hereinafter called the "Registered Owner"), on \_\_\_\_\_\* in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
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(Information for the Current Interest Bonds from the Pricing Certificate to be inserted)

The City promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from \_\_\_\_\_\* at the respective Interest Rate per annum specified above. Interest is payable on \_\_\_\_\_\* and semiannually on each \_\_\_\_\_\* and \_\_\_\_\_\* thereafter to the date of payment of the principal installment specified above; except, that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full."

C. The initial Bond shall be numbered "T-1."

(ii) The Initial Compound Interest Bond shall be in the form set forth in this Section, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As shown below" and "CUSIP NO. \_\_\_\_\_" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE CITY OF TEMPLE, Texas (the "City"), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the "Registered Owner") the Payment at Maturity on \_\_\_\_\_\* in each of the years and in installments of the respective Maturity Amounts set forth in the following schedule:

<u>Maturity Amounts</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
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(Information for the Premium Compound Interest Bonds from the Pricing Certificate to be inserted)

\_\_\_\_\_  
\*As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

\*As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

The amount shown above as the respective Maturity Amounts represent the principal amount hereof and accrued and compounded interest hereon. Interest shall accrue on the principal amount hereof from the Issuance Date at the interest rate per annum specified above, compounded semiannually on \_\_\_\_\_\* and \_\_\_\_\_\* of each year commencing \_\_\_\_\_. For convenience of reference, a table appears on the back of this Bond showing the "Compounded Amount" of the original principal amount plus initial premium, if any, per \$5,000 Maturity Amount compounded semiannually at the yield shown on such table."

C. the Initial Premium Compound Interest Bond shall be numbered "TPC-1."

**Section 8. TAX LEVY.** A special Interest and Sinking Fund (the "Interest and Sinking Fund") is hereby created solely for the benefit of the Bonds, and the Interest and Sinking Fund shall be established and maintained by the City at an official depository bank of the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Bonds. All ad valorem taxes levied and collected for and on account of the Bonds shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Bonds or interest thereon are outstanding and unpaid, the City Council shall compute and ascertain a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required to pay the interest on the Bonds as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Bonds as such principal matures (but never less than 2% of the original principal amount of the Bonds as a sinking fund each year); and the tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. The rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while any of the Bonds or interest thereon are outstanding and unpaid; and the tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund. The ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Bonds, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law. Accrued interest on the Bonds shall be deposited in the Interest and Sinking Fund.

**Section 9. DEFEASANCE OF BONDS.** (a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust



company or commercial bank for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bond shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bond and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bond and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of the Bond and such Bond shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the City retains the right under Texas law to later call that Defeased Bond for redemption in accordance with the provisions of this Ordinance, the City may call such Defeased Bond for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

**Section 10. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED BONDS.** (a) Replacement Bonds. In the event any outstanding Bond is damaged, mutilated, lost,

stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Bonds shall be made by the Registered Owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the Registered Owner applying for a replacement bond shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the Registered Owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every case of damage or mutilation of a Bond, the Registered Owner shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Bond, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement Bond, the Paying Agent/Registrar shall charge the Registered Owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued under this Ordinance.

(e) Authority for Issuing Replacement Bonds. In accordance with Subchapter D of Texas Government Code, Chapter 1201, this Section of this Ordinance shall constitute authority for the issuance of any such replacement Bond without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such Bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 6(a) of this Ordinance for Bonds issued in conversion and exchange for other Bonds.

**Section 11. CUSTODY, APPROVAL, AND REGISTRATION OF BOND; BOND COUNSEL'S OPINION.** The Pricing Officer is hereby authorized to have control of the initial Bonds issued and delivered hereunder and all necessary records and proceedings pertaining to the Bond pending its delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bond the Comptroller of Public Accounts (or a deputy

designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Bond, and the seal of the Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the City's Bond Counsel may, at the option of the City, be printed on the Bond issued and delivered under this Ordinance, but it shall have no legal effect, and shall be solely for the convenience and information of the Registered Owner of the Bonds.

**Section 12. COVENANTS REGARDING TAX EXEMPTION ON TAX-EXEMPT BONDS.** (a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired

with --

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(8) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the

Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Pricing Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(d) Allocation Of, and Limitation On, Expenditures for the Project. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Ordinance (the "Project") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Project. The City covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the City may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Reimbursement. This Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

**Section 13. APPROVAL OF OFFERING DOCUMENTS, THE FORMS OF PAYING AGENT/REGISTRAR AGREEMENT AND ESCROW AGREEMENT.** The Pricing Officer is hereby authorized to approve the Preliminary Official Statement, the Official Statement relating to the Bonds and any addenda, supplement or amendment thereto and to deem such documents final in accordance with Rule 15c2-12. The City further approves the distribution of such Official Statement in the reoffering of the Bonds by the underwriter(s) in final form, with such

changes therein or additions thereto as the Pricing Officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof.

The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar ("Paying Agent Agreement") in substantially the form and substance previously approved by the City in previous transactions is hereby approved and the Pricing Officer is hereby authorized and directed to complete, amend, modify and execute the Paying Agent Agreement as necessary.

The discharge and defeasance of Refunded Obligations shall be effectuated pursuant to the terms and provisions of an Escrow Agreement, in the form and containing the terms and provisions as shall be approved by a Pricing Officer, including any insertions, additions, deletions, and modifications as may be necessary (a) to carry out the program designed for the City by the underwriters or purchasers, (b) to maximize the City's present value savings and/or to minimize the City's costs of refunding, (c) to comply with all applicable laws and regulations relating to the refunding of the Refunded Obligations and (d) to carry out the other intents and purposes of this Ordinance; and, the Pricing Officer is hereby authorized to execute and deliver such Escrow Agreement, on behalf of the City, in multiple counterparts.

To maximize the City's present value savings and to minimize the City's costs of refunding, the City hereby authorizes and directs that certain of the Refunded Obligations shall be called for redemption prior to maturity in the amounts, at the dates and at the redemption prices set forth in the Pricing Certificate, and the Pricing Officer is hereby authorized and directed to take all necessary and appropriate action to give or cause to be given a notice of redemption to the holders or paying agent/registrar, as appropriate, of such Refunded Obligations, in the manner required by the documents authorizing the issuance of such Refunded Obligations.

The Pricing Officer and the Escrow Agent are each hereby authorized (a) to subscribe for, agree to purchase, and purchase Defeasance Securities that are permitted investments for a defeasance escrow established to defease Refunded Obligations, and to execute any and all subscriptions, purchase agreements, commitments, letters of authorization and other documents necessary to effectuate the foregoing, and any actions heretofore taken for such purpose are hereby ratified and approved, and (b) to authorize such contributions to the escrow fund as are provided in the Escrow Agreement.

**Section 14. APPROVAL OF OFFICIAL STATEMENT.** The Pricing Officer is hereby authorized to approve the Preliminary Official Statement and the Official Statement relating to the Bonds and any addenda, supplement or amendment thereto, and to deem such documents final in accordance with Rule 15c2-12. The City further approves the distribution of such Official Statement in the reoffering of the Bonds with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof.

**Section 15. INSURANCE PROVISIONS.** In connection with the sale of one or more Series of the Bonds, the City may obtain municipal bond insurance policies from one or more

recognized municipal bond insurance organizations (the "Bond Insurer" or "Bond Insurers") to guarantee the full and complete payment required to be made by or on behalf of the City on the Bonds. The Pricing Officer is hereby authorized to sign a commitment letter or insurance agreement with the Bond Insurer or Bond Insurers and to pay the premium for the bond insurance policies at the time of the delivery of the Bonds to the underwriter out of the proceeds of sale of the Bonds or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as the Pricing Officer may deem appropriate. Printing on the Bonds covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to the Bond Insurer and the Pricing Officer, is hereby approved and authorized. The Pricing Certificate may contain provisions related to the bond insurance policies, including payment provisions thereunder, and the rights of the Bond Insurer or Insurers, and any such provisions shall be read and interpreted as an integral part of this Ordinance.

**Section 16. CONTINUING DISCLOSURE UNDERTAKING.** (a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

*"Financial Obligation"* means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial Obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with Rule.

*"MSRB"* means the Municipal Securities Rulemaking Board.

*"Rule"* means SEC Rule 15c2-12, as amended from time to time.

*"SEC"* means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB, (1) within six months after the end of each fiscal year of the City ending in or after 2020, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 7.04 of this Eighth Supplement, being information of the type described in each Pricing Certificate, including financial statements of the City if audited financial statements of the City are then available, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit "C" hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the official statement, and (ii) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within 12 months after any such fiscal year end, then the City shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet website or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(c) Event Notices. The City shall file notice to notify the MSRB of any of the following events with respect to the Bonds in a timely manner and not more than ten business days after the occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the City;



13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holder, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the City in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(d) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section 7.03 of this Ordinance that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or

equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consents to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the

provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

(e) Format, Identifying Information, and Incorporation by Reference. All financial information, operating data, financial statements, and notices required by this Section to be provided to the MSRB shall be provided in an electronic format and be accompanied by identifying information prescribed by the MSRB.

Financial information and operating data to be provided pursuant to Subsection (b) of this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public on the MSRB's Internet Web site or filed with the SEC.

**Section 17. AMENDMENT OF ORDINANCE.** The City hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The City may from time to time, without the consent of the Registered Owner, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i) cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (v) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (iv) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not in the opinion of the City's Bond Counsel materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the Registered Owner shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the City; provided, however, that without the consent of the Registered Owner, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in the Bond so as to:

- (1) Make any change in the maturity of the Bond;
- (2) Reduce the rate of interest borne by the Bond;
- (3) Reduce the amount of the principal of, or redemption premium, if any, payable on the Bond;
- (4) Modify the terms of payment of principal or of interest or redemption premium on the Bond or impose any condition with respect to such payment; or
- (5) Change the requirement with respect to Registered Owner consent to such amendment.

(c) If at any time the City shall desire to amend this Ordinance under this Section, the City shall send by U.S. mail to the Registered Owner a copy of the proposed amendment.

(d) Whenever at any time within one year from the date of publication of such notice the City shall receive an instrument or instruments executed by the Registered Owner, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the City may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the City and the Registered Owner shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the Registered Owner of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of such consent, and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after six months from the date of consent by the Registered Owner who gave such consent, or by a successor in title, by filing notice with the City.

For the purposes of establishing ownership of the Bonds, the City shall rely solely upon the registration of the ownership of such Bonds on the Register kept by the Paying Agent/Registrar.

**Section 18. REMEDIES IN EVENT OF DEFAULT.** In addition to all the rights and remedies provided by the laws of the State of Texas, it is specifically covenanted and agreed particularly that in the event the City (i) defaults in the payment of the principal, premium, if any, or interest on the Bonds, (ii) declares bankruptcy, or (iii) defaults in the observance or performance of any other of the covenant, agreement or obligation of the City, the failure to perform which materially adversely affects the rights of the owner, including but not limited to, their prospect or ability to be repaid in accordance with this Section and the continuation thereof for a period of 60 days after notice of such default is given by any owner to the City, the following remedies shall be available:

(a) Any owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights to the owner under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the owner hereunder or any combination of such remedies.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the

right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance. The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

**Section 19. NO RECOURSE AGAINST CITY OFFICIALS.** No recourse shall be had for the payment of principal of or interest on the Bonds or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bond.

**Section 20. FURTHER ACTIONS.** The Mayor, the City Manager, the Director of Finance and all other officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Manager, the Director of Finance and Bond Counsel are hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain a rating from any of the national bond rating agencies or satisfy requirements of any bond insurer, or (iii) obtain the approval of the Bond by the Texas Attorney General's office.

In case any officer of the City whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

There is hereby appropriated from funds of the City lawfully available for such purpose a sum sufficient to pay the interest and principal to become due with respect to the Obligations prior to collection of taxes for such purpose.

**Section 21. PERFECTION.** Chapter 1208, Government Code, applies to the issuance of the Bond and the pledge of ad valorem taxes granted by the City under Section 8 of this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bond is outstanding and unpaid such that the pledge of ad valorem taxes granted by the City under Section 8 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Registered Owner of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

**Section 22. INTERPRETATIONS.** All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict

any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and the validity of the lien on and pledge to secure the payment of the Bonds.

**Section 23. INCONSISTENT PROVISIONS.** All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provisions of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

**Section 24. INTERESTED PARTIES.** Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City and the Registered Owner of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City and the Registered Owner of the Bonds.

**Section 25. SEVERABILITY.** The provisions of this Ordinance are severable; and in case any one or more of the provisions of this Ordinance or the application thereof to any person or circumstance should be held to be invalid, unconstitutional, or ineffective as to any person or circumstance, the remainder of this Ordinance nevertheless shall be valid, and the application of any such invalid provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

**Section 26. FUNDS AND ACCOUNTS.** Notwithstanding anything in this Ordinance to the contrary any funds or accounts created by this Ordinance, other than the escrow funds, may be subaccounts of the City's funds held by the City's depository, and, as such, not held in separate bank accounts, such treatment shall not constitute commingling of the monies in such funds or of funds and the City shall keep full and complete records indicating the monies and investment credited to each such fund.

**Section 27. CREDIT AGREEMENT.** To the extent permitted by law, the City reserves the right under Chapter 1371 of the Texas Government Code to enter into Credit Agreements in connection with the Bonds, upon the written opinion of the City's Finance Director that such Credit Agreements are in the best interest of the City given the market conditions at the time. The Credit Agreements will constitute a Credit Agreement as defined in Chapter 1371 of the Texas Government Code. Any such Credit Agreements must be reviewed and approved by the Attorney General of the State of Texas.

**Section 28. REPEALER.** All orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

**Section 29. EFFECTIVE DATE.** This Ordinance shall become effective upon the final passage of this Ordinance in accordance with Section 1201.028, Texas Government Code, as amended.

**Section 30. PAYMENT OF ATTORNEY GENERAL FEE.** The City hereby authorizes the disbursement of a fee equal or lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) \$9,500, provided that such fee shall not be less than \$750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General=s review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The appropriate member of the City=s staff is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds.

**IN ACCORDANCE WITH SECTION 1201.028**, Texas Government Code, finally passed, approved and effective on this 18th day of June, 2020.

**THE CITY OF TEMPLE, TEXAS**

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Mayor  
City of Temple, Texas

**ATTEST:**

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City Secretary  
City of Temple, Texas

**APPROVED AS TO FORM:**

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City Attorney  
City of Temple, Texas

*[Ordinance Signature Page]*



## **EXHIBIT "A"**

### **DEFINITIONS**

As used in this Ordinance, the following terms and expressions shall have the meanings set forth below, unless the text hereof specifically indicates otherwise:

"*Accountant*" means an independent certified public accountant or accountants or a firm of an independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

"*Accreted Value*" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof, plus all interest accrued and compounded to the particular date of calculation, as determined in accordance with the Pricing Certificate and the Accretion Table attached as an exhibit to the Pricing Certificate relating to the respective Bonds that shows the Accreted Value per \$5,000 maturity amount on the calculation date of maturity to its maturity.

"*Accretion Table*" means the exhibit attached to the Pricing Certificate that sets forth the rounded original principal amounts at the Issuance Date for the Premium Compound Interest Bonds and the Accreted Values and maturity amounts thereof as of each Compounding Date until final maturity.

"*Authorized Denominations*" means the denomination of \$5,000 or any integral multiple thereof with respect to the Current Interest Bonds and in the denomination of \$5,000 in maturity amount or any integral multiple thereof with respect to the Premium Compound Interest Bonds.

"*Bond Insurer*" or "*Insurer*" means the provider of a municipal bond insurance policy for the Bonds as determined by the Pricing Officer in the Pricing Certificate or any other entity that insures or guarantees the payment of principal and interest on any Bonds.

"*Bonds*" means one or more Series of the "City of Temple, Texas General Obligation Refunding Bonds."

"*Book-Entry-Only System*" means the book-entry system of bond registration provided in Section 6, or any successor system of book-entry registration.

"*Business Day*" means any day which is not a Saturday, Sunday or a day on which the Paying Agent/Registrar is authorized by law or executive order to remain closed.

"*Cede & Co.*" means the designated nominee and its successors and assigns of The Depository Trust Company, New York.

"*City*" means the City of Temple, Texas, and where appropriate, the City Council.

"*City Council*" means the governing body of the City.

"*Closing Date*" means the date of initial delivery of and payment for the Bonds.

"*Compounded Amount*" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof plus all interest accrued and compounded to the particular date of calculation.

"*Compounding Dates*" means the dates on which interest is compounded on the Premium Compound Interest Bonds as set forth in the Accretion Table attached to the Pricing Certificate.

"*Current Interest Bonds*" means the Bonds paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in the Pricing Certificate.

"*Defeasance Securities*" means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"*Depository*" means one or more official depository banks of the City.

"*DTC*" means The Depository Trust Company, New York, New York and its successors and assigns.

"*DTC Participant*" means securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"*Escrow Agent*" means the Escrow Agent designated in the Pricing Certificate or any successor escrow agent under the Escrow Agreement.

"*Escrow Agreement*" means the agreements by and between the City and the Escrow Agent relating to refunding the Refunded Obligations.

"*Federal Securities*" as used herein means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

"*Fiscal Year*" means the twelve-month accounting period used by the City in connection with the operation of the System, currently ending on September 30 of each year, which may be any twelve consecutive month period established by the City, but in no event may the Fiscal Year be changed more than one time in any three calendar year period.

"*Holder*," "*Holders*," "*Owners*" or "*Registered Owners*" means any person or entity in whose name a Bond is registered in the Security Register, for any Parity Obligation.

"*Initial Bonds*" means the Bonds authorized, issued, and initially delivered as provided in Section 4 of this Ordinance.

"*Insurance Policy*" means an insurance policy issued by any Insurer guaranteeing the scheduled principal of and interest on the Bonds when due.

"*Interest and Sinking Fund*" means the special fund maintained by the provisions of Section 8 of this Ordinance.

"*Interest Payment Date*" means a date on which interest on the Bonds is due and payable.

"*Issuance Date*" means the date of delivery of the Bonds.

"*MSRB*" means the Municipal Securities Rulemaking Board.

"*Ordinance*" means this ordinance finally adopted by the City Council on June 18, 2020.

"*Outstanding*", when used with respect to Bonds, means, as of the date of determination, all Bonds theretofore delivered under this Ordinance, except:

- (1) Bonds theretofore cancelled and delivered to the City or delivered to the Paying Agent/Registrar for cancellation;
- (2) Bonds deemed paid pursuant to the provisions of Section 9 of this Ordinance;
- (3) Bonds upon transfer of or in exchange for and in lieu of which other Bonds have been authenticated and delivered pursuant to this Ordinance
- (4) Bonds under which the obligations of the City have been released, discharged or extinguished in accordance with the terms thereof.

"*Permitted Investments*" means any security or obligation or combination thereof permitted under the Public Funds Investments Act, Chapter 2256, Texas Government Code, as amended or other applicable law.

"*Premium Compound Interest Bonds*" means the Bonds on which no interest is paid prior to maturity, maturing in various amounts and in the aggregate principal amount as set forth in the Pricing Certificate.

"*Pricing Certificate*" means the Pricing Certificate of the City's Pricing Officer to be executed and delivered pursuant to Section 4 hereof in connection with the issuance of the Bonds.

"*Pricing Officer*" means the Director of Finance of the City, acting as the designated pricing officer of the City to execute the Pricing Certificate but in her absence, the City Manager may act as the designated pricing officer of the City to execute the Pricing Certificate.

"*Rating Agency*" means any nationally recognized securities rating agency which has assigned, at the request of the City, a rating to the Bonds.

"*Record Date*" means Record Date as defined in Section 7 the Form of Bonds.

"*Redemption Date*" means a date fixed for redemption of any Bond pursuant to the terms of this Ordinance.

"*Refunded Obligations*" means those Refundable Obligations designated by the Pricing Officer in the Pricing Certificate to be refunded.

"*Refundable Obligations*" means all or a portion of the City's outstanding ad valorem tax obligations and waterworks and sewer utility system revenue obligations.

"*Register*" or "*Registration Books*" means the registry system maintained on behalf of the City by the Registrar in which are listed the names and addresses of the Registered Owners and the principal amount of Bonds registered in the name of each Registered Owner.

"*Registrar*" or "*Paying Agent/Registrar*" means the paying agent/registrar designated by the Pricing Officer in the Pricing Certificate, or such other bank, trust company, financial institution, or other entity as may hereafter be designated by the District to act as paying agent and registrar for the Bonds in accordance with the terms of this Bond Order.

"*Replacement Bonds*" means the Bonds authorized by the City to be issued in substitution for lost, apparently destroyed, or wrongfully taken Bonds as provided in Section 10 of this Ordinance.

"*Rule*" means SEC Rule 15c2-12, as amended from time to time.

"*SEC*" means the United States Securities and Exchange Commission.

"*Series*" means a separate series of Bonds as specified by or pursuant to the terms of this Ordinance.

**EXHIBIT "B"**

**CONTINUING DISCLOSURE**  
**DESCRIPTION OF ANNUAL FINANCIAL INFORMATION**

The following information is referred to in Section 16 of this Ordinance.

**Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the current notes to the financial statements used in the Official Statement.



## COUNCIL AGENDA ITEM MEMORANDUM

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Consent Agenda  
Page 1 of 1

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

Stephanie Hedrick, Interim City Secretary

**ITEM DESCRIPTION:** Approve Minutes:

- (A) June 2, 2020 Special Called Meeting
- (B) June 8, 2020 Special Called 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:**

[June 2, 2020 Special Called Meeting Minutes](#)  
[June 8, 2020 Special Called Meeting Minutes / Video](#)

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

**JUNE 12, 2020**

**Present:**

Councilmember Susan Long  
Councilmember Jessica Walker  
Councilmember Wendell Williams  
Mayor Pro Tem Judy Morales  
Mayor Timothy A. Davis

Meeting was called to order at 9:00 AM.

**I. AGENDA ITEMS**

1. **Discuss the employment, duties, and work plans of the City Secretary. Pursuant to Texas Government Code § 551.074 – The City Council will meet in executive session to discuss the appointment, employment, and duties of the City Secretary. No final action will be taken.**

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

\_\_\_\_\_  
Timothy A. Davis

ATTEST:

\_\_\_\_\_  
Stephanie Hedrick  
Interim City Secretary

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

**JUNE 8, 2020**

**Present:**

Councilmember Susan Long  
Councilmember Jessica Walker  
Councilmember Wendell Williams  
Mayor Pro Tem Judy Morales  
Mayor Timothy A. Davis

**I. AGENDA ITEMS**

- 1. 2020-0090-R: Consider adopting a resolution appointing Jana Lewellen as City Secretary and setting compensation for the position.**

Kathryn Davis, City Attorney welcomed Jana Lewellen and gave an overview of her background. Ms. Lewellen previously worked for the City of Temple as Deputy City Secretary from 2011 to 2013.

Motion by Mayor Pro Tem Judy Morales 1. 2020-0090-R: Consider adopting a resolution appointing Jana Lewellen as City Secretary and setting compensation for the position., be Approve, seconded by Councilmember Jessica Walker.

Motion passed unanimously.

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

Meeting was adjourned at approximately 1:02 PM.

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Timothy A. Davis

ATTEST:

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Stephanie Hedrick  
Interim City Secretary





## COUNCIL AGENDA ITEM MEMORANDUM

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Item #4(C)  
Consent Agenda  
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**DEPT./DIVISION SUBMISSION & REVIEW:**

M. Sean Parker, Airport Director  
Charla Thomas, Assistant City Attorney

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a lease agreement with Chris and Vicki Avants for lease of T-Hangar #23 at the Draughon-Miller Central Texas Regional Airport.

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

**ITEM SUMMARY:** Chris and Vicki Avants have requested to lease T-Hangar #23 at the Airport for aircraft storage and aeronautical purposes. The rent for this T-Hangar will be \$185 per month, due on the 1<sup>st</sup> day of the month.

The Avants will be leasing T-Hangar #23, which will be used to store the following aircraft:

<b>Type:</b>	Fixed Wing Single Engine
<b>Manufacturer:</b>	Cessna
<b>Model:</b>	182P
<b>Engine Manufacturer:</b>	CONT Motor
<b>Engine Model:</b>	O 470 Series
<b>U.S. Registration No./Tail #:</b>	N1343S

The initial term of this lease agreement will be for 12 months and may be renewed for additional 12-month terms at the agreement of the parties, and as evidenced by the execution of a written amendment or addendum, or a new lease agreement reflecting any new rental rates or changes to terms and conditions. Staff recommends that the lease have an effective date of July 1, 2020.

Mr. and Mrs. Avants agree to use the T-Hangar solely for aircraft hangar purposes and aeronautical operations and understands that the T-Hangar space is for storage of an operable airworthy aircraft. The Avants further understand that commercial activity is prohibited in the T-Hangar.

Pursuant to the lease agreement, the Avants will: timely pay rent, store only aircraft and items related to aeronautical operations on the leased premises, grant the City the right to enter the T-Hangar at any time for inspection, repairs, additions, alterations, or repairs, furnish a duplicate key or combination to the Airport Director for any lock used to secure the T-Hangar, keep the premises in a good and orderly condition, comply with all terms of the lease agreement and all ordinances, rules, regulations of the City and the Airport, and maintain the required liability insurance as evidenced by a current certificate of insurance that names the City as an additional insured. This is an as-is lease, the City will not be making any adjustments or upgrades to the space.

**FISCAL IMPACT:** Annual lease revenue of \$2,220 for rental of T-Hangar #23 will be deposited into Account 110-0000-446-3021.

**ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. 2020-0091-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING AN AIRPORT HANGAR LEASE AGREEMENT WITH CHRIS AND VICKI AVANTS, IN THE AMOUNT OF \$185 PER MONTH, FOR THE USE OF T-HANGAR NO. 23 AT THE DRAUGHON-MILLER CENTRAL TEXAS REGIONAL AIRPORT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, Mr. and Mrs. Avants have requested to lease T-hangar No. 23 at the Airport for aircraft storage and aeronautical purposes

**Whereas**, if approved, Mr. and Mrs. Avants will be leasing T-hangar No. 23 to store the following aircraft:

<b>Type:</b>	Fixed Wing Single Engine
<b>Manufacturer:</b>	Cessna
<b>Model:</b>	182P
<b>U.S. Registration No./ Tail No.:</b>	N1343S

**Whereas**, Staff recommends Council authorize a 12-month airport T-hangar lease agreement with Mr. and Mrs. Avants, at the rental rate of \$185 per month, due on the 1<sup>st</sup> day of each month, with an effective date of July 1, 2020;

**Whereas**, the lease may be renewed for additional 12-month terms at the agreement of the parties, as evidenced by the execution of a written amendment or addendum, or a new lease agreement reflecting any new rental rates or changes to terms and conditions;

**Whereas**, Mr. and Mrs. Avants agree to use the T-hangar solely for aircraft hangar purposes and aeronautical operations and understands that the hangar space is for storage of an operable airworthy aircraft – Mr. and Mrs. Avants further understand that commercial activity is prohibited in the T-hangar;

**Whereas**, pursuant to the lease agreement, Mr. and Mrs. Avants will: timely pay rent; store only aircraft and items related to aeronautical operations on the leased premises; grant the City the right to enter the T-hangar at any time for inspection, repairs, additions, alterations, or repairs; furnish a duplicate key or combination to the Airport Director for any lock used to secure the T-hangar; keep the premises in a good and orderly condition; comply with all terms of the lease agreement and all ordinances, rules, regulations of the City and the Airport; and maintain the required liability insurance as evidenced by a current certificate of insurance that names the City as an additional insured,

**Whereas**, this is an as-is lease, and the City will not be making any adjustments or upgrades to the space;

**Whereas**, the City will receive annual lease revenue of \$2,200, which will be deposited into Account No. 110-0000-446-3021; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute an airport hangar lease agreement with Chris and Vicki Avants, in the amount of \$185 per month for the use of T-hangar No. 23 at the Draughon-Miller Central Texas Regional Airport, effective July 1, 2020.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution was 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 18<sup>th</sup> day of **June, 2020**.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Hedrick  
Interim City Secretary

\_\_\_\_\_  
Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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

Don Bond, P.E., CFM, Director of Public Works  
Richard Wilson, P.E., CFM, City Engineer

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick, & Associates, LP, of Temple for preliminary design services required for the Avenue G Pump Station Improvement Project, in the amount of \$76,930.

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

**ITEM SUMMARY:** The Avenue G Pump Station, built in 1935, is a critical component of the City of Temple's water system and is the only supply for the 876 Pressure Plane, which encompasses the middle portion of the City and extends to the north CCN boundary. The Avenue G Pump Station supplies water to the West Park, Nugent, 25<sup>th</sup> Street, and Taylor Road Elevated Storage Tanks.

As identified in the attached engineer's proposal, this agreement will authorize KPA to perform preliminary investigations and evaluate design improvement options for the existing Avenue G Pump Station. The main focus will be to evaluate two separate site locations to relocate the pump station to, one adjacent to the existing pump station site and one further south adjacent to the existing Avenue G Ground Storage Tanks. See the attached project map.

Consultant services recommended under this professional services agreement include:

**Professional Services**

Design Surveys	\$ 7,150
Preliminary Engineering – Civil	66,955
Preliminary Engineering – Electrical	<u>2,825</u>

**TOTAL      \$ 76,930**

Time required for preliminary design is 145 calendar days from the notice to proceed.

These investigation services will result in a preliminary opinion of probable construction cost for the selected site and be followed by Final Design services.

**FISCAL IMPACT:** Funding for the professional services agreement with Kasberg, Patrick, & Associates, LP, (KPA) for preliminary design services for the Avenue G Pump Station Improvements is available in account 561-5100-535-6546, project 102255, as follows:

Project Budget	\$	76,930
Encumbered/Committed to Date		-
Professional Services Agreement - KPA		(76,930)
Remaining Project Funds Available	\$	-

**ATTACHMENTS:**

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



**KASBERG, PATRICK & ASSOCIATES, LP**  
CONSULTING ENGINEERS  
Texas Firm F-510

Temple  
19 North Main Street  
Temple, Texas 76501  
(254) 773-3731

**RICK N. KASBERG, P.E.**  
**R. DAVID PATRICK, P.E., CFM**  
**THOMAS D. VALLE, P.E.**  
**GINGER R. TOLBERT, P.E.**  
**ALVIN R. "TRAE" SUTTON, III, P.E., CFM**  
**JOHN A. SIMCIK, P.E., CFM**

Georgetown  
800 South Austin Avenue  
Georgetown, Texas 78626  
(512) 819-9478

May 26, 2020

Mr. James Billeck, P.E.  
3210 E. Avenue H  
Building A  
Temple, Texas 76501

Re: City of Temple, Texas  
Avenue G Pump Station Improvements  
Preliminary Design

Dear Mr. Billeck:

This letter proposal is in response to the City's request for engineering services required for preliminary investigations and design improvement options for the existing Ave G Pump Station. In general, these options include preliminary design of a New Pump Station adjacent to the existing pump station site and a New Pump Station located adjacent to the existing Ave G Ground Storage basins. The attached Exhibit A depicts the general vicinity of the two options to be investigated. Recent conversations with City Staff have led to the development of the preliminary design tasks required and are shown in more detail on the attached Exhibit B – Scope of Services.

The charges for our services described in the attached Scope will be a lump sum amount of \$76,930. as detailed below.

Professional Services for Ave G Pump Station Improvements - Preliminary Design

Design Surveys (ACS)	\$ 7,150
Preliminary Engineering – Civil	\$ 66,955
Preliminary Engineering – Electrical (McCreary & Associates)	\$ 2,825

<b>Total</b>	<b>\$ 76,930</b>
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The Lump Sum Amount for the project will not be exceeded unless the scope of the project is changed and additional work is authorized in writing. We will invoice this work for percent complete on a monthly basis.

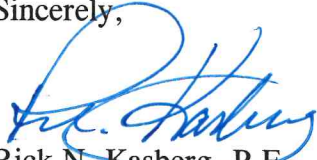
Mr. James Billeck, P.E.

May 26, 2020

Page Two

We anticipate our efforts can be completed within 145 calendar days from receipt of a notice to proceed. We are available to address any questions or comments that you may have about this proposal. As always, we look forward to working with you on this project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick N. Kasberg", is written over the word "Sincerely,".

Rick N. Kasberg, P.E.

RNK/crc



**Exhibit B**  
**City of Temple, Texas**  
**Avenue G Pump Station Improvements**  
**Scope of Services**  
**May 26, 2020**

**Background**

The existing Avenue G Pump Station contains six pumps, which pump water from the Avenue G Ground Storage Tanks to the 876 pressure plane and the West Park Pump Station. The Avenue G Pump Station is used to replenish the West Park, Nugent, 25th Street and Taylor Road Elevated Storage Tanks. This pump station also supplies water to the WCID No. 2 system in Little River-Academy. The pumps have a combined capacity of 9,600 gallons per minute or 13.83 MGD. The existing pump station site is pictured below.

Recent conversations with City Staff have led to the scope proposed below, which will consist of preliminary investigations and evaluation of improvement options. One option to be investigated will include a new pump station adjacent to the existing pump station and potential modifications to the existing building for use as a MCC enclosure for a new pump station. The second option to be investigated will include a new pump station located adjacent to the existing Ave G Ground Storage. These two (2) options and their respective locations are shown on the attached Exhibit A.



**Scope**

**TASK 1 – Preliminary Design – tasks to be completed prior to final design.**

**1.1 Design surveys**

- a. Existing Pump Station Site.
- b. Existing Ave G Ground Storage Site including outlet pipe elevations.
- c. 29<sup>th</sup> Street corridor from Ground Storage to Existing Ave G Pump Station Site including dry and wet utilities.
- d. TxDOT ROW boundaries along the east side of 31<sup>st</sup> Street from Ground Storage to Existing Pump Station Site including dry and wet utilities.

- 1.2 Review and document existing property ownership and easements from ground storage to existing pump station.
- 1.3 Inventory / confirm horizontal centrifugal pump capacities and conditions at existing pump station.
- 1.4 Prepare system head curve related to existing pump station site based on field pressure testing during varied operational conditions to reflect actual flow distribution within distribution system.
- 1.5 Evaluate use of VFDs for existing pump station.
- 1.6 Determine maximum pumping capacity at existing pump station site.
- 1.7 Determine recommended pump improvements and building layout modifications for existing pump station site.
- 1.8 Develop preliminary schematic of pump discharge yard piping modifications at the existing pump station site for both options.
- 1.9 Preliminarily size the following components for New Pump Station adjacent to ground storage tanks :
  - a. Vertical turbine pumps (number and size w/VFDs)
  - b. Wet well configuration and size
  - c. Discharge piping, including surge valves(s)
  - d. MCC Building
  - e. Generator (determine feasibility of relocating and utilizing existing)
  - f. Ground storage outlet pipe to new wet well including preliminary horizontal and vertical alignments.
  - g. Transmission main from new pump station to yard piping near existing pump station including preliminary horizontal and vertical alignments.
  - h. Prepare system head curve related to new pump station utilizing system head curve developed from field pressure testing data obtained from existing pump station.
- 1.10 Meet with City and Pump Manufacturers to determine preliminary pump selection.
- 1.11 Meet with ONCOR to determine requirements for service at proposed new location near ground storage and existing location if it is determined that expansion is warranted under Task Item 1.6.
- 1.12 Prepare Preliminary Opinion of Probable Construction Cost (OPC) for both pump station improvement options.
- 1.13 Prepare letter report detailing the proposed improvements options and their associated costs the preferred option for final design. Letter report will include applicable calculations, details, general footprint layout and exhibits and OPCs.
- 1.14 No final design component is included in this scope being that the final design task for each option will vary significantly as it relates to new transmission main piping, structural and electrical scope disciplines required.
- 1.15 Progress Review Meetings (4 each).







RESOLUTION NO. 2020-0092-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH KASBERG, PATRICK AND ASSOCIATES, LP, OF TEMPLE, TEXAS IN THE AMOUNT OF \$76,930.00 FOR PRELIMINARY DESIGN SERVICES REQUIRED FOR THE AVENUE G PUMP STATION IMPROVEMENT PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the Avenue G Pump Station, built in 1935, is a critical component of the City of Temple's water system and is the only supply for the 876 Pressure Plane, which encompasses the middle portion of the City and extends to the north CCN boundary - the Avenue G Pump Station supplies water to the West Park, Nugent, 25<sup>th</sup> Street, and Taylor Road Elevated Storage Tanks;

**Whereas**, this agreement will authorize Kasberg, Patrick and Associates, LP to perform preliminary investigations and evaluate design improvement options for the existing Avenue G Pump Station and the main focus will be to evaluate two separate site locations to relocate the pump station to, one adjacent to the existing pump station site and one further south adjacent to the existing Avenue G Ground Storage Tanks;

**Whereas**, consultant services provided under this contract include the following tasks and costs:

**Professional Services**

Design Surveys	\$ 7,150
Preliminary Engineering – Civil	\$ 66,955
Preliminary Engineering – Electrical	\$ <u>2,825</u>

**TOTAL     \$ 76,930**

**Whereas**, Staff recommends Council authorize a professional services agreement with Kasberg, Patrick and Associates, LP, of Temple, Texas in the amount of \$76,930 for preliminary design services required for the Avenue G Pump Station Improvement Project;

**Whereas**, funding for this agreement is available in Account No. 561-5100-535-6546, Project No. 102255; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute a professional services agreement with Kasberg, Patrick and Associates, LP, of Temple, Texas in the amount of \$76,930 for preliminary design services required for the Avenue G Pump Station Improvement Project.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution was 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 18<sup>th</sup> day of **June, 2020.**

THE CITY OF TEMPLE, TEXAS

---

TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

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Stephanie Hedrick  
Interim City Secretary

---

Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(E)  
Consent Agenda  
Page 1 of 2

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

Erin Smith, Assistant City Manager

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a professional services agreement with Kasberg, Patrick and Associates, LP, for services required to develop a schematic and final design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street, in an amount not to exceed \$191,600.

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

**ITEM SUMMARY:** Work to be performed under this contract consists of planning and engineering services for the schematic and final design of Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street. The project shall follow the concepts of the Ferguson Park Master Plan created in 2019. The final product will be final design for the full extents of project. The schematic design portion will develop schematic roadway sections, alignments, utility improvements, pedestrian enhancements, etc. The schematic design phase will be the genesis for final design plans producing documents ready for bidding and construction.

Consultant services recommended under this contract include the following tasks and costs:

Design Surveys	\$ 12,200
Geotechnical Investigations	8,000
Archaeological & Environmental Investigations	5,800
Schematic Civil Design	6,500
Schematic Landscape Design	6,400
Final Civil Design	78,100
Final Landscape Design	38,500
Electrical Design	13,800
Utility Design	18,800
Project Phasing and Cost Estimates	3,500

**TOTAL** **\$ 191,600**

Please refer to the attached proposal for further details. Time required for design is nine months from the notice to proceed and receipt of all necessary rights-of-entry. The engineer's preliminary opinion of probable cost for construction of the Avenue D connections and alleys improvements is \$2,335,000.

**FISCAL IMPACT:** Funding for the contract with Kasberg, Patrick, & Associates, LP for professional services required to design the Avenue D Connections and Alleys Improvements, in the amount of \$191,600 is available in project 102249 as follows:

	Road Improvements 365-3400-531-6974	Utility Improvements 561-5200-535-6974	Total
Project Budget	\$ 631,000	\$ 34,000	\$ 665,000
Professional Services Agreement - KPA	(172,800)	(18,800)	(191,600)
Remaining Project Funds	\$ 458,200	\$ 15,200	\$ 473,400

On May 21, 2020, Council authorized proceeding with the issuance of the City of Temple, Texas Combination Tax and Revenue Certificates of Obligation, Series 2020 which includes funding for construction of the Ave D Connections and Alleys improvements in the amount of \$1,835,000. An additional \$500,000 is planned with Utility Revenue Bonds for a total of \$2,335,000.

**ATTACHMENTS:**

[Proposal](#)  
[Exhibit](#)  
[Resolution](#)



**KASBERG, PATRICK & ASSOCIATES, LP**

CONSULTING ENGINEERS

Texas Firm F-510

Temple

One South Main Street  
Temple, Texas 76501  
(254) 773-3731

**RICK N. KASBERG, P.E.**

**R. DAVID PATRICK, P.E., CFM**

**THOMAS D. VALLE, P.E.**

**GINGER R. TOLBERT, P.E.**

**ALVIN R. "TRAE" SUTTON, III, P.E., CFM**

**JOHN A. SIMCIK, P.E., CFM**

Georgetown

1008 South Main Street  
Georgetown, Texas 78626  
(512) 819-9478

May 13, 2020

Ms. Erin Smith, AICP  
Assistant City Manager  
City of Temple  
2 North Main Street  
Temple, Texas 76501

Re: City of Temple  
Avenue D, Connections and Alleys  
Schematic and Final Design

Dear Ms. Smith:

At the request of the City of Temple, we are submitting this proposal for the above referenced project. This project will develop Schematic Design and Final Design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the Alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street and the Alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street.

The work to be performed by KPA under this contract consists of providing planning and engineering services for design of Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the Alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street and the Alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street. The project shall follow the concepts of the Ferguson Park Master Plan created in 2019. The timeframe for design of the project is nine (9) months from the Notice to Proceed and any required rights-of-entry.

The purpose of the scope of work as described in this proposal is to develop schematic design and final design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the Alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street and the Alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street. The final product will be final design for the full extents of project. The schematic design portion will develop schematic roadway sections, alignments, utility improvements, pedestrian enhancements, etc. The schematic design phase will be the genesis for final design plans producing documents ready for bidding and construction.

KPA will perform all work and prepare all deliverables in accordance with the latest version of AASHTO regulations and City of Temple specifications, standards, and manuals.



KPA will perform quality control and quality assurance (QA/QC) on all deliverables associated with the project.

The following services will be performed:

1) FIELD SURVEYING

- a) Topographic Surveys for Engineering and Landscape Design.
  - i) Data collection shall consist of surveying all elements of the project to complete the design requirements. Elements shall include roadways, curb and gutter, existing streetscape amenities, existing property corners, etc. Previous data will be incorporated to reduce fees.
- b) Metes and Bounds – Metes and Bounds are not included in this proposal as the unknowns for the design do not allow to estimate the required rights-of-way and easements. We will develop a separate proposal after the schematic design phase for metes and bounds.

2) GEOTECHNICAL INVESTIGATIONS

- a) Roadway – Geotechnical field data will be taken for the length of the project every 500 feet to establish the subsurface conditions. Boring logs will be established for inclusion in the final report. Borings will be 5 feet in depth. Traffic loading will be based on City of Temple criteria.
- b) A final report of the subsurface investigations and geotechnical design for the roadway and alleys will be completed for the project.
- c) Traffic Control will be required for these activities and will be supplied with this contract.

3) ENVIRONMENTAL INVESTIGATIONS

- a) Prepare Phase I Site Assessment for the length of the project in accordance with the procedures included in ASTM E 1527-05.
- b) A full report of all findings will be completed with a recommendation. If additional investigations are required which are not a part of this proposal, a contract amendment will be required.
- c) At this time there are not any expected submittal or review fees by state or federal agencies and therefore no fees of this kind are included in the proposal.

4) ARCHAEOLOGICAL INVESTIGATIONS

- a) Complete field investigations in accordance with regulatory requirements to clear the length of the project not currently cleared for archaeological review with the State of Texas.
- b) A full report of all findings will be completed with a recommendation. If additional investigations are required which are not a part of this proposal, a contract amendment will be required. The finding will be submitted to the Texas Historical Commission for review and clearance of the project.
- c) At this time there are not any expected submittal or review fees by state or federal agencies and therefore no fees of this kind are included in the proposal.

5) PLANNING DESIGN STUDIES

- a) Data Collection – Obtain and review any existing data from the City and other entities that may have record documents and are allowed to release the information. The facilities within the defined project area and immediate surrounding area will be reviewed and documented.

6) SCHEMATIC DESIGN

- a) Roadway Alignment – Roadway alignment will be developed for the schematic design utilizing a 35 mile per hour design speed. Alleys will be designed for a 20 mile per hour design speed. For schematic design, only horizontal alignment will be developed. The alignment will be in coordination with the concepts from the Ferguson Park Master Plan.
- b) Property Owner Research – After the centerline alignment has been established, property owner research will be conducted along the route. Information will be derived from Bell County Property records via Bell CAD. All information from Bell Cad will be inventoried and illustrated for the project in a separate exhibit and in spreadsheet format.
- c) Utilities – Based on the centerline alignment and the City of Temple Utility Master Plans, general utility alignments will be developed with sizes based on the current Master Plan. Utilities will be illustrated in plan view only.
- d) Roadway Section and Rights of Way – Roadway sections will be developed for the project as well as rights-of-way requirements. The roadway section will be based off soil information obtained in the Geotechnical Investigations and data from previous projects in the vicinity. Schematic right-of-way requirements will be established based on the roadway sections and topography.
- e) Drainage – Schematic drainage design will include a general assessment of drainage requirements and major drainage conveyance. Previous studies will be utilized to reduce fees.
- f) Connections – Connections will be established based on survey data. Connections will be schematically designed for:
  - (1) 14<sup>th</sup> Street
  - (2) 16<sup>th</sup> Street
  - (3) 18<sup>th</sup> Street
  - (4) Internal Connections
- g) Schematic Plans – Based on the criteria listed above, Schematic Design Plans will be developed. Plans will be on 11x17 at 1":40' scale.
- h) Develop schematic design for landscaping for the project.
- i) Incorporate Ferguson Park Master Plan amenities into the schematic design.
- j) Incorporate the use of alleys for driveway connections.
- k) Extend sidewalks to structures for connectivity.
- l) Prepare exhibits illustrating schematic landscape design.
- m) Prepare exhibits illustrating Ferguson Park Master Plan amenities in conjunction with proposed landscaping improvements.
- n) OPCs – Based on the Schematic Design Plans, OPCs for the project will be created. Review of potential phasing will be concluded and the OPCs will be broken down into phases, as applicable.

7) FINAL DESIGN

- a) Roadway Design
  - i) Develop final typical Sections for the project.
  - ii) Finalize plan & profile drawings for the project.
  - iii) Finalize intersection and connection layouts for the project.
  - iv) Develop typical driveway designs and summarize driveway features including material type and geometric design. Driveways shall be replaced with HMA or concrete, conforming to existing or as directed by the City of Temple. Profiles for each driveway will be completed

to illustrate the connection with proposed infrastructure and existing private access. All access facilities will meet the requirements of the City of Temple criteria.

- v) Develop various details, as required, for pavement, curb, riprap, etc.
- b) Drainage Design – Previous studies will be utilized to reduce fees.
  - i) Develop final designs for all cross-drainage structures within the project limits. All cross-drainage structures shall be illustrated in plan profile sheets as well as detail sheets in the 100% plans. Grading to existing ground elevations shall be detailed as well as elevations for flow lines and headwalls. Hydraulic grade lines for the 4% and 1% annual chance storm (25-year and 100-year) events shall be illustrated in the profile views. Designs for conveyance to reduce erosion shall be completed and detailed in the plans.
  - ii) Develop final designs for the storm water collection system for the curb-and gutter portion of the project. Flow lines shall be detailed as well as hydraulic grade lines for the 4% and 1% annual chance storm (25-year and 100-year) events. All drainage infrastructure shall be designed and presented in the drawings in plan and profile.
  - iii) Design storm water conveyance to existing streams and channel ways. Design shall include conveyance for positive drainage and shall check current water surface elevations to proposed water surface elevations after project completion.
  - iv) Determine potential utility conflicts based on final design for the project area. Existing utility locations shall be illustrated in the drainage plan profile sheets.
  - v) Develop final drainage easement requirements for the project area. Layouts for drainage easements shall be prepared for review with the City. Details will be provided for the production of metes and bounds for acquisition.
  - vi) Prepare Hydraulic Data Sheets as appropriate reflecting the results of the hydraulic analyses and designs for proposed crossroad culverts and storm sewer systems.
  - vii) Develop summary of final quantities for all drainage infrastructure and prepare OPCs based on current bid data.
  - viii) Coordinate with the City of Temple to review the final drainage design, phasing for the project, utility conflicts and relocations. All comments and direction shall be incorporated into final designs.
  - ix) Storm Water Pollution Prevention Plans (SW3P) - Develop SW3P to minimize potential impact to receiving waterways. The SW3P shall include quantities, type and locations of erosion control devices and any required permanent erosion control measures in accordance with the City of Temple Policy.
- c) Utilities
  - i) Prepare plan and profile for water line for the project as shown in the City of Temple Water Master Plan
  - ii) Call out fittings, hydrants, valves, etc. on the plan profile sheets.
  - iii) Prepare details for water utilities. Details shall be in accordance with current City of Temple standards.
  - iv) Develop summary of final quantities for all utility infrastructure and prepare OPCs based on current bid data.
  - v) Develop final plan and profile for the gravity fed wastewater to connect to the existing City of Temple system.
  - vi) Prepare details for all wastewater improvements.
- d) Signage & Markings

- i) Signing and Markings Layouts - Prepare signing and pavement markings layouts for the full roadway sections. The layouts shall include signing and striping, roadway layout, centerline with stationing, existing signs to remain, to be removed or to be relocated, proposed signs and proposed permanent markings including pavement markings, object markers and delineation. Details shall be in accordance with TMUTCD,
- ii) Sign Details - Prepare details for signs included in the Project.
- iii) Intersection Layouts - Prepare detailed signing and striping layouts at intersections
- e) Landscape Design
  - i) Complete final design of landscape amenities for the project.
  - ii) Complete final design for street and intersection enhancements for the project.
  - iii) Develop material and color palates for the project.
  - iv) Complete irrigation development for the project.
- f) Miscellaneous Design
  - i) Traffic Control Plans TCP, Detours and Sequence of Construction - A detailed TCP shall be developed including sequence of construction and the existing and proposed traffic control devices (including signs, barricades, pavement markings, etc.). The TCP shall be based on phasing construction to allow traffic flow. The TCP shall also include the design of temporary drainage, if required, throughout the construction process to ensure positive flow during construction. TCP shall be based on the TMUTCD and the latest Standards. Plan sheets shall include:
    - ii) Traffic control layout for each phase of construction
    - iii) Advance Warning Signs
    - iv) TCP Phasing Overview Layout
    - v) Any necessary miscellaneous drawings relevant to traffic control
    - vi) Illumination and Electric
    - vii) Develop final conduit layout for future installation of street lighting.
    - viii) Coordinate with Oncor for final layout for the project.
  - ix) OPCs - Prepare detailed construction OPCs.
  - x) General Notes and Specifications – Prepare project specific general notes including standard notes for City of Temple.

8) LANDSCAPE DESIGN

- a) In conjunction with the efforts of the Ferguson Park Master Plan design the elements for the streetscape, pocket park, signing elements, lighting, etc.
- b) In conjunction with the Ferguson Park Concept Design developed in the Ferguson Park Master Plan, Schematic Design will complete the vision for the area.
- c) Final Design will follow the Schematic Design and follow the concepts developed and agreed upon. Final Design plans and specifications will be developed and include all amenities, landscaping, irrigation, materials specification, color palates, etc.

Ms. Erin Smith, AICP  
May 13, 2020  
Page 6

The following scope of work for the Avenue D, Connections and Alleys Schematic and Final Design project can be completed for the lump sum price of \$191,600. Below is a breakdown of project costs. We are pleased to submit this proposal and look forward to the benefit it will bring the City of Temple.

Design Surveys	\$	12,200.00
Geotechnical Investigations	\$	8,000.00
Archaeological & Environmental Investigations	\$	5,800.00
Schematic Civil Design	\$	6,500.00
Schematic Landscape Design	\$	6,400.00
Final Civil Design	\$	78,100.00
Final Landscape Design	\$	38,500.00
Electrical Design	\$	13,800.00
Utility Design	\$	18,800.00
Project Phasing and Cost Estimates	\$	3,500.00
<b>TOTAL</b>	<b>\$</b>	<b>191,600.00</b>

Sincerely,



R. David Patrick, P.E., CFM

xc: File

**ATTACHMENT "C"**

**Charges for Additional Services**

**City of Temple  
Avenue D, Connections and Alleys  
Schematic Design and Final Design**

<u>POSITION</u>	<u>MULTIPLIER</u>	<u>SALARY COST/RATES</u>
Principal	2.4	\$ 75.00 – 95.00/hour
Project Manager	2.4	60.00 – 75.00/hour
Project Engineer	2.4	50.00 – 60.00/hour
Engineer-in-Training	2.4	40.00 – 50.00/hour
Engineering Technician	2.4	35.00 – 50.00/hour
CAD Technician	2.4	30.00 – 50.00/hour
Clerical	2.4	15.00 – 30.00/hour
Expenses	1.1	actual cost
Computer	1.0	15.00/hour
Survey Crew	1.1	125.00 – 160.00/hour
Registered Public Surveyor	1.0	130.00/hour
On-Site Representative	2.1	30.00 – 40.00/hour



Avenue C

Avenue D

16th Street

18th Street

24th Street

Jeff Hamilton  
Park

RESOLUTION NO. 2020-0093-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH KASBERG, PATRICK AND ASSOCIATES, LP, OF TEMPLE, TEXAS IN AN AMOUNT NOT TO EXCEED \$191,600 FOR SERVICES REQUIRED TO DEVELOP A SCHEMATIC AND FINAL DESIGN FOR AVENUE D FROM 14<sup>TH</sup> STREET TO 18<sup>TH</sup> STREET, THE ALLEY BETWEEN AVENUE C AND AVENUE D FROM JEFF HAMILTON PARK TO 18<sup>TH</sup> STREET, AND THE ALLEY BETWEEN AVENUE D AND AVENUE E FROM JEFF HAMILTON PARK TO 18<sup>TH</sup> STREET; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, work to be performed under this contract consists of planning and engineering services for the schematic and final design of Avenue D from 14th Street to 18th Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18th Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18th Street - the project shall follow the concepts of the Ferguson Park Master Plan created in 2019;

**Whereas**, the final product will be final design for the full extents of project - the schematic design portion will develop schematic roadway sections, alignments, utility improvements, pedestrian enhancements, etc. and will be the genesis for final design plans producing documents ready for bidding and construction;

**Whereas**, consultant services recommended under this contract include the following tasks and costs:

Design Surveys	\$ 12,200
Geotechnical Investigations	\$ 8,000
Archaeological & Environmental Investigations	\$ 5,800
Schematic Civil Design	\$ 6,500
Schematic Landscape Design	\$ 6,400
Final Civil Design	\$ 78,100
Final Landscape Design	\$ 38,500
Electrical Design	\$ 13,800
Utility Design	\$ 18,800
Project Phasing and Cost Estimates	\$ <u>3,500</u>

**TOTAL** **\$ 191,600**

**Whereas**, Staff recommends Council authorize a professional services agreement with Kasberg, Patrick and Associates, LP, of Temple, Texas in an amount not to exceed \$191,600 for services required to develop a schematic and final design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street;



**Whereas**, on May 21, 2020, Council authorized proceeding with the issuance of the City of Temple, Texas Combination Tax and Revenue Certificates of Obligation, Series 2020 which includes funding for construction of the Avenue D Connections and Alleys improvements in the amount of \$1,835,000 - an additional \$500,000 is planned with Utility Revenue Bonds for a total of \$2,335,000;

**Whereas**, upon issuance of the Combination of Tax and Revenue Bonds, the City desires to reimburse these prior expenditures with proceeds of the Notes;

**Whereas**, Section 1.150-2 of the Treasury Regulations provides that an expenditure on the Project may not be reimbursed from Tax and Revenue Bonds 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;

**Whereas**, this professional services agreement is being funded with the issuance of 2020 Combination Tax and Revenue Bonds, and the City is declaring an official intent to reimburse for this purchase - a budget adjustment will be prepared at the time of the bond sale to reimburse expenditures incurred prior to the issuance of the bonds;

**Whereas**, once the budget adjustment is approved, funding for this agreement is available in Account Nos. 365-3400-531-6974 and 561-5200-535-6974, Project No. 102249; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute a professional services agreement with Kasberg, Patrick and Associates, LP, of Temple, Texas in an amount not to exceed \$191,600 for services required to develop a schematic and final design for Avenue D from 14<sup>th</sup> Street to 18<sup>th</sup> Street, the alley between Avenue C and Avenue D from Jeff Hamilton Park to 18<sup>th</sup> Street, and the alley between Avenue D and Avenue E from Jeff Hamilton Park to 18<sup>th</sup> Street.

**Part 3:** This Resolution is a declaration of official intent by the City under Section 1.150-2 of the Treasury Regulations that it reasonably expects to reimburse the expenditures described in Part 1 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:** It is hereby officially found and determined that the meeting at which this Resolution was 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 **18<sup>th</sup>** day of **June, 2020.**

THE CITY OF TEMPLE, TEXAS

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TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

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Stephanie Hedrick  
Interim City Secretary

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Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(F)  
Consent Agenda  
Page 1 of 1

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

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a contract with Brockway, Gersbach, Franklin and Niemeier, P.C. to perform the annual City of Temple audit for an amount not to exceed \$79,900.

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

**BACKGROUND:** This item is to engage the audit firm of Brockway, Gersbach, Franklin and Niemeier, P.C. to perform the annual audit of the City of Temple. This will be the first year of a five-year contract for audit services. The contract will be renewed annually. Staff anticipates the audit for FY 2020 will be completed and presented to Council in February 2021.

Listed below are the cost proposals related to the audit services:

	<b>Fiscal Year Ending</b>	<b>Fee</b>
First Year	2020	\$ 79,900
Second Year	2021	84,200
Third Year	2022	86,000
Fourth Year	2023	87,800
Fifth Year	2024	89,700

Per the Local Government Code Section 252.022, professional services are exempt from the competitive bidding rules.

**FISCAL IMPACT:** \$79,900 will be proposed in the FY 2021 preliminary budget to be filed on June 25, 2020. The fee for FY 2020 audit is 3% higher than the FY 2019 audit fee.

### **ATTACHMENTS:**

[Engagement letter](#)  
[Resolution](#)

May 27, 2020

Honorable Mayor and  
Members of the City Council  
Temple, Texas

We are pleased to confirm our understanding of the services we are to provide the City of Temple, Texas (the City) for the year ended September 30, 2020. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of the City of Temple, Texas as of and for the year ended September 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis,
- 2) Budgetary Comparison Schedules, and
- 3) GASB – required Supplementary Pension and OPEB Schedules.

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

- 1) Schedule of Expenditures of Federal and State Awards and
- 2) Combining and Individual Fund Statements and Schedules.

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information.

- 1) Introductory Section and
- 2) Statistical Data



## Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Honorable Mayor and Members of the City Council of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.



### **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal and state awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

### **Audit Procedures—Internal Control**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.



As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

#### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. For federal programs that are included in the Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to audit. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

#### **Other Services**

We will also assist in preparing the financial statements, schedule of expenditures of federal and state awards, and related notes of the City in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal and state awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.



## **Management Responsibilities**

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.



You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal and state awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.



In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

#### **Engagement Administration, Fees, and Other**

We may from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Brockway, Gersbach, Franklin & Niemeier, P.C. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the federal agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Brockway, Gersbach, Franklin & Niemeier, P.C. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.



The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the federal agency. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit on approximately August 17, 2020 and to issue our reports no later than February 15, 2021. Steve Niemeier is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

Our fee for these services will be at our standard rates, except we agree that our gross fee, including expenses, will not exceed \$ 79,900. Our standard hourly rates vary accordingly to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report(s). You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We have attached **Schedule A** that provides the estimated audit fees for the next four years, providing the City the option to extend this contract for a period of up to five years.

*Government Auditing Standards* require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2018 peer review report accompanies this letter.

We appreciate the opportunity to be of service to the City of Temple, Texas and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,



Stephen H. Niemeier, CPA  
Brockway, Gersbach, Franklin & Niemeier, P. C.

RESPONSE:

This letter correctly sets forth the understanding of the City of Temple, Texas

By: \_\_\_\_\_ Title: City Manager  
Date: May 27, 2020

By: \_\_\_\_\_ Title: City Attorney  
Date: May 27, 2020

**Schedule of Professional Fees for  
the Audit of the Financial Statements**

Fee for Subsequent Years Ending September 30:

2021*	\$ <u>84,200</u>
2022	\$ <u>86,000</u>
2023	\$ <u>87,800</u>
2024	\$ <u>89,700</u>

\*Implementation of GASB 87 - Leases



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### Report on the Firm's System of Quality Control

To the Owners of Brockway, Gersbach, Franklin & Niemeier, P.C.  
And the Peer Review Committee of the Texas Society of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Brockway, Gersbach, Franklin & Niemeier, P.C. (the firm) in effect for the year ended April 30, 2018. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

#### **Firm's Responsibility**

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

#### **Peer Reviewer's Responsibility**

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

#### **Required Selections and Considerations**

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act; and Audits of employee benefit plans.,

As part of our review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

#### **Opinion**

In our opinion, the system of quality control for the accounting and auditing practice of Brockway, Gersbach, Franklin & Niemeier, P.C. in effect for the year ended April 30, 2018, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Brockway, Gersbach, Franklin & Niemeier, P.C. has received a peer review rating of *pass*.

*Bumgardner, Morrison & Company, LLP*

**BUMGARDNER, MORRISON & COMPANY, LLP**

August 20, 2018

Bumgardner, Morrison & Company, LLP  
Certified Public Accountants

Members: American Institute of Certified Public Accountants  
Texas Society of Certified Public Accountants  
AICPA Private Companies Practice Section  
AICPA Employee Benefit Plan Audit Quality Center  
AICPA Government Audit Quality Center

1501 E Mockingbird Lane, Suite 300  
PO Box 3750  
Victoria, Texas 77903-3750  
Phone: 361.575.0271  
Fax: 361.578.0880  
Website: BMCcpa.com

RESOLUTION NO. 2020-0094-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT WITH BROCKWAY, GERSBACH, FRANKLIN AND NIEMEIER, P.C., IN AN AMOUNT NOT TO EXCEED \$79,900, TO PERFORM THE ANNUAL CITY OF TEMPLE AUDIT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, this item is to engage the audit firm of Brockway, Gersbach, Franklin and Niemeier, P.C. to perform the annual audit of the City of Temple - this will be the first year of a five-year contract for audit services and will be renewed annually;

**Whereas**, Staff anticipates the audit for fiscal year 2020 will be completed and presented to Council in February 2021;

**Whereas**, per Local Government Code Section 252.022, professional services are exempt from the competitive bidding rules;

**Whereas**, Staff recommends Council authorize the firm of Brockway, Gersbach, Franklin and Niemeier, P.C., to perform the annual audit for fiscal year 2020 for the City of Temple;

**Whereas**, funds will be proposed in the fiscal year 2021 preliminary budget to be filed on June 25, 2020 - the fee for fiscal year 2020 audit is 3% higher than the fiscal year 2019 audit fee; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute a contract with Brockway, Gersbach, Franklin and Niemeier, P.C., in an amount not to exceed \$79,900, to perform the annual audit for fiscal year 2020 for the City of Temple.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution was 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 **18<sup>th</sup>** day of **June, 2020**.

THE CITY OF TEMPLE, TEXAS

---

TIMOTHY A. DAVIS, Mayor

ATTEST:

ATTEST:

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Stephanie Hedrick  
Interim City Secretary

---

Kathryn H. Davis  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(G)  
Consent Agenda  
Page 1 of 2

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

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a three year term contract for bank depository services with BBVA USA of Temple.

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

**ITEM SUMMARY:** This item is to seek approval of a new City of Temple depository bank services contract for municipal funds in accordance with Chapter 105 of the Texas Local Government Code (LGC). The initial contract term is for the period of three years commencing September 1, 2020, through August 31, 2023, with an option for two 1-year continuations.

In accordance with LGC Chapter 105, the City advertised for the submission of applications in March 2020. On April 21, 2020, four applications were received from the following Temple banking institutions: BBVA USA, First United Bank & Trust, JPMorgan Chase Bank, N.A., and VeraBank, N.A.

The applications were reviewed and analyzed by representatives of the following departments: Finance, City Attorney's Office, Utility Business Office, and Information Technology. In addition, the City's investment consultant, Valley View Consulting, LLC, participated in the review process. The applications were analyzed based on the following criteria:

- Ability to perform and provide the required and requested services
- Reputation of applicant and quality of services
- Cost of services
- Transition cost, retention and transition offers and incentives
- Funds availability
- Interest paid on interest bearing accounts and deposits
- Earnings credit calculation on compensation balances
- Completeness of application and agreement to points outlined in the RFA
- Convenience of location(s)
- Previous service relationship with the City
- Financial strength and stability of institution



Based on offered services, a net cost analysis, and the ability to provide a technologically advanced infrastructure and software system, Staff is recommending award of the depository bank services contract to BBVA USA. BBVA USA can provide the banking services required by the City at a competitive price, is offering a competitive interest rate and earnings credit rate, can provide the necessary collateral, is financially stable, is offering multiple incentives, and is conveniently located.

The staff would like to thank all of the banking institutions for their efforts in defining their applications and assisting in clarifications of points in their applications.

**FISCAL IMPACT:** Estimated future banking costs will average \$4,000 a month before interest paid and earnings credit on available balances. This amount will vary from month to month depending on transaction volume and services elected. Current banking costs average \$4,000 monthly.

**ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. 2020-0095-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A THREE-YEAR TERM CONTRACT FOR BANK DEPOSITORY SERVICES WITH BBVA USA, OF TEMPLE, TEXAS; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, this item is to seek approval for a new City of Temple bank depository services contract for municipal funds in accordance with Chapter 105 of the Texas Local Government Code (LGC) - the initial contract term is for a period of three years commencing September 1, 2020, and continuing through August 31, 2023, with an option for two 1-year continuations;

**Whereas**, in accordance with LGC Chapter 105, the City advertised for the submission of applications in March 2020 and on April 21, 2020, four applications were received;

**Whereas**, the applications were reviewed and analyzed by representatives of the following departments: Finance, City Attorney's Office, Utility Business Office, and Information Technology - in addition, the City's investment consultant, Valley View Consulting, LLC, participated in the review process;

**Whereas**, based on offered services, a net cost analysis, and the ability to provide a technologically advanced infrastructure and software system, Staff recommends Council award the bank depository services contract to BBVA USA, of Temple, Texas with an initial contract term for a period of three years commencing September 1, 2020, and continuing through August 31, 2023, with an option for two 1-year continuations;

**Whereas**, BBVA, USA can provide the banking services required by the City at a competitive price, are offering a competitive interest rate and earnings credit rate, can provide the necessary collateral, are financially stable, are offering multiple incentives, and are conveniently located; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute a three-year term contract for bank depository services with BBVA, USA, of Temple, Texas.

**Part 3:** It is hereby officially found and determined that the meeting at which this Resolution was 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 **18<sup>th</sup>** day of **June, 2020**.

THE CITY OF TEMPLE, TEXAS

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TIMOTHY A. DAVIS, Mayor

APPROVED AS TO FORM:

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Stephanie Hedrick  
Interim City Secretary

---

Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(H)  
Consent Agenda  
Page 1 of 2

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

Don Bond, P.E., CFM, Public Works Director  
Richard Wilson, P.E., CFM, City Engineer

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing change order #6 to the construction contract with Archer Western Construction, LLC, of Irving, to construct Phase 1 of the Temple-Belton Wastewater Treatment Plant Expansion, in the amount of \$87,662.06.

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

**ITEM SUMMARY:** The TBP, located on FM 93 between I-35 and South 31<sup>st</sup> Street (project map attached), is jointly owned by the Cities of Temple and Belton and is permitted to treat 10 million gallons per day of wastewater. Temple and Belton share capital improvement costs at 75% and 25%, respectively, and contract with the Brazos River Authority to operate the facility. The plant was constructed in 1975, expanded in 1990, and currently treats wastewater from approximately 70% of Temple and all of Belton.

TCEQ requires wastewater plants to complete steps toward expansion at specific inflow thresholds. In 2010, influent flow was at least 75% of the permitted capacity for three consecutive months, triggering a TCEQ requirement to perform preliminary engineering for expansion. On August 18, 2011, Council authorized KPA to prepare a preliminary engineering report for the TBP in the amount of \$895,698.75 (Temple's share of \$1,194,265).

On October 15, 2015, Council authorized an agreement with KPA, in the amount of \$1,006,166.25 (Temple's share of \$1,341,555) for professional services to design and bid Phase 1 of the expansion. This original scope of services consisted of three items organized as Task 1: Basis of Design, Task 2: Phase 1 Final Design, and Task 4: Phase 1 Bidding. Task 3: Phase 2 Final Design was not awarded at that time. On June 16, 2016, Council authorized Task 3, modified Task 2 to remove ORBAL improvements and add design of an equalization basin and added Task 5 to bid Phase 2 improvements when ready, in the amount of \$1,527,832.50 (Temple's share of \$2,037,110).

On September 7, 2017, Council authorized a construction contract with Archer Western for the base bid and deductive change order #1 totaling \$12,122,418 with Temple's 75% portion being \$9,091,813.50. Council authorized change orders #2 through #5 for the total amount of \$714,998.31 (\$536,248.73 is Temple's 75% portion).

As indicated in the attached change order and engineer's letter of recommendation, this is a necessary change order including an additive item for headworks piping modifications in the influent box as well as a deductive item for the screening dumpster substitution and totals \$87,662.06 (\$65,746.55 is Temple's 75% portion). This and the previous change orders would result in a total contract of \$12,925,078.37, a net decrease of 1.41% to the original amount. Time allotted for the additional construction activities brings the new contractual end date to September 3, 2020 (project map attached for reference).

**FISCAL IMPACT:** A budget adjustment is being presented to Council for approval to appropriate funding for the City's share of change order #6 to the construction contract with Archer Western Construction, LLC for the construction of Phase 1 of the Temple-Belton Wastewater Treatment Plant Expansion. Funding in the amount of \$65,746.55 will be available in account 561-5500-535-6938, project 101774, as follows:

Project Budget	\$	10,293,013
Budget Adjustment		65,747
Encumbered/Committed to Date		(10,290,443)
Archer Western Construction Change Order #6		(65,747)
<b>Remaining Project Funds Available</b>	<b>\$</b>	<b><u>2,570</u></b>

**ATTACHMENTS:**

[Engineer's Letter of Recommendation](#)  
[Change Order](#)  
[Project Map](#)  
[Budget Adjustment](#)  
[Resolution](#)



# KASBERG, PATRICK & ASSOCIATES, LP

CONSULTING ENGINEERS

Texas Firm F-510

Temple

One South Main Street  
Temple, Texas 76501  
(254) 773-3731

RICK N. KASBERG, P.E.

R. DAVID PATRICK, P.E., CFM

THOMAS D. VALLE, P.E.

GINGER R. TOLBERT, P.E.

ALVIN R. "TRAE" SUTTON, III, P.E., CFM

JOHN A. SIMCIK, P.E., CFM

Georgetown

1008 South Main Street  
Georgetown, Texas 78626  
(512) 819-9478

June 11, 2020

Ms. Angellia Points, P.E.

City Engineer

City of Belton

P. O. Box 120

Belton, Texas 76513

Mr. James Billeck, P.E.

Project Manager

City of Temple

3210 E. Avenue H, Building A

Temple, Texas 76501

Re: Cities of Temple and Belton, Texas

TBWWTP Phase 1 -- Headworks and Flow Equalization Improvements

Change Order No. 6

Dear Mrs. Points and Mr. Billeck:

Please find attached Change Order No. 6 for the referenced project. Change Order No. 6 includes an increase in the construction cost of \$87,662.06 and 366 days in contract time. This Change Order consists of modifications/additions noted during the construction phase, a deduction for changing the screening removal trailers to dumpsters and extends the construction time until September 3, 2020. These modifications and/or additions are necessary for the final operation of the project.

The following is a breakdown/explanation of each item included in Change Order No. 6:

1. CO6-1 – 30" Piping Modifications. Add \$90,696.00
  - a. There are four (4) separate channels consisting of an influent screen and grit removal unit. Phase I included installation of screening and grit removal equipment in three (3) of the four (4) channels with the fourth channel isolated. This piping modification is to allow all four influent channels to be utilized, removing a "dead space" in the influent box.
2. CO6-2 – Screening Dumpster Substitution. Deduct \$3,033.94
  - a. Screening dumpsters were submitted and approved in lieu of trailers. During the shop drawing phase, it was determined that the overall length of the trailers would be cause them to potentially conflict with the roll up doors. The dumpsters fit the footprint of the installation and result in a deduct in the overall project cost.

We have reviewed each of the proposals and recommend approval of an addition of \$87,662.06 and 366 days to the construction contract. This increases the total Contract Amount to \$12,925,078.37 and extends the construction time until September 3, 2020. The following table shows the contract summaries for both the City of Belton and Temple (Net Change is the current Change Order Amount):

	Total Contract	City of Belton	City of Temple
Original Contract Amount	\$ 13,110,000.00	\$ 3,277,500	\$ 9,832,500
Previous Net Change	\$ (272,583.69)	\$ (68,145.92)	\$ (204,437.77)
Net Change (Current)	\$ 87,662.06	\$ 21,915.52	\$ 65,746.55
Revised Contract Amount	\$ 12,925,078.37	\$ 3,231,269.59	\$ 9,693,808.78

Ms. Angellia Points, P.E. & Mr. James Billeck, P.E

June 11, 2020

Page Two

The net result of Change Orders 1-6 is a decrease in the overall project cost of \$184,921.63. When only the additive Change Orders (CO2 – CO 6) are considered, the contract has increased \$802,660.37 which is an increase of approximately 6.1% of the original contract amount. We are available to discuss any questions you may have concerning this change order.

Sincerely,



Thomas D. Valle

TDV/

xc: Mr. Luke Hill, Archer Western (by email)  
2015-140-40

## CHANGE ORDER

**PROJECT:** Temple-Belton Wastewater Treatment Plant - Phase I, Headworks & Flow Equalization Improvements  
**OWNER:** Cities of Temple and Belton, Texas  
**CONTRACTOR:** Archer Western  
**ENGINEER:** Kasberg, Patrick & Associates, LP  
**CHANGE ORDER #:** 6

Make the following additions, modifications or deletions to the work described in the Contract Documents:

### Additions

Item	Description	Quantity	Unit	Cost	Total
CO6-1	30" Piping Modifications @ Influent Box to Screen 3 and Future Screen 4	100%	LS	\$ 90,696.00	\$ 90,696.00
<b>Total Add</b>					<b>\$ 90,696.00</b>

### Deletions

Item	Description	Quantity	Unit	Cost	Total
CO6-2	Screening Dumpster Substitution / Modification	100%	LS	\$ (3,033.94)	\$ (3,033.94)
<b>Total Deduct</b>					<b>\$ (3,033.94)</b>
<b>Total Change in Contract Amount (Add)</b>					<b>\$ 87,662.06</b>

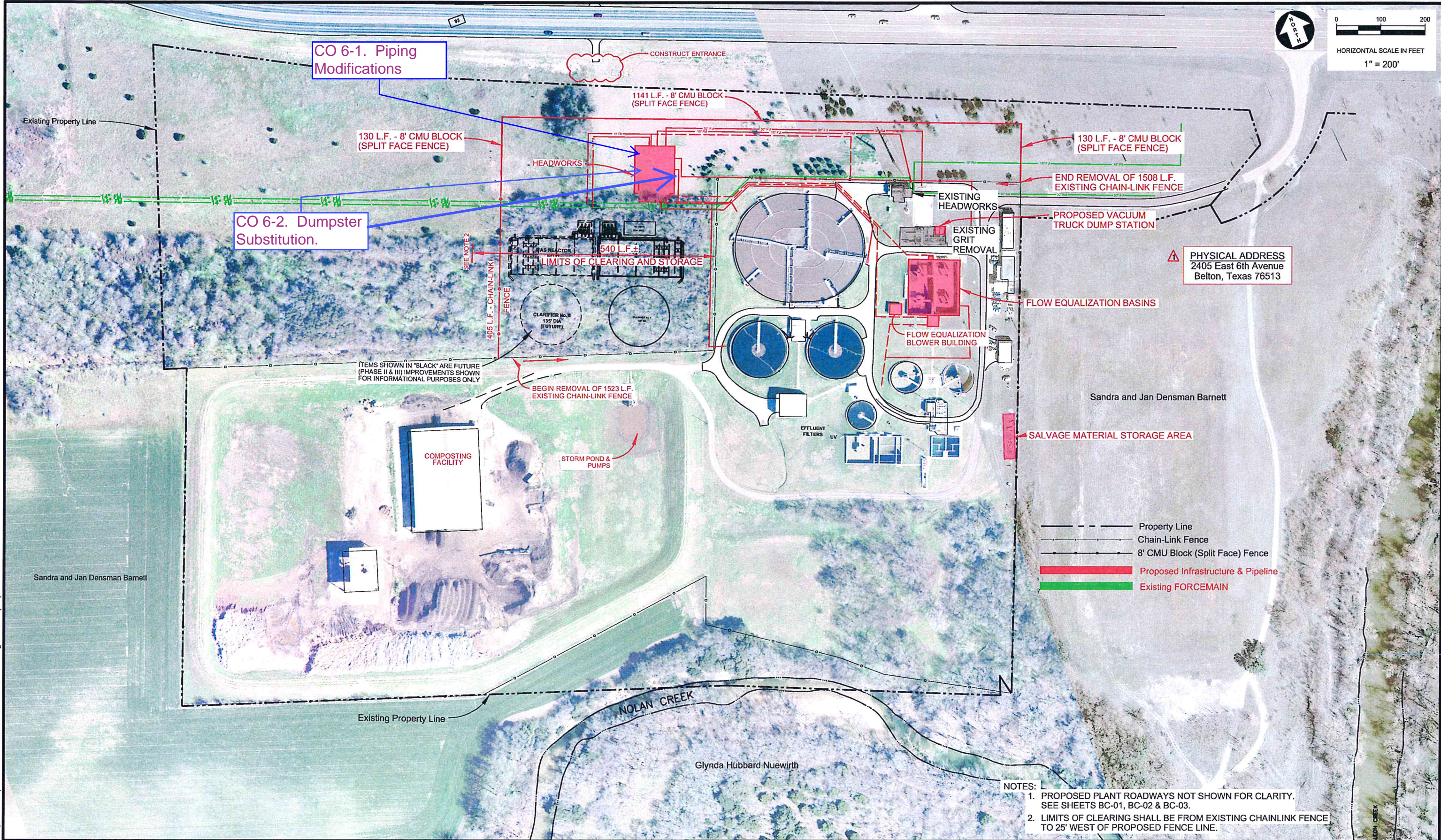
The compensation agreed upon in this Change Order is full, complete and final payment for all costs the Contractor may incur as a result of or relating to this change whether said costs are known, unknown, foreseen or unforeseen at this time, including without limitation, any cost for delay (for which 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.

	Total Contract	City of Belton	City of Temple
Original Contract Amount	\$ 13,110,000.00	\$ 3,277,500.00	\$ 9,832,500.00
Previous Net Change in Contract Amount	\$ (272,583.69)	\$ (68,145.92)	\$ (204,437.77)
Net Change in Contract Amount	\$ 87,662.06	\$ 21,915.52	\$ 65,746.55
Revised Contract Amount	\$ 12,925,078.37	\$ 3,231,269.59	\$ 9,693,808.78
Original Contract Time	400 days		
Previous Net Change in Contract Time	271 days		
Net Change in Contract Time	366 days		
Revised Contract Time	1037 days		
Original Final Completion Date	December 6, 2018		
Revised Final Completion Date	September 3, 2020		




<b>Recommended By:</b>  <hr/> Project Manager (Temple)                      Date  <b>Recommended By:</b>  <hr/> Project Manager (Belton)                      Date  <b>Agreed to:</b>  <hr/> Contractor    Date  <b>Approved as to form:</b>  <hr/> Temple City Attorney's Office                      Date  <b>Approved as to form:</b>  <hr/> Belton City Attorney's Office                      Date	<b>Recommended by:</b>  <hr/> Engineer    Date  <b>Approved by City of Belton:</b>  <hr/> City Manager Belton                                      Date  <b>Approved by City of Temple:</b>  <hr/> City Manager Temple                                      Date  <b>Approved by Finance Department</b>  <hr/> Temple Finance    Date  <b>Approved by Finance Department</b>  <hr/> Belton Finance    Date
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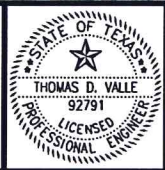




P:\Template\2015\2015-140 (TBWWTP)\CAD\WORKING\GENERAL SHEETS.dwg - AG-04 (OA)

	7-7-17	ADDENDUM NO. 1, ITEM 1.a.	TDV
NO.	DATE	REVISION	BY
© 2017 Kasberg, Patrick & Associates, LP		Plot Date: Oct 18, 2017 - 4:03pm	
KPA Firm Registration Number F-510		Plotted By: DKRUMNOW	

PROJECT NO.	2015-140
DRAWN BY	Jared A. Chandler
DESIGNED BY	Thomas D. Valle, P.E.
APPROVED BY	Thomas D. Valle
DATE	OCTOBER 18, 2017





**KASBERG, PATRICK & ASSOCIATES, LP**  
CONSULTING ENGINEERS  
TEMPLE, TEXAS 76501

**CITY OF TEMPLE & BELTON, TEXAS**  
TEMPLE-BELTON WASTEWATER TREATMENT PLANT - PHASE I  
HEADWORKS & FLOW EQUALIZATION IMPROVEMENTS  
  
PLANT LAYOUT  
OVERALL

SHEET NO. **AG-04**  
  
OF **13**

- NOTES:
1. PROPOSED PLANT ROADWAYS NOT SHOWN FOR CLARITY. SEE SHEETS BC-01, BC-02 & BC-03.
  2. LIMITS OF CLEARING SHALL BE FROM EXISTING CHAINLINK FENCE TO 25' WEST OF PROPOSED FENCE LINE.



FY 2020

## 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
561-5500-535-69-38	101774	TBWWTP Expansion, Phase I Construction	\$ 65,747	
561-5400-535-69-97	101922	City-wide SECAP - SSES		65,747
TOTAL.....			\$ 65,747	\$ 65,747

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

Allocate funding for Change Order #6 to the construction contract with Archer Western Construction to construct Phase 1 of the Temple-Belton Wastewater Treatment Plant (TBP) Expansion in the amount of \$87,662.06. The City of Temple portion of this change order is 75% which comes to \$65,746.55.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

**X**

Yes

1

No

DATE OF COUNCIL MEETING

06/18/20

WITH AGENDA ITEM?

**X**

Yes

1

No

Department Head/Division Director

Date \_\_\_\_\_

--	--

Approved


Disapproved

6/9/20 SMP

Finance

Date \_\_\_\_\_

--	--

Approved


Disapproved

City Manager

Date \_\_\_\_\_

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Approved


Disapproved

RESOLUTION NO. 2020-0096-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING CHANGE ORDER NO. 6 TO THE CONSTRUCTION CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC OF IRVING, TEXAS IN THE AMOUNT OF \$87,662.06, TO CONSTRUCT PHASE 1 OF THE TEMPLE-BELTON WASTEWATER TREATMENT PLANT EXPANSION PROJECT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, the Temple-Belton Wastewater Treatment Plant (TBP), located on FM 93 between I-35 and South 31<sup>st</sup> Street, is jointly owned by the Cities of Temple and Belton and is permitted to treat 10 million gallons of wastewater per day;

**Whereas**, the cities of Temple and Belton share capital improvement costs at 75% and 25%, respectively, and contract with the Brazos River Authority to operate the facility – this facility was constructed in 1975, expanded in 1990, and currently treats wastewater from approximately 70% of Temple and all of Belton;

**Whereas**, the Texas Commission on Environmental Quality requires wastewater plants to complete steps toward expansion at specific inflow thresholds - in 2010, influent flow was at least 75% of the permitted capacity for three consecutive months, triggering a TCEQ requirement to perform preliminary engineering for expansion;

**Whereas**, on August 18, 2011, Council authorized Kasberg, Patrick & Associates (KPA) of Temple, Texas to prepare a preliminary engineering report for the TBP - on October 15, 2015, Council again authorized an agreement with KPA for professional services to design and bid Phase 1 of the expansion which included Task 1, Task 2 and Task 4;

**Whereas**, on June 16, 2016, Council authorized Task 3, modified Task 2 to remove ORBAL improvements, added the design of an equalization basin, and added Task 5 to bid Phase 2 improvements when ready;

**Whereas**, on September 7, 2017, Council authorized a construction contract with Archer Western of Irving, Texas for the base bid and deductive Change Order No. 1 totaling \$12,122,418, with Temple's 75% portion being \$9,091,813.50;

**Whereas**, Council authorized Change Order Nos. 2 through 5 for a total amount of \$714,998.31 with Temple's 75% portion being \$536,248.73;

**Whereas**, Change Order No. 6 is necessary to include an additive item for headworks piping modifications in the influent box as well as a deductive item for the screening dumpster substitution and totals \$87,662.06, with Temple's 75% portion being \$65,746.55 - this and the previous change orders would result in a total contract of \$12,925,078.37, a net decrease of 1.41% to the original amount;

**Whereas**, time allotted for the additional construction activities brings the new contractual end date to September 3, 2020;

**Whereas**, funding is available for Change Order No. 6, but a budget amendment is being presented to Council for approval to appropriate funds to Account No. 561-5500-535-6938, Project No. 101774; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council authorizes the City Manager, or her designee, after approval as to form by the City Attorney's office, to execute Change Order No. 5 to the construction contract with Archer Western Construction, LLC, of Irving, Texas in the amount of \$87,662.06, to construct Phase 1 of the Temple-Belton Wastewater Treatment Plant Expansion Project.

**Part 3:** The City Council authorizes an amendment, substantially in the form of the copy attached hereto as Exhibit 'A.'

**Part 4:** It is hereby officially found and determined that the meeting at which this Resolution was 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 18<sup>th</sup> day of **June, 2020.**

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Hedrick  
Interim City Secretary

\_\_\_\_\_  
Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(I)  
Consent Agenda  
Page 1 of 1

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

Kathryn Davis, City Attorney

Amanda Rice, Deputy City Attorney

**ITEM DESCRIPTION:** Consider adopting a resolution establishing the City's Zoning Board of Adjustment as the body that will hear and render judgment on requests for variances from the requirements of Chapter 13, Flood Damage Prevention, of the City's Code of Ordinances.

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

**ITEM SUMMARY:** On April 2, 2020, the City Council adopted amendments to Chapter 13, Flood Damage Prevention, of the City of Temple's Code of Ordinances ("Chapter 13") through Ordinance No. 2020-5023. Before Ordinance No. 2020-5023 was passed, Chapter 13 established the City of Temple's Zoning Board of Adjustment ("the ZBA") as the body that heard and rendered judgment on requests for variances from the requirements of Chapter 13.

One of Ordinance No. 2020-5023's amendments to Chapter 13 removed the specific references to the ZBA throughout the chapter and replaced this term with the generic term "Appeal Board." This change provided the City Council with the flexibility to establish different boards in the future if City needs or City boards changed over time.

City Staff believes that the ZBA currently is the appropriate appeal board for variance requests brought under Chapter 13. City Staff recommends that City Council establish the ZBA as the body to hear and render judgment on requests for variances from the requirements of Chapter 13.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

[Resolution](#)

RESOLUTION NO. 2020-0097-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS ESTABLISHING THE CITY OF TEMPLE'S ZONING BOARD OF ADJUSTMENT AS THE APPEAL BOARD FOR VARIANCE REQUESTS BROUGHT UNDER CHAPTER 13, FLOOD DAMAGE PREVENTION, OF THE CITY OF TEMPLE'S CODE OF ORDINANCES; AND PROVIDING A SEVERABILITY, SAVINGS, AND OPEN MEETINGS CLAUSE.

---

**Whereas**, the City Council adopted amendments to Chapter 13, Flood Damage Prevention, of the City of Temple's Code of Ordinances ("Chapter 13") on April 2, 2020 through Ordinance No. 2020-5023;

**Whereas**, before the passage of Ordinance No. 2020-5023, Chapter 13 established the City of Temple's Zoning Board of Adjustment ("the ZBA") as the body that heard and rendered judgment on requests for variances from the requirements of Chapter 13;

**Whereas**, one of the amendments made by Ordinance No. 2020-5023 replaced the specific references to the ZBA within the chapter with the generic term "Appeal Board;"

**Whereas**, this amendment provided the City Council with the flexibility to establish different boards to hear and render judgment on such requests for variances if City needs or City boards changed over time;

**Whereas**, City Staff believes that the ZBA currently remains the appropriate appeal board for requests for variances from the requirements of Chapter 13;

**Whereas**, City Staff recommends that City Council establish the ZBA as the body that hears and renders judgment on requests for variances from the requirements of Chapter 13; 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: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council establishes the City of Temple's Zoning Board of Adjustment as the body that hears and renders judgment on requests for variances from the requirements of Chapter 13, Flood Damage Prevention, of the City of Temple's Code of Ordinances.

**Part 3:** All ordinances or resolutions, or portions thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed;

**Part 4:** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase,

clause, sentence, paragraph, or section of this Resolution should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity will not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Resolution, since the same would have been enacted by the City Council without the incorporation in this Resolution of any such invalid phrase, clause, sentence, paragraph, or section.

**Part 5:** Nothing in this Resolution may be construed to affect any suit or proceeding pending any court, any rights acquired or liability incurred, or any cause or causes of action acquired or existing, under any act or prior resolution or ordinance; nor may any legal right or remedy of any character be lost, impaired, or affected by this Resolution.

**Part 6:** This Resolution will 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 was passed was open to the public as required and that the 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 18<sup>th</sup> day of **June, 2020.**

THE CITY OF TEMPLE, TEXAS

---

TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

---

Stephanie Hedrick  
Interim City Secretary

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Kathryn H. Davis  
City Attorney





## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(J)  
Consent Agenda  
Page 1 of 1

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

Traci Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing budget amendments for fiscal year 2019-2020.

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

**ITEM SUMMARY:** This item is to recommend various budget amendments, based on the adopted FY 2019-2020 budget. The amendments will involve transfers of funds between contingency accounts, department and fund levels.

**FISCAL IMPACT:** The total amount of budget amendments is \$2,714,445.

**ATTACHMENTS:**

[Budget Amendments  
Resolution](#)

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2020 BUDGET**  
**June 18, 2020**

ACCOUNT #	PROJECT #	DESCRIPTION	APPROPRIATIONS	
			Debit	Credit
292-2900-534-6312	101637	Capital Buildings & Grounds / Drainage - Ave T & R / Fairview & Sunset Additions	\$ 34,000	
<b>292-2900-534-6532</b>		<b>Capital - Special Projects / Contingency</b>		<b>\$ 34,000</b>
To reallocate contingency funds for contract amendment # 3 with MRG Group for construction administration and inspection services for the Sunset and Fairview Drainage Improvements project.				
353-2900-534-6813	102016	Capital - Bonds / Pepper Creek Tributary III Drainage	\$ 1,200	
353-0000-461-0111		Interest / Interest Income		\$ 1,200
To appropriate interest income for pot holing work to be performed on the Pepper Creek Tributary III drainage project.				
520-5200-535-6222	102250	Capital Equipment / Dump Truck (Crew # 7)	\$ 113,500	
520-5200-535-6220	102251	Capital Equipment / Backhoe (Crew # 7)	\$ 106,000	
520-5200-535-6211	102252	Capital Equipment / Trailer for Backhoe (Crew # 7)	\$ 10,700	
520-5200-535-6222	102253	Capital Equipment / Dump Truck (Crew # 3)	\$ 113,500	
520-5200-535-6211	102254	Capital Equipment / Trailer for Backhoe (Crew # 3)	\$ 10,700	
520-5200-535-6216	102256	Capital Equipment / (6) Backhoe Plate Compactors	\$ 20,000	
520-5400-535-6216	102256	Capital Equipment / (6) Backhoe Plate Compactors	\$ 20,000	
520-5200-535-6216	102257	Capital Equipment / (8) Onboard Air Compressors	\$ 20,000	
520-5400-535-6216	102257	Capital Equipment / (8) Onboard Air Compressors	\$ 20,000	
520-5700-580-7211		Interest & Fiscal Charges / Bond Interest		\$ 434,400
To reallocate available bond interest funds for the purchase of capital equipment to support water maintenance crew # 3 and water maintenance crew # 7, as well as additional capital that will be utilized by all utility crews. Funding is available to reallocate from bond interest due to the UR Bonds, Series 2020 issuance delayed until Fall 2020.				
110-2032-521-2516		Other Services / Judgments & Damages	\$ 2,845	
110-0000-461-0554		Insurance Claims / Insurance Claims		\$ 2,845
To appropriate proceeds received from Dairyland related to damages sustained to asset 13855 that was involved in collision on 04/21/20.				
561-5400-535-6997	102198	Capital - Bonds / SSO Remediation Plan - Bird Creek Assessment (SSES)	\$ 2,242,000	
561-5200-535-6939	100608	Capital - Bonds / Charter Oaks Waterline, Phase II		\$ 2,242,000
To reallocate available bond proceeds for the professional services agreement with RJN Group for an assessment of Bird Creek wastewater basin. Council authorized the professional services agreement on 12/05/19. This project was originally to be funded with the UR Bonds, Series 2020. The bond issuance has been delayed to Fall 2020, so realignment of projects is required to fund the agreement in FY 2020.				
<b>TOTAL AMENDMENTS</b>			<b>\$ 2,714,445</b>	<b>\$ 2,714,445</b>

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2020 BUDGET**  
June 18, 2020

ACCOUNT #	PROJECT #	DESCRIPTION	APPROPRIATIONS	
			Debit	Credit
		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	\$	-
		Added to Contingency Judgments & Damages from Council Contingency		-
		Taken From Judgments & Damages		-
		Net Balance of Judgments & Damages Contingency Account	\$	-
		Beginning <b>Compensation</b> Contingency	\$	506,197
		Added to Compensation Contingency		-
		Taken From Compensation Contingency		(506,197)
		Net Balance of Compensation Contingency Account	\$	-
		<b>Net Balance Council Contingency</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 & WASTEWATER FUND		
		Beginning <b>Contingency</b> Balance	\$	100,000
		Added to Contingency Sweep Account		-
		Taken From Contingency		(68,867)
		Net Balance of Contingency Account	\$	31,133
		Beginning <b>Compensation</b> Contingency	\$	93,500
		Added to Compensation Contingency		-
		Taken From Compensation Contingency		(62,170)
		Net Balance of Compensation Contingency Account	\$	31,330
		<b>Net Balance Water &amp; Wastewater Fund Contingency</b>	\$	62,463
		HOTEL/MOTEL TAX 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>Compensation</b> Contingency	\$	19,500
		Added to Compensation Contingency		-
		Taken From Compensation Contingency		(15,533)
		Net Balance of Compensation Contingency Account	\$	3,967
		<b>Net Balance Hotel/Motel Tax Fund Contingency</b>	\$	3,967
		DRAINAGE FUND		
		Beginning <b>Contingency</b> Balance	\$	488,446
		Added to Contingency Sweep Account		-
		Carry forward from Prior Year		-
		Taken From Contingency		(34,000)
		Net Balance of Contingency Account	\$	454,446
		Beginning <b>Compensation</b> Contingency	\$	10,500
		Added to Compensation Contingency		-
		Taken From Compensation Contingency		(8,759)
		Net Balance of Compensation Contingency Account	\$	1,741
		<b>Net Balance Drainage Fund Contingency</b>	\$	456,187

CITY OF TEMPLE  
BUDGET AMENDMENTS FOR FY 2020 BUDGET  
June 18, 2020

			APPROPRIATIONS	
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
		FED/STATE GRANT FUND		
		Beginning <b>Contingency</b> Balance		\$ -
		Carry forward from Prior Year		-
		Added to Contingency Sweep Account		-
		Taken From Contingency		-
		<b>Net Balance Fed/State Grant Fund Contingency</b>		<b>\$ -</b>

RESOLUTION NO. 2020-0098-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING BUDGET AMENDMENTS TO THE 2019-2020 CITY BUDGET; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on the 19<sup>th</sup> day of September, 2019, the City Council approved a budget for the 2019-2020 fiscal year; and

**Whereas**, the City Council deems it in the public interest to make certain amendments to the 2019-2020 City Budget.

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

**Part 1: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**Part 2:** The City Council hereby amends the 2019-2020 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 3:** It is hereby officially found and determined that the meeting at which this Resolution was 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 18<sup>th</sup> day of **June, 2020**.

THE CITY OF TEMPLE, TEXAS

---

TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

---

Stephanie Hedrick  
Interim City Secretary

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Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #4(K)  
Consent Agenda  
Page 1 of 2

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

Mark Baker, Principal Planner

**ITEM DESCRIPTION:** SECOND & FINAL READING – FY-20-8-ANX: Consider adopting an ordinance authorizing the voluntary annexation of two tracts of land, totaling approximately 40.093 +/- acres, upon petition of the landowner, Daniel Three Forks Farm LTD, said tracts being generally located south of FM 93 and east of Hartrick Bluff Road.

**STAFF RECOMMENDATION:** Adopt ordinance on second and final reading.

**ITEM SUMMARY:** Texas Local Government Code (LGC) Chapter 43 governs the annexation process. LGC Chapter 43 requires that land to be annexed must be in the municipality's extraterritorial jurisdiction (ETJ) and contiguous to the municipality. The subject property is within the City's southern ETJ.

LGC § 43.0671 allows a municipality to annex an area if each owner of land in the area requests the annexation. On February 10, 2020, property owner Martha Daniel filed a written request seeking voluntary annexation of 19.014 +/- acres and 21.079 +/- acres respectively for a total of 40.093 +/- acres of land, as shown by Exhibit A and being more particularly described in Exhibit B.

Prior to annexing an area of land, the City must offer the property owner a development agreement if the area would be eligible for an agreement under LGC Chapter 212, Subchapter G and appraised for ad valorem tax purposes as land for agricultural use, wildlife management use, or timber use pursuant to Texas Tax Code Chapter 23. The property owner was offered and rejected offers for a development agreement on February 10, 2020.

The City and property owner have entered into written agreement for the provision of municipal services in the area. Before offering the proposed municipal services agreement to the property owner, the proposed agreement was circulated to relevant City Departments to determine the services that would be provided on the effective date of the annexation, such as Fire, Police and solid waste disposal. The property owner accepted the proposed agreement. The City is not required to provide a service that is not included in the agreement.

LGC § 43.0673 requires that the City hold one public hearing prior to adopting an ordinance annexing an area on the written request of a landowner. The City's Charter requires a second reading to adopt the annexation ordinance. The second reading will be held on June 16, 2020.

LGC §§ 43.905 and 43.9051 requires a City to provide written notice regarding any financial impact caused by the proposed annexation to the affected school district as well as the political subdivisions and public entities that provide services in the area. The City notified the Temple Independent School District (TISD) and Bell County on May 18, 2020. While the City of Temple did notify all of the public entities required by State law about the potential fiscal impact on those organizations, a better understanding of that impact can be determined once the owner proposes rezoning and development in the future.

**FISCAL IMPACT:** The design of the Little River Basin Wastewater Improvements and the Hartrick Bluff Water Line currently underway contain a proposal to extend water and wastewater services through this area.

If the property is annexed, the City's ad valorem tax base will increase and result in future property tax revenue for the City.

**ATTACHMENTS:**

[Vicinity Map \(Exhibit A\)](#)

[Voluntary Petition for Annexation for 19.014 +/- Acres \(Feb 6, 2020\)](#)

[Voluntary Petition for Annexation for 21.079 +/- Acres \(Feb 10, 2020\)](#)


[Municipal Services Agreement \(Exhibit B\)](#)

[Ordinance](#)





# EXHIBIT A






**Voluntary Annexation**

 21.079 acres; 19.014 acres

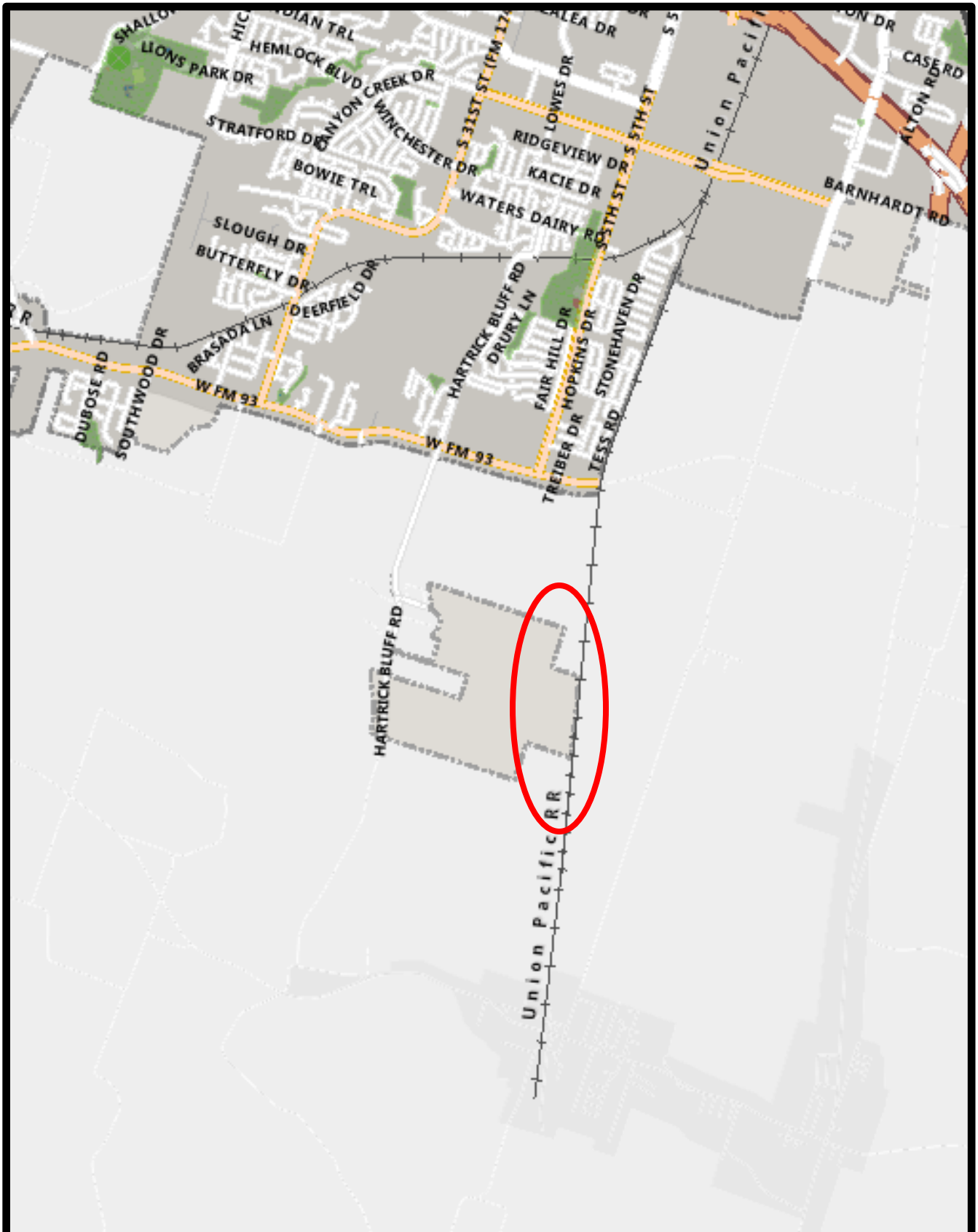
 Municipal Boundary

0 250 500 1,000 Feet

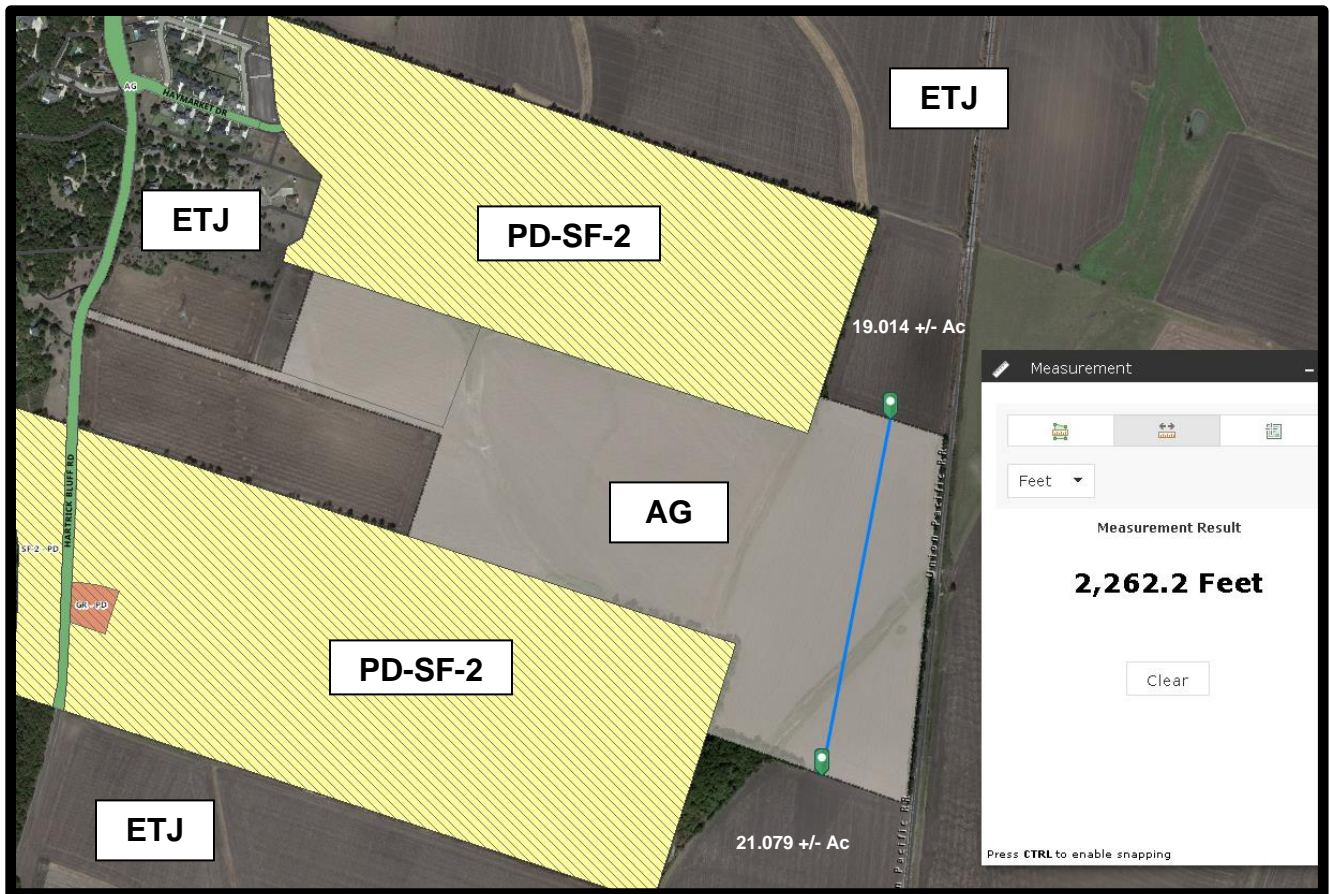
DISCLAIMER:  
GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.



# Vicinity Map



Vicinity Map – South of FM 93 & East of Hartrick Bluff Road (City of Temple GIS Maps)



Vicinity Map & Existing Zoning – Distance between tracts and adjacent ETJ and City limits  
(City of Temple GIS Maps)





## **TURLEY ASSOCIATES, INC.**

301 NORTH THIRD STREET • TEMPLE, TEXAS 76501 • (254) 773-2400  
F-1658 TBPLS No. 10056000

February 10, 2020

City of Temple  
Attn: Brian Chandler, Planning Director  
2 North Main Street  
Temple, TX 76501

**RE: Voluntary Annexation Request  
19.014 Acres**

Dear Mr. Chandler,

On behalf of our client, Turley Associates, Inc. respectfully requests that the City Council approve voluntary annexation of the 19.014 acres listed in the attached petition. Attached please find the boundary surveys, field notes and Voluntary Petition of Annexation. Zoning will be done at a later date.

If you have any questions or need any additional information, please contact our office.

Sincerely,  
**TURLEY ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to be "B.J. Little", written over a horizontal line.

B.J. Little, Manager

Attachments

BJL/sb

# VOLUNTARY PETITION FOR ANNEXATION

DATE: FEBRUARY 6, 2020

To the City Council of the City of Temple:

Daniel Three Forks Farm, Ltd., a Texas Limited Partnership, is the sole owner of the tract of land containing approximately 19.014 acres ("the Tract"). The Tract is more particularly described by metes and bounds in Exhibit A to this petition.

The Tract is currently adjacent to the John M. Baker 143.985 acre property, as well as the Short Term Lending GP, INC. 122.191 acre property that is currently being annexed. The owner is petitioning the City Council to take the appropriate actions to annex the 19.014 acre tract.

Texas Local Government Code ("LGC") § 43.016 requires a municipality to offer a property owner a development agreement under LGC § 212.172 prior to annexation that would guarantee the continuation of the extraterritorial status of the property and authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the use of the land for agriculture, wildlife management, or timber purposes. These development agreements are sometimes commonly referred to as "non-annexation" agreements. Local Government Code § 43.016 applies to properties appraised for ad valorem tax purposes and land for agricultural use, or wildlife management, or timber uses under the Texas Tax Code.

The City has determined that your property meets the requirements in LGC § 43.016; therefore, the City is offering to enter into a development agreement under LGC § 212.172 for your property.

Please indicate below whether you accept or reject the development agreement and would prefer to proceed with annexation.

       I accept the Development Agreement and request to retain my extraterritorial status.

MD I reject the Development Agreement and request annexation by the City of Temple.

DANIEL THREE FORKS FARM, LTD.,  
a Texas limited partnership

By: DANIEL THREE FORKS FARM MANAGEMENT, LC,  
a Texas limited liability company,  
general partner

By: MARtha K. Daniel  
MARtha K. DANIEL, President

STATE OF TEXAS

COUNTY OF BELL

This instrument was acknowledged before me on FEBRUARY 6, 2020, by MARTHA K. DANIEL, in her capacity as President of DANIEL THREE FORKS FARM MANAGEMENT, LC, a Texas limited liability company, in its capacity as general partner of DANIEL THREE FORKS FARM, LTD., a Texas limited partnership, for and on behalf of said limited liability company and said limited partnership.

Given under my hand and seal of office this 6 day of FEBRUARY, 2020.



Juanita Weir  
Notary Public State of Texas



## **TURLEY ASSOCIATES, INC.**

301 NORTH THIRD STREET • TEMPLE, TEXAS 76501 • (254) 773-2400  
F-1658 TBPLS No. 10056000

February 10, 2020

City of Temple  
Attn: Brian Chandler, Planning Director  
2 North Main Street  
Temple, TX 76501

**RE: Voluntary Annexation Request  
21.079 Acres**

Dear Mr. Chandler,

On behalf of our client, Turley Associates, Inc. respectfully requests that the City Council approve voluntary annexation of the 21.079 acres listed in the attached petition. Attached please find the boundary surveys, field notes and Voluntary Petition of Annexation. Zoning will be done at a later date.

If you have any questions or need any additional information, please contact our office.

Sincerely,  
**TURLEY ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to read "B.J. Little", is written over a horizontal line.

B.J. Little, Manager

Attachments

BJL/sb



# VOLUNTARY PETITION FOR ANNEXATION

DATE: FEBRUARY 6, 2020

To the City Council of the City of Temple:

Daniel Three Forks Farm, Ltd., a Texas Limited Partnership, is the sole owner of the tract of land containing approximately 21.079 acres ("the Tract"). The Tract is more particularly described by metes and bounds in Exhibit A to this petition.

The Tract is currently adjacent to the John M. Baker 143.985 acre property, as well as the Kiella Land Investments LTD. 160.047 acre property that is currently being annexed. The owner is petitioning the City Council to take the appropriate actions to annex the 21.079 acre tract.

Texas Local Government Code ("LGC") § 43.016 requires a municipality to offer a property owner a development agreement under LGC § 212.172 prior to annexation that would guarantee the continuation of the extraterritorial status of the property and authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the use of the land for agriculture, wildlife management, or timber purposes. These development agreements are sometimes commonly referred to as "non-annexation" agreements. Local Government Code § 43.016 applies to properties appraised for ad valorem tax purposes and land for agricultural use, or wildlife management, or timber uses under the Texas Tax Code.

The City has determined that your property meets the requirements in LGC § 43.016; therefore, the City is offering to enter into a development agreement under LGC § 212.172 for your property.

Please indicate below whether you accept or reject the development agreement and would prefer to proceed with annexation.

       I accept the Development Agreement and request to retain my extraterritorial status.

M.D. I reject the Development Agreement and request annexation by the City of Temple.

DANIEL THREE FORKS FARM, LTD.,  
a Texas limited partnership

By: DANIEL THREE FORKS FARM MANAGEMENT, LC,  
a Texas limited liability company,  
general partner

By: *Martha K. Daniel*  
MARTHA K. DANIEL, President

STATE OF TEXAS

COUNTY OF BELL

This instrument was acknowledged before me on FEBRUARY 6, 2020, by MARTHA K. DANIEL, in her capacity as President of DANIEL THREE FORKS FARM MANAGEMENT, LC, a Texas limited liability company, in its capacity as general partner of DANIEL THREE FORKS FARM, LTD., a Texas limited partnership, for and on behalf of said limited liability company and said limited partnership.

Given under my hand and seal of office this 6 day of FEBRUARY, 2020.



*Juanita Weir*  
Notary Public State of Texas

# EXHIBIT B

## MUNICIPAL SERVICES AGREEMENT BETWEEN THE CITY OF TEMPLE, TEXAS AND DANIEL THREE FORKS FARM LTD

This Municipal Services Agreement ("Agreement") is entered into on \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Temple, Texas, a home-rule municipality of the State of Texas, ("City") and Daniel Three Forks Farm, LTD., a Texas limited partnership ("Owner").

### RECITALS

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

**WHEREAS**, Section 43.0671 of the Local Government Code (LGC) permits the City to annex an area if each owner of land in an area requests the annexation;

**WHEREAS**, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

**WHEREAS**, Owner owns certain parcels of land situated in Bell County, Texas, which consists of approximately 40.093 acres of land in the City's extraterritorial jurisdiction, such property being more particularly described and set forth in Exhibit A attached and incorporated herein by reference ("Property");

**WHEREAS**, Owner has filed a written request with the City for full-purpose annexation of the Property, identified as Annexation Case No. FY-20-8-ANX ("Annexation Case");

**WHEREAS**, City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation;

**WHEREAS**, the Annexation Case and execution of this Agreement are subject to approval by the Temple City Council; and

**NOW THEREFORE**, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

1. **PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case.
2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

### 3. MUNICIPAL SERVICES.

- a. Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City's infrastructure extension policies and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.
  - i. Fire – The City's Fire Department will provide emergency and fire protection services.
  - ii. Police – The City's Police Department will provide protection and law enforcement services.
  - iii. Emergency Medical Services - The City's Fire Department and the City's contracted emergency medical transport franchisee will provide emergency medical services. At the time of this agreement, the contracted emergency medical transport franchisee is American Medical Response operating as Temple EMS.
  - iv. Planning, Zoning, and Building – The City's Planning and Development Department will provide comprehensive planning, land development, land use, and building review and inspection services in accordance with all applicable laws, rules, and regulations.
  - v. Publicly Owned Parks, Facilities, and Buildings
    1. Residents of the Property will be permitted to utilize all existing publicly owned and available parks, facilities (including, community service facilities, libraries, swimming pools, etc.), and buildings throughout the City. Any private parks, facilities, and buildings will be unaffected by the annexation; provided, however, that the City will provide for maintenance and operation of the same upon acceptance of legal title thereto by the City and appropriations therefor.
    2. In the event the City acquires any other parks, facilities, or buildings necessary for City services within the Property, the appropriate City department will provide maintenance and operations of the same.
  - vi. Streets - The City's Public Works Department will maintain the public streets over which the City has jurisdiction. The City will provide regulatory signage services in accordance with the City policies and procedures and applicable laws.
  - vii. Water and Wastewater
    1. Existing, occupied homes that are using water-well and on-site sewer facilities on the effective date of annexation may continue to use the same. If a property owner desires to connect to the City water and sewer system, then the owner may request a connection once those services are available. The connection will be at the owner's expense in accordance with existing City ordinances and policies, Texas Commission on Environmental Quality (TCEQ) Rules and Regulations, and any applicable laws. Once connected to the City's water and sanitary

- sewer mains, the water and sanitary sewage service will be provided by the City at rates established by City ordinances for such service.
2. New homes will be required to connect to the City's water and sewer system at the owner's expense in accordance with existing City ordinances and policies, Texas Commission on Environmental Quality (TCEQ) Rules and Regulations, and any applicable laws.
  - viii. Solid Waste Services – The City will provide solid waste collection services in accordance with existing City ordinances and policies, except where prohibited by law.
  - ix. Code Compliance – The City's Code Compliance Department will provide education, enforcements, and abatement relating to code violations within the Property.
  - x. Animal Services – The City's Animal Services Department will provide services for animal cruelty, animal bites, stray animals, loose livestock or wildlife, animal pickup, and animal disturbances in accordance with the City policies and procedures and applicable laws.
- b. It is understood and agreed that the City is not required to provide a service that is not included in this Agreement.
  - c. Owner understands and acknowledges that the City departments listed above may change names or be re-organized by the City Manager. Any reference to a specific department also includes any subsequent City department that will provide the same or similar services.
5. **AUTHORITY.** City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.
  6. **SEVERABILITY.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
  7. **INTERPRETATION.** The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that each of them was represented by legal counsel in the negotiation and drafting of this Agreement.
  8. **GOVERNING LAW AND VENUE.** Venue shall be in the state courts located in Bell County, Texas or the United States District Court for the Western District of Texas, Waco Division and construed in conformity with the provisions of Texas Local Government Code Chapter 43.
  9. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.



10. **GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.
11. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
12. **CAPTIONS.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
13. **AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND.** This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Property and is binding on the Owner.
14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. This Agreement shall not be amended unless executed in writing by both parties.

Executed as of the day and year first above written to be effective on the effective date of annexation of the Property.

*Signatures to follow.*

**CITY OF TEMPLE**

By: \_\_\_\_\_  
Brynn Myers, City Manager

**DANIEL THREE FORKS FARM, LTD.**

By: Martha K. Daniel  
Martha K. Daniel, President and  
Manager Daniel Three Forks Farm  
Management, L.C. as general partner  
of Daniel Three Forks Farm, LTD

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

Cylena Davis  
City Attorney's Office

STATE OF TEXAS                   §  
COUNTY OF BELL               §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_,  
by **Brynn Myers**, as City Manager of the City of Temple, a Texas home rule City.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                   §  
COUNTY OF BELL               §

This instrument was acknowledged before me on APRIL 30, 2020, by  
MARTHA K. DANIEL, in her capacity as President of DANIEL THREE FORKS FARM  
MANAGEMENT, LC, a Texas limited liability company, in its capacity as general partner of DANIEL  
THREE FORKS FARM, LTD., a Texas limited partnership, for and on behalf of said limited liability  
company and said limited partnership.



Juanita Weir  
Notary Public, State of Texas





THIS SURVEY WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE TEXAS SURVEYING BOARD, AND THE SURVEYOR'S CERTIFICATE IS HEREBY FILED FOR RECORD IN THE PUBLIC RECORDS OF BELL COUNTY, TEXAS.

NOTES:  
1. THE SURVEY WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE TEXAS SURVEYING BOARD.  
2. THE SURVEYOR'S CERTIFICATE IS HEREBY FILED FOR RECORD IN THE PUBLIC RECORDS OF BELL COUNTY, TEXAS.

BEING a 21.079 acre tract of land more particularly described by reports and notes. THE SURVEY WAS COMPLETED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE TEXAS SURVEYING BOARD, AND THE SURVEYOR'S CERTIFICATE IS HEREBY FILED FOR RECORD IN THE PUBLIC RECORDS OF BELL COUNTY, TEXAS.



WILLIAM E. AMES, R.L.S., No. 2427  
Surveyor  
191632-DE

REVISIONS	DATE	REVISION	BY
1	191632-DE	191632-DE	191632-DE

SURVEY OF:  
**21.079 ACRES**  
MAXIMO MORENO SURVEY  
ABSTRACT No. 14  
BELL COUNTY, TEXAS

PREPARED FOR:  
**DANIEL THREE FORKS FARM, LTD.**

TURLEY ASSOCIATES, INC.  
ENGINEERING • PLANNING • SURVEYING  
321 N. 3rd St.  
TEMPLE, TEXAS 76701  
254.773.2400  
www.turley-inc.com

**TURLEY ASSOCIATES, INC.**  
ENGINEERING • PLANNING • SURVEYING  
321 N. 3rd St.  
TEMPLE, TEXAS 76701  
254.773.2400  
www.turley-inc.com

BEING a 21.079 acre tract situated in the MAXIMO MORENO SURVEY, ABSTRACT No. 14, Bell County, Texas and being all of the that certain called 20.884 acre tract of land described in a Warranty Deed dated July 7, 2000 from E. J. Daniel and wife, Martha K. Daniel to Daniel Three Forks Farm and being of record in Volume 4225, Page 711, Official Public Records of Bell County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1" iron pipe found being the northeast corner of the said 20.884 acre tract and being the southeast corner of that certain 124.36 acre tract (TRACT ONE) described in a Deed dated October 14, 1983 from Henry Wayne Chupik and wife, Barabara Chupik to John M. Baker and wife, Bobbie L. Baker and being of record in Volume 1901, Page 821, Deed Records of Bell County, Texas and being in the west right-of-way line of the M.K.T. Railroad company as occupied and evidenced on the ground for corner;

THENCE S. 04° 19' 37" W., 655.96 feet departing the said 124.36 acre tract (TRACT ONE) ad with the east boundary line of the said 20.884 acre tract ( calls S. 05° 54' 15" W., 654.88 feet ) and with the said west right-of-way line to a Steel fence corner post found being the southeast corner of the said 20.884 acre tract and being the northeast corner of that certain 98.242 acre tract of land described in a Warranty Deed dated December 16, 1994 to Garland Daniel and being of record in Volume 3251, Page 401, Official Public Records of Bell County, Texas for corner;


THENCE N. 73° 35' 21" W., 1468.07 feet departing the said west right-of-way line and with the south boundary line of the said 20.884 acre tract ( calls N. 71° 45' 01" W., 1460.09 feet ) and with the north boundary line of the said 98.242 acre tract to a 1/2" iron rod with cap stamped "RPLS 2475" set being the southwest corner of the said 20.884 acre tract and being the northwest corner of the said 98.242 acre tract and being in the east boundary line of that certain 160.050 acre tract of land described in a Warranty Deed dated March 15, 2018 from Mary Lavelle Hartrick Amato to Short-Term Lending Gp, Inc and being of record in Document No. 2018-00010557, Official Public Records of Bell County, Texas for corner;

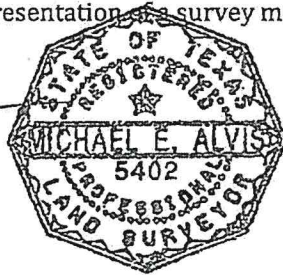
THENCE N. 16° 24' 40" E., 672.34 feet departing the said 98.242 acre tract and with the west boundary line of the said 20.884 acre tract ( calls N. 18° 06' 15" E., 669.85 feet ) and with the said east boundary line ( calls S. 16° 24' 40" W., 1694.53 feet ) to a 1" iron pipe found being the northwest corner of the said 20.884 acre tract and being the most easterly southwest corner of the aforementioned 124.36 acre tract (TRACT ONE) for corner;

THENCE S. 72° 15' 29" E., 1331.10 feet departing the said 124.36 acre tract (TRACT ONE) and with the north boundary line of the said 20.884 acre tract ( calls S. 70° 26' 43" E., 1322.11 feet ) and with the south boundary line of the said 124.36 acre tract (TRACT ONE) ( calls S. 70° 22' 24" E., 1323.17 feet ) to the Point of BEGINNING and containing 21.079 acres of land.

\*\*\*\*\*

I, Michael E. Alvis, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that these field notes are a correct representation of a survey made on the ground.

  
Michael E. Alvis, R.P.L.S. #5402  
January 29, 2019



TURLEY ASSOCIATES, INC.

ENGINEERING • SURVEYING • PLANNING  
301 NORTH 3RD STREET • TEMPLE, TEXAS 76501 • (254) 773-2400  
ENGINEERING FIRM #1658 SURVEY FIRM #10056000

THIS PROJECT IS REFERENCED IN NAD 1983, CENTRAL TEXAS STATE PLANE. ALL DISTANCES ARE HORIZONTAL SURFACE DISTANCES UNLESS NOTED AND ALL BEARINGS ARE GRID BEARINGS.

ALL COORDINATE VALUES ARE REFERENCED TO CITY MONUMENT NUMBER 541

THE THETA ANGLE AT SAID CITY MONUMENT IS  $01^{\circ} 30' 47''$

THE COMBINED CORRECTION FACTOR (CCF) IS 0.999858

PUBLISHED CITY COORDINATES ARE  $X = 3,216,784.76$   $Y = 10,341,981.47$

THE TIE FROM THE ABOVE CITY MONUMENT TO THE POINT OF BEGINNING (POB) IS N.  $81^{\circ} 19' 38''$  E., 9823.00 FEET.

GRID DISTANCE = SURFACE DISTANCE X CCF

GEODETIC NORTH = GRID NORTH + THETA ANGLE









BEING a 19.014 acre tract of land situated in the MAXIMO MORENO SURVEY, ABSTRACT No. 14, Bell County, Texas and being all of that certain 18.983 acre tract of land being described in a Warranty Deed dated June 22, 2000 from E. J. Daniel and wife, Martha Kamas Daniel to Daniel Three Forks Farm, Ltd., a Texas limited partnership and being of record in Volume 4225, Page 711, Official Public Records of Bell County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1" iron pipe found being the southwest corner of the said 18.983 acre tract and being the most easterly northwest corner of that certain 124.36 acre tract ( TRACT ONE ) described in a Deed dated October 14, 1983 from Henry Wayne Chupik and wife, Barabara Chupik to John M. Baker and wife, Bobbie L. Baker and being of record in Volume 1901, Page 821, Deed Records of Bell County, Texas and being in the east boundary line of the remainder of that certain 122.191 acre tract of land described in a Correction Affidavit dated April 23, 2018 from JDJS Investments, Inc. to Short-Term Lending Gp, Inc and being of record in Document No. 2018-00020037, Official Public Records of Bell County, Texas for corner;

THENCE departing the said 124.36 acre tract ( TRACT ONE ) and with the west boundary line of the said 18.983 acre tract ( calls N. 18° 28' 52" E., 1219.61 feet ) the following two ( 2 ) calls:

- 1) N. 16° 50' 35" E., 1159.31 feet with the east boundary line of the said remainder 122.191 acre tract ( calls S. 16° 50' 35" W., 1159.31 feet ) to a 1/2" iron rod found being the northeast corner of the said remainder 122.191 acre tract and being the southeast corner of that certain 160 acre tract of land standing in the name of Patsy Beasley and being of record in Volume 773, Page 277, Deed Records of Bell County, Texas for corner;
- 2) N. 16° 23' 05" E., 57.11 feet departing the said remainder 122.191 acre tract and with the east boundary line of the said 160 acre tract to a 1" iron pipe found being the northwest corner of the said 18.983 acre tract and being the southwest corner of that certain 187.2 acre tract of land standing in the name of Patsy Beasley and being of record in Volume 667, Page 626, Deed Records of Bell County, Texas for corner;

THENCE S. 73° 28' 38" E., 547.56 feet departing the said 160 acre tract and with the north boundary line of the said 18.983 acre tract ( calls S. 71° 23' 24" E., 545.98 feet ) and with the south boundary line of the said 187.2 acre tract to a 1/2" iron rod with cap stamped "RPLS 2475" set being the northeast corner of the said 18.983 acre tract and being the southeast corner of the said 187.2 acre tract and being in the west right-of-way line of the M.K.T. Railroad company as occupied and evidenced on the ground for corner;

THENCE S. 04° 12' 23" W., 1237.73 feet departing the said 187.2 acre tract and with the east boundary line of the said 18.983 acre tract ( calls S. 05° 51' 53" W., 1236.53 feet ) and with the said west right-of-way line to a 1/2" iron rod with cap stamped "RPLS 2475" set being the southeast corner of the said 18.983 acre tract and being the northeast corner of the aforementioned 124.36 acre tract ( TRACT ONE ) for corner;

THENCE N. 73° 58' 43" W., 817.95 feet departing the said west right-of-way line and with the south boundary line of the said 18.983 acre tract ( calls N. 72° 20' 27" W., 816.15 feet ) and with the north boundary line of the said 124.36 acre tract ( TRACT ONE ) ( calls N. 71° 02' 20"

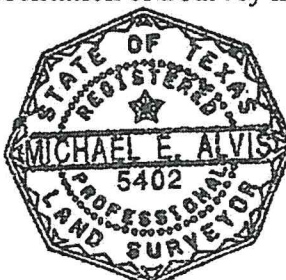
W., 410.0 feet and N. 72° 13' 38" W., 381.0 feet ) to the Point of BEGINNING and containing 19.014 acres of land.

\*\*\*\*\*

I, Michael E. Alvis, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that these field notes are a correct representation of a survey made on the ground.



Michael E. Alvis, R.P.L.S. #5402  
September 29, 2019



THIS PROJECT IS REFERENCED IN NAD 1983, CENTRAL TEXAS STATE PLANE. ALL DISTANCES ARE HORIZONTAL SURFACE DISTANCES UNLESS NOTED AND ALL BEARINGS ARE GRID BEARINGS.

ALL COORDINATE VALUES ARE REFERENCED TO CITY MONUMENT NUMBER 541

THE THETA ANGLE AT SAID CITY MONUMENT IS 01° 30' 47"

THE COMBINED CORRECTION FACTOR (CCF) IS 0.999858

PUBLISHED CITY COORDINATES ARE X = 3,216,784.76 Y = 10,341,981.47

THE TIE FROM THE ABOVE CITY MONUMENT TO THE POINT OF BEGINNING (POB) IS

N. 66° 12' 20" E., 9938.10 FEET.

GRID DISTANCE = SURFACE DISTANCE X CCF

GEODETIC NORTH = GRID NORTH + THETA ANGLE



ORDINANCE NO. 2020-5029  
(FY-20-8-ANX)

AN ORDINANCE OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE VOLUNTARY ANNEXATION OF TWO TRACTS OF LAND, TOTALING APPROXIMATELY 40.093 ACRES, UPON PETITION OF THE LANDOWNER, DANIEL THREE FORKS FARM LTD, SAID TRACTS BEING GENERALLY LOCATED SOUTH OF FM 93 AND EAST OF HARTRICK BLUFF ROAD; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, Texas Local Government Code (LGC) Chapter 43 governs the annexation process and requires that land to be annexed must be in the municipality's extraterritorial jurisdiction (ETJ) and contiguous to the municipality - the subject property is within the City's southern ETJ;

**Whereas**, LGC § 43.0671 allows a municipality to annex an area if each owner of land in the area requests the annexation - on February 10, 2020, property owner Martha Daniel filed a written request seeking voluntary annexation of approximately 19.014 acres and 21.079 acres of land respectively for a total of approximately 40.093 acres of land, as shown by Exhibit 'A' and being more particularly described as in Exhibit 'B';

**Whereas**, prior to annexing an area of land, the City must offer the property owner a development agreement if the area would be eligible for an agreement under LGC Chapter 212, Subchapter G and appraised for ad valorem tax purposes as land for agricultural use, wildlife management use, or timber use pursuant to Texas Tax Code Chapter 23 - the property owner was offered and rejected a development agreement on February 10, 2020;

**Whereas**, the City and property owner have entered into written agreement for the provision of municipal services in the area however, before offering the proposed municipal services agreement to the property owner, the proposed agreement was circulated to affected City Departments to determine the services that would be provided on the effective date of the annexation - the property owner accepted the proposed agreement;

**Whereas**, the City is not required to provide a service that is not included in the agreement;

**Whereas**, LGC § 43.0673 requires that the City hold one public hearing prior to adopting an ordinance annexing an area on the written request of a landowner and the City's Charter requires a second reading to adopt the annexation ordinance;

**Whereas**, LGC § 43.905 and § 43.9051 requires a City to provide written notice regarding any financial impact caused by the proposed annexation to the affected school district as well as the political subdivisions and public entities that provide services in the area - the City notified Temple Independent School District and Bell County on May 18, 2020;

**Whereas**, while the City of Temple did notify all of the public entities required by State law about the potential fiscal impact on those organizations, a better understanding of that impact can be determined once the owner proposes rezoning and development in the future;

**Whereas**, the design of the Little River Basin Wastewater Improvements and the Hartrick Bluff Water Line currently underway contain a proposal to extend water and wastewater services through this area;

**Whereas**, if the property is annexed, the City's ad valorem tax base will increase and result in future property tax revenue for the City; and

**Whereas**, the City Council has considered these matters and deems it in the public interest to authorize these actions.

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

**Part 1: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**Part 2:** The City Council approves the voluntary annexation of two tracts of land, totaling approximately 40.093 acres, upon petition of the landowner, Daniel Three Forks Farm LTD, said tracts being generally located south of FM 93 and east of Hartrick Bluff Road, as shown and described in Exhibits 'A' and 'B' attached hereto, and said property is hereby annexed and brought within the corporate limits of the City of Temple, Bell County, Texas, and is made an integral part thereof.

**Part 3:** The service plan submitted in accordance with Chapter 43 of the Texas Local Government Code is hereby approved as part of this Ordinance, made a part hereof and attached hereto as Exhibit "C."

**Part 4:** The official map and boundaries of the City of Temple are hereby amended to include the annexed Property as part of the City of Temple.

**Part 5:** The annexed Property shall be zoned at a future date, in compliance with the Zoning Ordinance of the City of Temple.

**Part 6:** The annexed Property shall be included in, and become a part of, the City of Temple City Council Election District Number 3.

**Part 7:** If the taking of any territory annexed by this Ordinance is declared by a court of competent jurisdiction to be invalid and/or illegal, it shall not affect the balance of the property annexed and attempted to be annexed, and that property shall remain as part of the City of Temple, Texas. It is the intent of this Ordinance that any territory that is not lawful for the City to incorporate be excluded from this annexation and that such exclusion be documented by having a qualified surveyor correct the property description of the annexed area to conform to the Council's intention and to ensure that the boundary description closes.

**Part 8: 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 9: 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 10: Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance was 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.

PASSED AND APPROVED on First Reading and Public Hearing on the **4<sup>th</sup>** day of **June, 2020**.

PASSED AND APPROVED on Second and Final Reading on the **18<sup>th</sup>** day of **June, 2020**.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Hedrick  
Interim City Secretary

\_\_\_\_\_  
Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20

Item #5

Regular Agenda

Page 1 of 3

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

Tammy Lyerly, Senior Planner

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – FY-20-21-ZC: Consider an ordinance adopting a site development plan and rezoning from Two-Family to Planned Development-Temple Medical Educational District T5-E Neighborhood Edge Zone for a restaurant parking lot expansion at 1216 South Main Street.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** At its May 18, 2020 meeting the Planning and Zoning Commission voted 5/0 to recommend approval of the site/development plan and requested rezoning Two-Family (2F) to Planned Development-Temple Medical Educational District T5-E Neighborhood Edge Zone (PD-TMED T5-E) for a restaurant parking lot expansion at 1216 South Main Street, per staff recommendation.

**STAFF RECOMMENDATION:** Staff recommends approval of the applicant's requested Planned Development-Temple Medical Education District T5-E Neighborhood Edge Zone (PD-TMED T5-E) for the following reasons:

1. Compliance with surrounding zoning and land uses;
2. Compliance with the Thoroughfare Plan; and
3. Compliance with availability of public facilities to serve the subject property

And with the following conditions:

1. Development will be subject to substantial compliance with the Planned Development site/development plan, including landscaping and sidewalk;
2. Parking for the adjacent restaurant will be paved and striped per the attached site/development Plan; and
3. The curb will be rebuilt to prevent egress onto South Main Street

**PROPOSED CITY COUNCIL MEETING SCHEDULE:** This rezoning request is scheduled for 1<sup>st</sup> Reading on June 18, 2020 and 2<sup>nd</sup> Reading on July 2, 2020.

**ITEM SUMMARY:** This rezoning request for 1216 South Main Street is to connect the gap between two existing Old Jody's restaurant parking lots located across the alley behind the Old Jody's restaurant at 1219 South First Street. The subject property was a residential lot when the two existing restaurant parking lots were approved by City Council in 2017 with Planned Development Ordinance 2017-4874.

The attached site/development plan shows the combination of the subject property with the adjacent parking lots to the north and south. The buffer fence between the two existing restaurant parking lots is no longer required since the subject property proposes connecting both existing parking lots. The site/development plan also shows the continuation of the existing sidewalks between the two existing parking lots. Access to the entire consolidated parking lot will remain from South Main Street and the alley adjacent to the Old Jody's Restaurant.

The applicant's proposed "base" zoning district T5-E is a Neighborhood Edge transect zone within the Temple Medical Education district (TMED), a special purpose district. The T5-E Neighborhood Edge Zone consists of mixed-use development with primarily commercial, retail, and office urban character. This TMED transect zone typically has a 'teaser row' of parking in front of a primary building with strong vehicular cross-connection among adjacent properties.

**Planned Development: UDC Section 3.4.1 defines a Planned Development as:**

"A flexible overlay zoning district designed to respond to unique development proposals, special design considerations and land use transitions by allowing evaluation of land use relationships to surrounding areas through development plan approval."

A development plan is subject to review and approval as part of the Planned Development rezoning. As opposed to a standard rezoning, conditions of approval can be included into the rezoning ordinance of a Planned Development. The applicants have provided the attached PD site/development plan with this rezoning request.

**Per UDC Section 3.4.2C, the City Council may include additional conditions of approval into the rezoning ordinance.** In approving a Planned Development, the City Council may require additional standards deemed necessary to create a reasonable transition to, and protection of, adjacent property and public areas, including but not limited to, access and circulations, signs, parking, building design, location and height, light and air, orientation, building coverage, outdoor lighting, landscaping, homeowners or property owners associations, open space, topography and screening.

**DEVELOPMENT REVIEW COMMITTEE (DRC):** The DRC reviewed the PD site/development plan on May 4, 2020. There were no objections to the PD site/development plan.

**COMPREHENSIVE PLAN COMPLIANCE:** The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

**Future Land Use and Character Plan (FLUP) (CP Map 3.1)**

The *Choices '08* City of Temple Comprehensive Plan shows the subject property as Neighborhood Conservation. The alley separates the subject property from the Auto Urban Commercial designation of the FLUP. The *Choices '08* City of Temple Comprehensive Plan shows TMED as the FLUP designation on the south side of Avenue M.

Although the requested rezoning is not compliant with the FLUP, this request is compatible with the adjacent PD-MED T5-E zoning districts for the existing restaurant parking lots to the north and south.



As for compliance with the proposed Future Development Plan of the draft Comprehensive Plan, this property is designated as “Urban Residential,” which allows neighborhood serving retail as long as it:

- Takes access from a collector or greater street classification (ingress is from South 1<sup>st</sup> an Arterial or Avenue M a Collector with egress being limited to South Main Street
- Have an urban character that includes sidewalks and street trees

The request is compatible.

Thoroughfare Plan (CP Map 5.2) and Temple Trails Master Plan Map and Sidewalk Ordinance

The subject property fronts South Main Street, a local street. The west property line borders the alley adjacent to the Old Jody’s Restaurant.

Availability of Public Facilities (CP Goal 4.1)

Water services are available to the subject property through existing water lines within South Main Street and West Avenue M rights-of-way. Sanitary sewer services are available to the subject property through an existing sanitary sewer line within the adjacent alley.

**PUBLIC NOTICE:** Twelve (12) notices of the Planning and Zoning Commission public hearing were sent out to property owners within 200-feet of the subject property as required by State law and City Ordinance. As of Friday, June 5, 2020, three notices have been returned in favor of the proposed rezoning and no notices have been returned in opposition to the proposed rezoning.

The newspaper printed the notice of the public hearing on May 6, 2020 in accordance with state law and local ordinance.


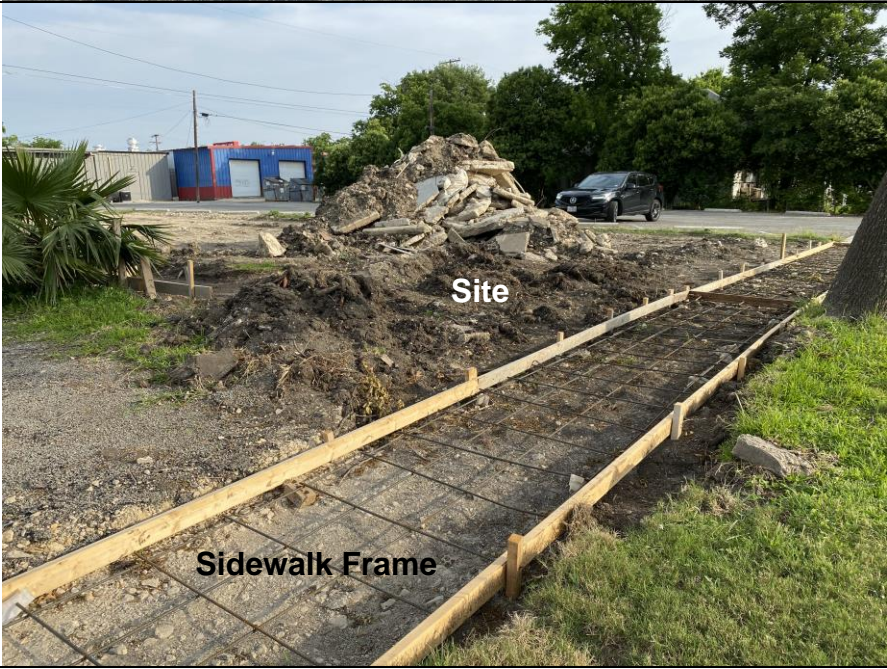
**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**



[Site and Surrounding Property Photos](#)  
[Maps](#)  
[Development Regulations](#)  
[Site/Development Plan](#)  
[Notification Response Letters](#)  
[P&Z Minutes Excerpt](#)  
[Ordinance](#)



**SURROUNDING PROPERTY AND USES:**

The following table shows the subject property, existing zoning and current land uses:

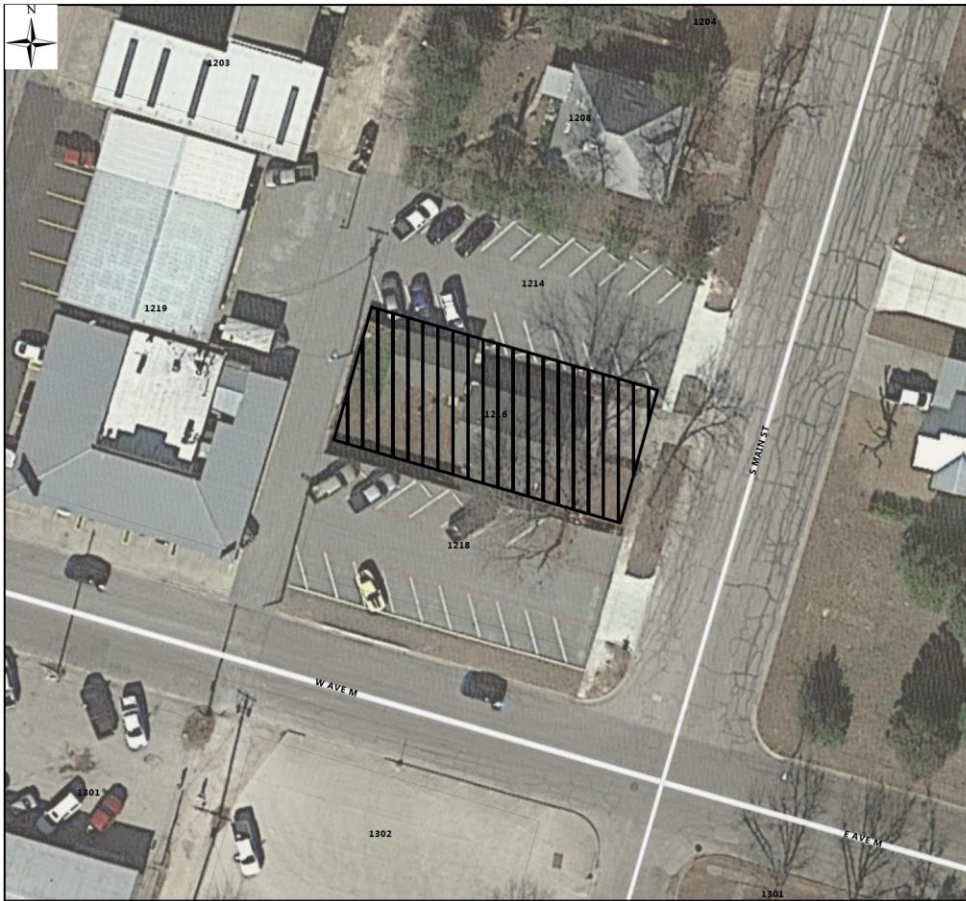
Direction	Zoning	Current Land Use	Photo
Subject Property	2F	Vacant Land	 <p>Site</p> <p>S. Main St.</p>
			 <p>Site</p> <p>Sidewalk Frame</p>



Direction	Zoning	Current Land Use	Photo
East	2F	Residential	 <p>S. Main St.</p>
West	TMED T5-E	Restaurant	 <p>Old Jody's Restaurant Across Alley</p> <p>Site</p>

Direction	Zoning	Current Land Use	Photo
South	PD-TMED T5-E	South Restaurant Parking Lot	 <p>Site</p>
North	PD-TMED T5-E	North Restaurant Parking Lot	 <p>S. Main St.</p>





2F TO PD-T5-E

## AERIAL MAP

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.

## Transportation

### Streets

COLLECTOR

LOCAL STREET

Temple Municipal Boundary

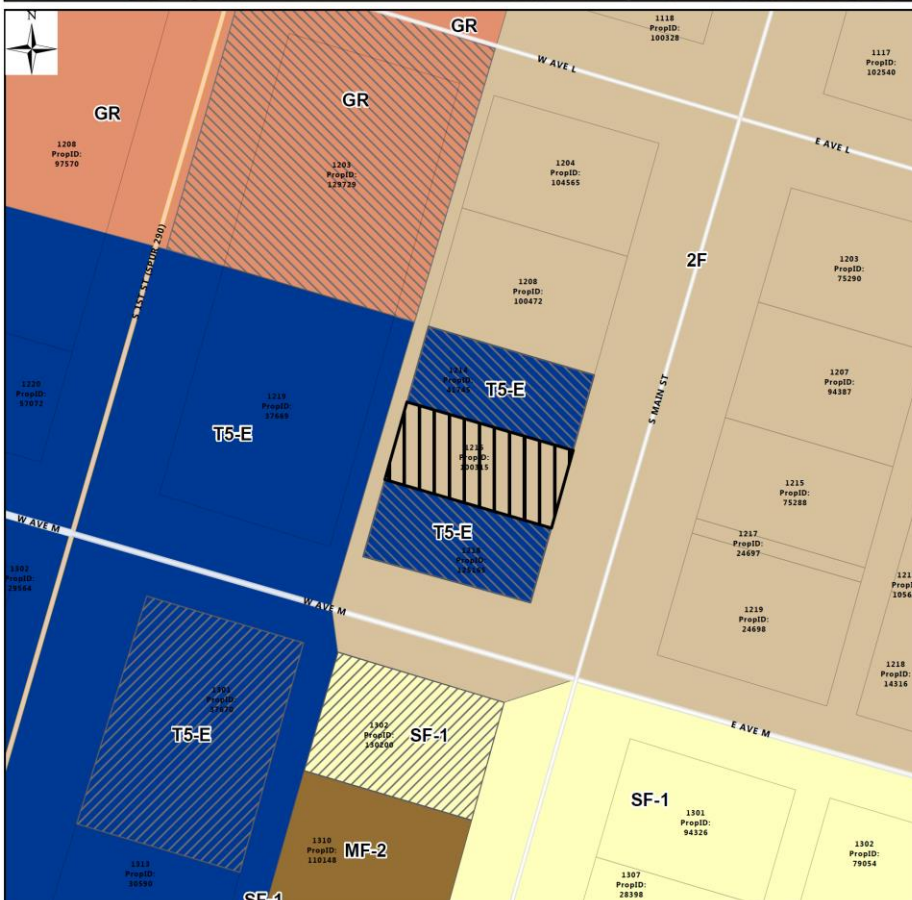
## Parcel Features

Parcels

GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.

TLYERLY

Date: 4/21/2020



2F TO PD-T5-E

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.

CurrentZoning	MF-3 - PD	HI - PD
HI - CUP	O-1	AG
UE	O-1 - CUP	AG - CUP
UE - PD	O-1 - PD	MH
SF-1	O-2	MH - CUP
SF-1 - CUP	O-2 - CUP	MH - PD
SF-1 - PD	O-2 - PD	MU
SF-2	NS	MU - CUP
SF-2 - PD	NS - CUP	SD-C
SF-3	NS - PD	SD-C - CUP
SF-3 - PD	GR	SD-H
SF-3 - CUP, PD	GR - CUP	SD-H - CUP
SFA	GR - PD	SD-T
SFA-2	GR - CUP, PD	SD-V
SFA-2 - PD	CA	T4
SFA-3	CA - CUP	T4 - PD
SFA-3 - PD	CA - PD	T4 - CUP
2F	C	TS-C
2F - CUP	C - CUP	TS-C - CUP
2F - PD	C - PD	TS-C - PD
MF-1	C - CUP, PD	TS-E
MF-1 - CUP	LI	TS-E - CUP
MF-1 - PD	LI - CUP	TS-E - PD
MF-2	LI - PD	NO BASE
MF-2 - PD	LI - CUP, PD	CUP
MF-2 - PD	HI	PD

GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.

TLYERLY

Date: 4/21/2020







2F TO PD-T5-E

## FUTURE LAND USE MAP

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.

### Transportation

- EXPRESSWAY
- MAJOR ARTERIAL
- COLLECTOR
- LOCAL STREET
- MINOR ARTERIAL
- PRIVATE
- RAMP

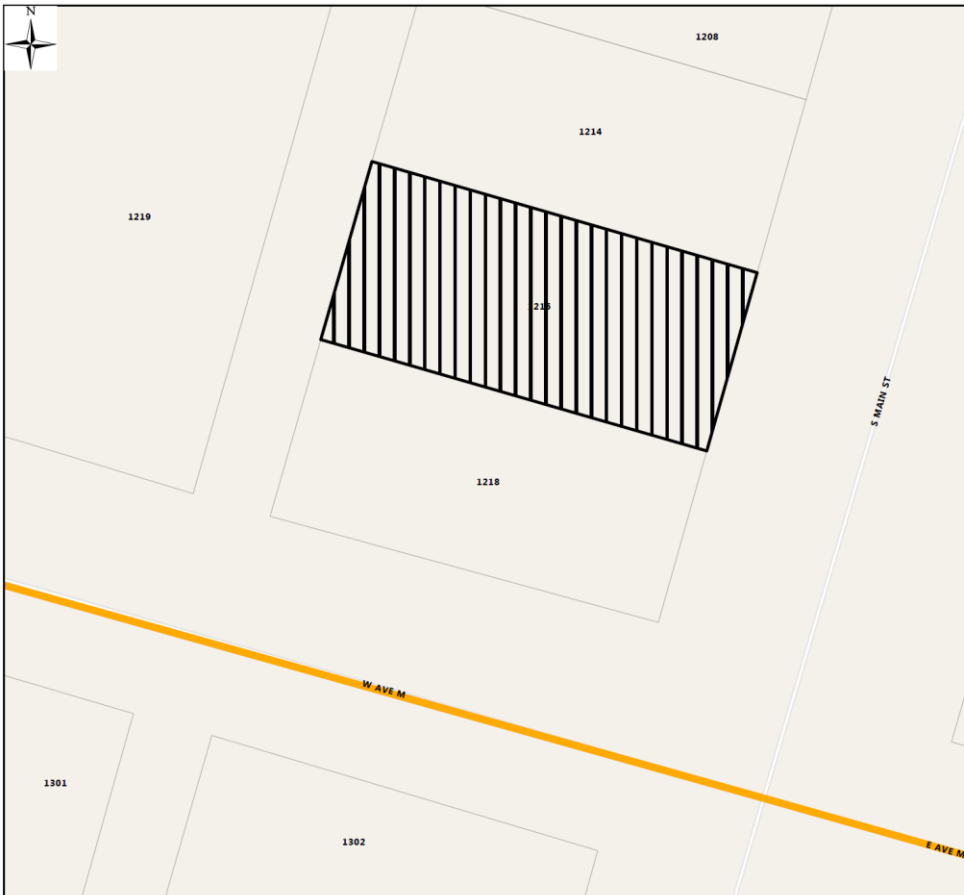
### Parcel Features

- Parcels
- Future LUP
  - Agricultural/Rural
  - Auto-Urban Commercial
  - Auto-Urban Mixed Use
  - Auto-Urban Multi-Family
  - Auto-Urban Residential
  - Business Park
  - Estate Residential
  - Industrial
  - Neighborhood Conservation
  - Parks & Open Space
  - Public Institutional
  - Suburban Commercial
  - Suburban Residential
  - Temple Medical Education District
  - Urban Center

GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.

TLYERLY

Date: 4/21/2020



2F TO PD-T5-E

## THOROUGHFARE AND TRAILS MAP

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.

### Parcel Features

- Parcels

### Thoroughfare Plan

- Expressway
- Major Arterial
- Proposed Major Arterial
- Minor Arterial
- Proposed Minor Arterial
- Collector
- Proposed Collector

### Trails Master Plan

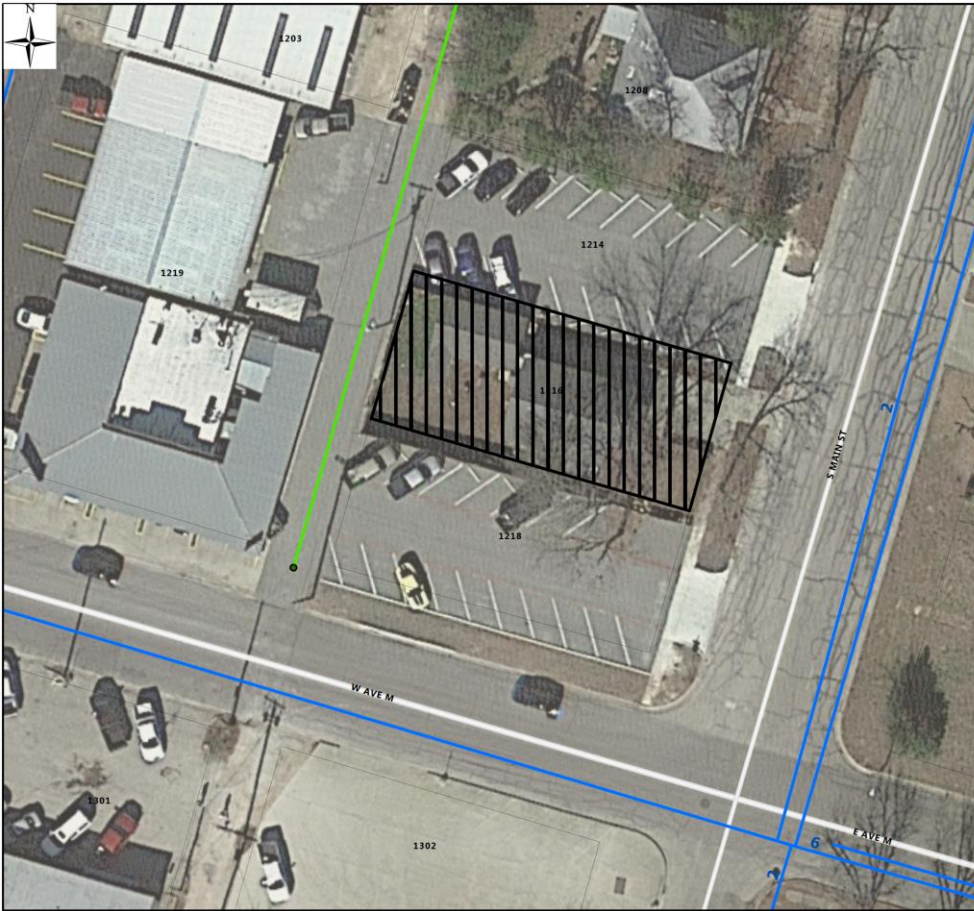
- X = EXISTING, CITY WIDE SPINE
- EXISTING, COMMUNITY WIDE CONNECTOR
- || = EXISTING, LOCAL CONNECTOR
- X = PROPOSED, CITY WIDE SPINE
- PROPOSED, COMMUNITY WIDE CONNECTOR
- || = PROPOSED, LOCAL CONNECTOR

GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.

TLYERLY

Date: 4/21/2020





2F TO PD-T5-E

## UTILITY MAP

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.  
Sewer

● Manhole

— Gravity Main

## WaterDistribution

● Hydrant

— Main

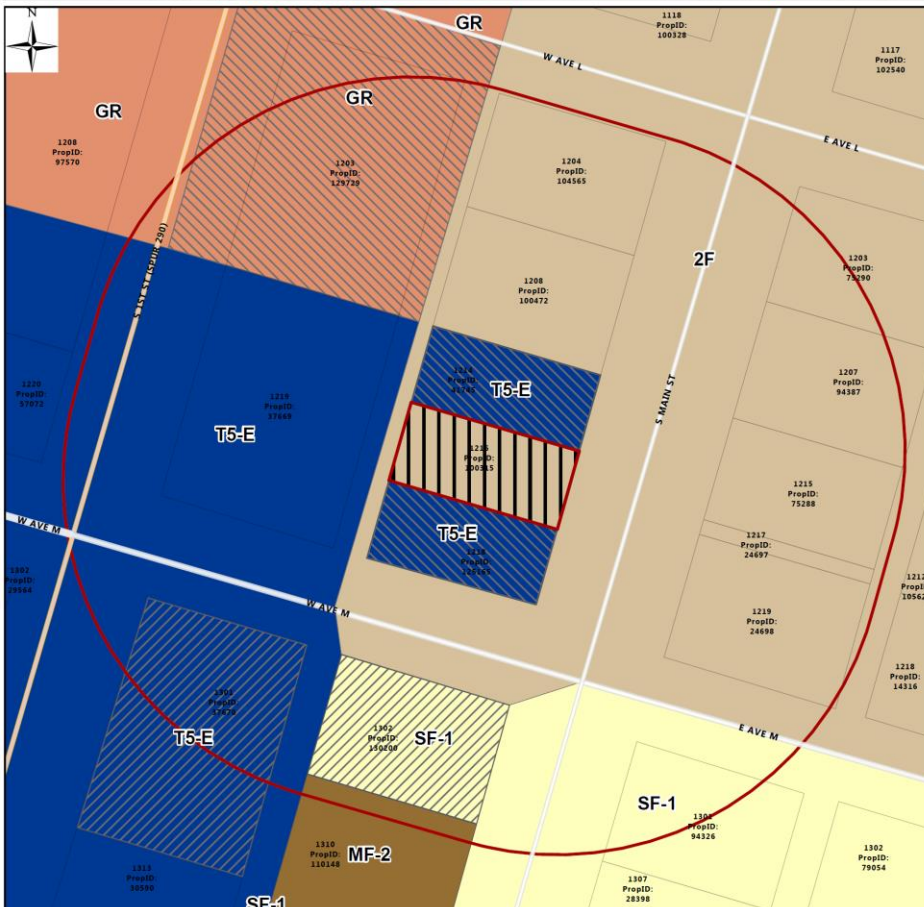
## Parcel Features

□ Parcels

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TLYERLY

Date: 4/21/2020



2F TO PD-T5-E

## 200' NOTIFICATION MAP

Zoning Case :  
FY-20-21-ZC

Address :  
1216 S. Main St.

CurrentZoning	MF-3 - PD	HI - PD
HI - CUP	O-1	AG
UE	O-1 - CUP	AG - CUP
UE - PD	O-1 - PD	HH
SF-1	O-2	HH - CUP
SF-1 - CUP	O-2 - CUP	HH - PD
SF-1 - PD	O-2 - PD	MU
SF-2	NS	MU - CUP
SF-2 - PD	NS - CUP	SD-C
SF-3	NS - PD	SD-C - CUP
SF-3 - PD	GR	SD-H
SF-3 - CUP, PD	GR - CUP	SD-H - CUP
SFA	GR - PD	SD-T
SFA-2	GR - CUP, PD	SD-V
SFA-2 - PD	CA	T4
SFA-3	CA - CUP	T4 - PD
SFA-3 - PD	CA - PD	T4 - CUP
2F	C	T5-C
2F - CUP	C - CUP	T5-C - CUP
2F - PD	C - PD	T5-C - PD
MF-1	C - CUP, PD	T5-E
MF-1 - CUP	LI	T5-E - CUP
MF-1 - PD	LI - CUP	T5-E - PD
MF-2	LI - PD	NO BASE
MF-2 - CUP	LI - CUP, PD	CUP
MF-2 - PD	HI	PD

GIS products are for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. They do not represent an on-the-ground survey and represent only the approximate relative location of property boundaries and other features.

TLYERLY

Date: 4/21/2020





**DEVELOPMENT REGULATIONS:** Dimensional standards for the TMED T5-E district are:

Sec. 6.3. TMED, Temple Medical and Educational

**B. General Requirements**

The tables below establish the general requirements for the TMED Transect Zones as they relate to lot dimensions, setbacks, structure configuration, and type permitted.

<b>Lot Dimensional Standards</b>	<b>T4</b>	<b>T5-e</b>	<b>T5-c</b>	<b>T-South</b>	<b>SD-c; SD-t</b>	<b>SD-v; SD-h</b>
Min. Lot Area	NA	NA	NA	NA	NA	NA
Min. Lot Width (ft.)	18	18	18	18 (50 for all detached single-family without alley access)	NA	NA
Max. Lot Width (ft.)	120	700	700	700	NA	NA
Min. Lot Depth (ft.)	NA	NA	NA	NA	NA	NA
Max. Lot Depth (ft.)	NA	NA	NA	NA	NA	NA
Max. Impervious Lot Coverage – Res. Uses (%)	70	70	80	80	NA	NA
Max. Impervious Lot Coverage – Nonres. Uses (%)	80	80	80	80	NA	NA

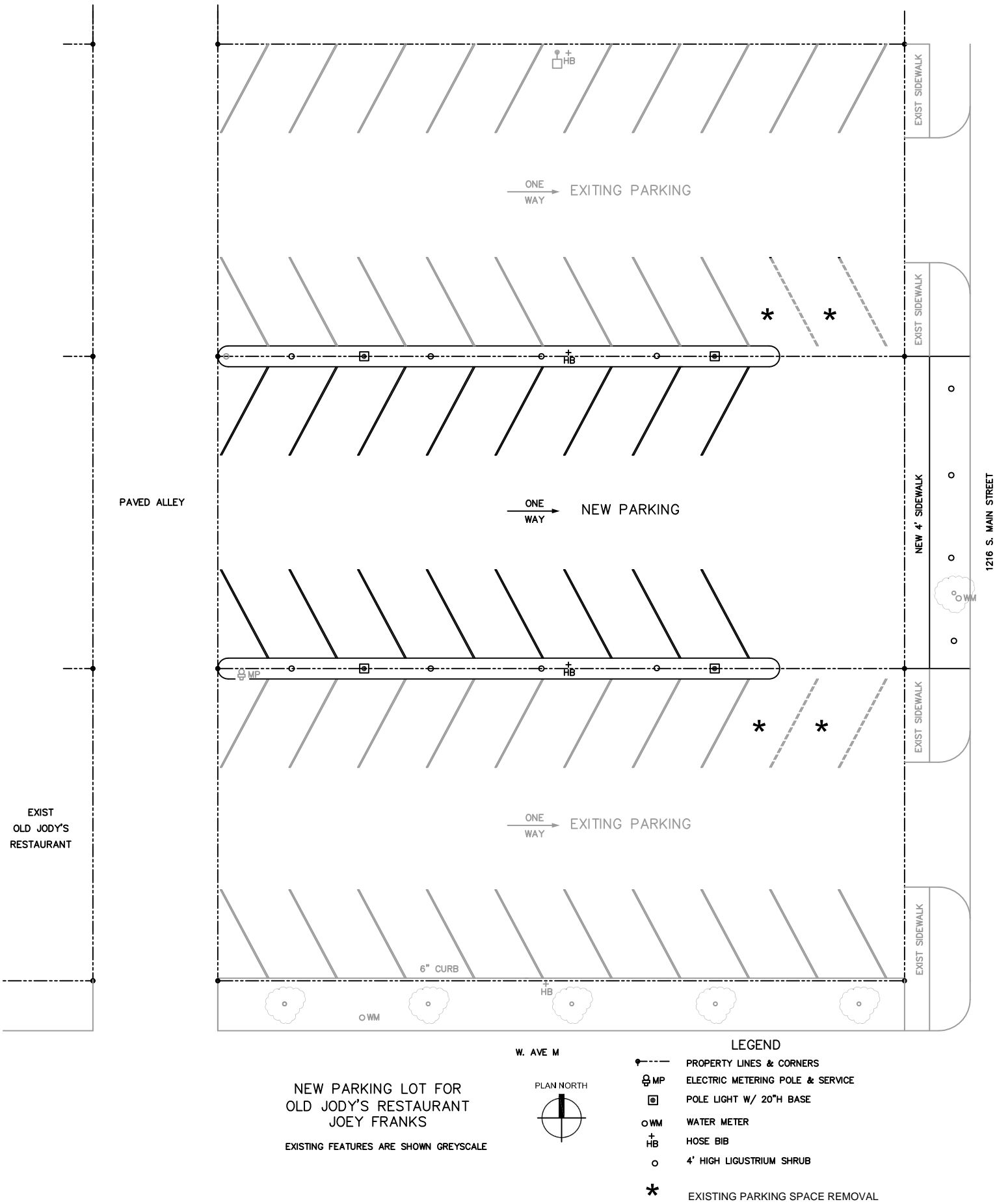
<b>Surrounding Property &amp; Uses</b>			
<b>Direction</b>	<b>Future Land Use Map</b>	<b>Zoning</b>	<b>Current Land Use</b>
Site	Neighborhood Conservation	2F	Vacant Land
North	Neighborhood Conservation	PD-TMED T5-E	Parking Lot
South	Neighborhood Conservation	PD-TMED T5-E	Parking Lot
East	Neighborhood Conservation	2F	Residential
West	Auto-Urban Commercial	TMED T5-E	Restaurant

**COMPREHENSIVE PLAN (CP) COMPLIANCE:** The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan

:

<b>Document</b>	<b>Policy, Goal, Objective or Map</b>	<b>Compliance?</b>
CP	Map 3.1 - Future Land Use Map	Yes
CP	Map 5.2 - Thoroughfare Plan	Yes
CP	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes
STP	Temple Trails Master Plan Map and Sidewalks Ordinance	Yes

CP = Comprehensive Plan      STP = Sidewalk and Trails Plan







**RESPONSE TO PROPOSED  
REZONING REQUEST  
CITY OF TEMPLE**

Parcel ID # 130200  
FRANKS, DOUGLAS  
1301 S 1ST ST  
TEMPLE, TX 76504-5762

**Zoning Application Number:** FY-20-21-ZC

**Case Manager:** Tammy Lyerly

**Location:** 1216 South Main Street

The proposed rezoning is the area shown in hatched marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I ☒ agree

( ) disagree with this request

**Comments:**

Douglas Franks  
Signature

Doug Franks  
Print Name

**Provide email and/or phone number if you want Staff to contact you** (Optional)

If you would like to submit a response, please email a scanned version of this completed form to the Case Manager referenced above, [tlyerly@templetx.gov](mailto:tlyerly@templetx.gov), or mail or hand-deliver this comment form to the address below, no later than **May 18, 2020**.

City of Temple  
Planning Department  
2 North Main Street, Suite 102  
Temple, Texas 76501

Number of Notices Mailed: 13

Date Mailed: May 6, 2020

**OPTIONAL:** Please feel free to email questions or comments directly to the Case Manager or call us at 254.298.5668.





**RESPONSE TO PROPOSED  
REZONING REQUEST  
CITY OF TEMPLE**

Parcel ID # 125165  
FRANKS, JOEY  
3360 E HWY 190  
TEMPLE, TX 76501

**Zoning Application Number:** FY-20-21-ZC

**Case Manager:** Tammy Lyerly

**Location:** 1216 South Main Street

The proposed rezoning is the area shown in hatched marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I ☒ agree

( ) disagree with this request

**Comments:**

Joeey Franks  
Signature

Joeey Franks  
Print Name

(Optional)

**Provide email and/or phone number if you want Staff to contact you**

If you would like to submit a response, please email a scanned version of this completed form to the Case Manager referenced above, [tllyerly@templetx.gov](mailto:tllyerly@templetx.gov), or mail or hand-deliver this comment form to the address below, no later than **May 18, 2020**.

City of Temple  
Planning Department  
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Temple, Texas 76501

Number of Notices Mailed: 13

Date Mailed: May 6, 2020

**OPTIONAL:** Please feel free to email questions or comments directly to the Case Manager or call us at 254.298.5668.





**RESPONSE TO PROPOSED  
REZONING REQUEST  
CITY OF TEMPLE**

Parcel ID # 41745  
FRANKS, JOEY  
1219 S 1ST ST  
TEMPLE, TX 76504-5786

**Zoning Application Number:** FY-20-21-ZC

**Case Manager:** Tammy Lyerly

**Location:** 1216 South Main Street

The proposed rezoning is the area shown in hatched marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

☒ agree

☐ disagree with this request

**Comments:**

Joey Franks  
Signature

JOEY FRANKS  
Print Name

\_\_\_\_\_  
**Provide email and/or phone number if you want Staff to contact you** (Optional)

If you would like to submit a response, please email a scanned version of this completed form to the Case Manager referenced above, [tllyerly@templetx.gov](mailto:tllyerly@templetx.gov), or mail or hand-deliver this comment form to the address below, no later than **May 18, 2020**.

**City of Temple  
Planning Department  
2 North Main Street, Suite 102  
Temple, Texas 76501**

**Number of Notices Mailed:** 13

**Date Mailed:** May 6, 2020

**OPTIONAL:** Please feel free to email questions or comments directly to the Case Manager or call us at 254.298.5668.



**EXCERPTS FROM THE  
PLANNING & ZONING COMMISSION MEETING  
MONDAY, MAY 18, 2020**

**ACTION ITEMS**

**Item 4: FY-20-21-ZC** -- Hold a public hearing to discuss and recommend action on a rezoning with a site/development plan from Two-Family (2F) to Planned Development Temple Medical Educational District T5-E Neighborhood Edge Zone (PD-TMED T5-E) for a restaurant parking lot expansion at 1216 South Main Street.

Mr. Brian Chandler, Director of Planning and Development, stated this item is scheduled to go forward to City Council for first reading on June 18, 2020 and second reading on July 2, 2020.

The Development Review Committee reviewed the site and development plan on May 4, 2020 with no objections.

Consolidated parking lot has two access points along South Main Street and the alley access.

The removal of four parking spaces will allow middle traffic flow to South Main Street.

The zoning map is shown and found to be in compliance.

The Future Land Use Map is shown.

Neighborhood Conservation (Choice's '08) is characterized by established residential development.

Urban Residential allows neighborhood serving retail as long as it has:

- Access from a collector or great street classification;
  - Ingress is from South First Street, an arterial, or Avenue M, a collector with egress being limited to South Main Street
- Urban character that includes sidewalks and street trees;

This request is compatible.

Thoroughfare Map plan is shown and found to be in compliance.

Existing water and sewer map is shown and found to be in compliance.

Water is provided through existing lines within the rights-of-way of South Main Street and West Avenue M.

Sewer is provided through an existing line within the alley.

Surrounding and on-site photos are shown.

Compliance Summary chart is shown, and all areas are found to be in compliance.

Twelve public notices were mailed in accordance with all state and local regulations with four notices returned in agreement and zero responses returned in disagreement.

The newspaper notice was printed May 6, 2020 in accordance with state law and local ordinance.

Staff recommends approval of a rezoning from “2F” to “PD-TMED T5-E” and the Site/Development Plan with the following conditions:

1. Development will be subject to substantial compliance with the Planned Development Site/Development Plan, including landscaping and sidewalk;
2. Parking for the adjacent restaurant will be paved and striped per the attached Site/Development Plan; and
3. **Curb will be rebuilt to prevent egress onto South Main Street.**

This item does require a public hearing.

There being no speakers, the public hearing was closed.

Commissioner Fettig made a motion to approve Item 4, **FY-20-21-ZC**, per staff recommendation, and Commissioner Wright made a second.

*Motion passed: (5:0)*

Vice-Chair Ward and Commissioners Armstrong, Jeanes, and Marshall absent.



ORDINANCE NO. 2020-5032  
(FY-20-21-ZC)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS,  
AUTHORIZING A REZONING FROM TWO-FAMILY TO PLANNED  
DEVELOPMENT TEMPLE MEDICAL EDUCATIONAL DISTRICT T5-E  
NEIGHBORHOOD EDGE ZONE WITH A DEVELOPMENT/SITE PLAN FOR A  
RESTAURANT PARKING LOT EXPANSION AT 1216 SOUTH MAIN STREET;  
PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE;  
AND PROVIDING AN OPEN MEETINGS CLAUSE.

---

**Whereas**, this rezoning request for 1216 South Main Street is to connect the gap between two existing Old Jody's restaurant parking lots located across the alley behind the Old Jody's restaurant at 1219 South First Street - the subject property was a residential lot when the two existing restaurant parking lots were approved by City Council in 2017 by Planned Development Ordinance 2017-4874;

**Whereas**, the site/development plan shows the combination of the subject property with the adjacent parking lots to the north and south - the buffer fence between the two existing restaurant parking lots is no longer required since the plan proposes connecting both existing parking lots;

**Whereas**, the site/development plan also shows the continuation of the existing sidewalks between the two existing parking lots - access to the entire consolidated parking lot will remain from South Main Street and the alley adjacent to the Old Jody's Restaurant;

**Whereas**, the applicant's proposed "base" zoning district T5-E is a Neighborhood Edge transect zone within the Temple Medical Education District (TMED), a special purpose district - the T5-E Neighborhood Edge Zone consists of mixed-use development with primarily commercial, retail, and office urban character and this TMED transect zone typically has a 'teaser row' of parking in front of a primary building with strong vehicular cross-connection among adjacent properties;

**Whereas**, the Planning and Zoning Commission of the City of Temple, Texas, at its May 18, 2020 meeting, voted 5 to 0 to recommend Council approve of the rezoning, from Two-Family to Planned Development Temple Medical Educational District T5-E Neighborhood Edge Zone with a site/development plan for a restaurant parking lot expansion at 1216 South Main Street;

**Whereas**, Staff approval of the proposed Planned Development and development/site plan, attached hereto as Exhibit 'A,' and made a part hereof for all purposes, subject to the following conditions:

- Development will be subject to substantial compliance with the Planned Development site/development plan, including landscaping and sidewalk;
- Parking for the adjacent restaurant will be paved and striped per the attached site/development Plan; and

- The curb will be rebuilt to prevent egress onto South Main Street; and

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

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:**

**Part 1: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**Part 2:** The City Council approves of the rezoning from Two-Family to Planned Development Temple Medical Educational District T5-E Neighborhood Edge Zone with a site/development plan for a restaurant parking lot expansion at 1216 South Main Street, as shown here in 'Exhibit A' attached hereto and incorporated herein for all purposes, and subject to the following conditions:

- Development will be subject to substantial compliance with the Planned Development site/development plan, including landscaping and sidewalk;
- Parking for the adjacent restaurant will be paved and striped per the attached site/development Plan; and
- The curb will be rebuilt to prevent egress onto South Main Street.

**Part 3:** The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map.

**Part 4:** 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 5:** 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:** It is hereby officially found and determined that the meeting at which this Ordinance was 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 **18th** day of **June**,  
**2020.**

PASSED AND APPROVED on Second Reading on the **2nd** day of **July, 2020.**

THE CITY OF TEMPLE, TEXAS

---

TIMOTHY A. DAVIS, Mayor

ATTEST:

APPROVED AS TO FORM:

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Stephanie Hedrick  
Interim City Secretary

---

Kathryn H. Davis  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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06/18/20  
Item #6  
Regular Agenda  
Page 1 of 2

**DEPT. / DIVISION SUBMISSION REVIEW:**

Amanda Rice, Deputy City Attorney  
Mitch Randles, Fire Chief

**ITEM DESCRIPTION:** SECOND READING: Consider adopting an ordinance amending City Code of Ordinances, Chapter 12, Fire Prevention and Protection.

**STAFF RECOMMENDATION:** Adopt ordinance on second reading as described in the item description. Third reading will be scheduled for July 2, 2020.

**ITEM SUMMARY:** As part of the City's continuing effort to update the City's Code of Ordinances and to bring the City's code up to date with current City policies and to better protect citizens against fire, City Staff recommends amending Chapter 12, Fire Prevention and Protection, of the City's Code of Ordinances.

This item was presented at the June 4, 2020 City Council Meeting for first reading and public hearing. After the public hearing and City Council discussion, this item was tabled by the City Council. City Staff revised the proposed amendments to Chapter 12 to incorporate the feedback that City Staff received from the City Council during the June 4<sup>th</sup> meeting. Paragraphs (h)-(k) summarize the new proposed amendments that incorporate this feedback.

The proposed amendments include:

- a) General housekeeping such as reformatting and renumbering the Chapter, updating City Staff titles, and removing obsolete sections;
- b) Adopting the 2015 International Code Council International Fire Code;
- c) Revising the Appeals section of the Chapter to help deter frivolous appeals and ensure uniform application of fire safety regulations;
- d) Requiring fire apparatus access road gates to be equipped with Knox gate and key switches or padlocks approved by the Fire Marshal to ensure access to private properties in cases of emergency;
- e) Updating the controlled burning section of the Chapter to comply with state law's requirements for outdoor burning and providing exceptions and regulations for allowed outdoor burning;
- f) Requiring private property owners to annually perform testing and maintenance on all private fire hydrants located upon their property;
- g) Amending the extraction operations section to reduce the maximum ground vibration limit from 1" per second to  $\frac{3}{4}$ " per second at the location of any dwelling;



- a) Amending the extraction operations regulations section to require an extraction blasting permittee to reapply for a permit if:
  - (1) An extraction site operator, blaster, or blasting company for the permitted extraction site changes,
  - (2) A blaster for the permitted extraction site has his/her state or federal license to blast expire or revoked,
  - (3) There is a change made to the extraction blasting permittee's required insurance policy,
  - (4) The extraction blasting permittee's required insurance policy is cancelled or expires;
- b) Amending the extraction operations section to require the extraction blasting permittee to notify the Fire Marshal in writing at least 24 hours prior to performing any blasting operation if there are any changes to the information provided by the permittee on the permittee's extraction blasting permit application other than the changes to the information specified under Paragraph (h), above;
- c) Providing that the City may suspend or revoke a permittee's extraction blasting permit or issue a stop work order for the extraction site if the permittee fails to comply with the requirements in Paragraphs (h) and (i), above;
- d) Requiring annual permit application and permit fee for extraction blasting permittees;
- e) Providing that a permittee with an existing, valid extraction blasting permit as of July 2, 2020 must either comply with: (1) this Ordinance's amendments to extraction operations regulations or (2) the extraction operations regulations as they existed prior to the adoption of this Ordinance, until the permittee's permit expires or is revoked, whichever occurs first, and, after such a permit is expired or revoked, providing that the permittee must comply with all provisions of this Ordinance regulating extraction operations;
- f) Creating a new blasting regulation section to regulate blasting related to construction, tunneling, and demolition;
- g) Removing a section offering a reward for the arrest and conviction of arsonists;
- h) Creating new offenses for false alarms and burning without a permit; and
- i) Updating the penalties section to require the pleading of a culpable mental state for offenses with a fine over \$500.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

[Current copy of Chapter 12](#)

[Clean copy of Chapter 12 with proposed amendments  
Ordinance](#)



## **Chapter 12**

### **FIRE PREVENTION AND PROTECTION**

#### **ARTICLE I. IN GENERAL**

- Sec. 12-1. Appointment qualifications, general powers, and duties of the fire chief.**
- Sec. 12-2. Appointment qualification, general powers, and duties of the fire code official.**
- Sec. 12-3. Definitions.**

#### **ARTICLE II. ADOPTION OF FIRE PREVENTION CODE**

- Sec. 12-4. Adoption of fire prevention code.**

#### **ARTICLE III. EXCLUSIONS OF INTERNATIONAL FIRE CODE 2009**

#### **ARTICLE IV. REVISIONS OF INTERNATIONAL FIRE CODE 2009**

- Sec. 12-5. Adjustment to Chapter 1, “Administration.”**
- Sec. 12-6. Replace Table 906.3(1), “Fire Extinguishers for Class A Fire Hazards,”**
- Sec. 12-7. Replace Table 906.3(2), “Flammable or Combustible Liquids with Depths of Less than or Equal to 0.25- inch,”**
- Sec. 12-8. Adjustment to Chapter 33, “Explosives and Fireworks,” Section 3307 “Blasting,” Subsection 3307.1 “General,”**
- Sec. 12-9. Adjustment to Chapter 38, “Liquefied Petroleum Gases,” Section 3801, “General,” 3801.1 “Scope,”**
- Sec. 12-10. Adjustment to Appendix D, “Fire Apparatus Access Roads.”**

## **ARTICLE V. ADDITIONS TO INTERNATIONAL FIRE CODE 2009**

- Sec. 12-11.       Fireworks.**
- Sec. 12-12.       Controlled Burning**
- Sec. 12-13.       Private Fire Apparatus Access Road and Fire Lanes.**
- Sec. 12-14.       Fire Hydrants**
- Sec. 12-15.       Extraction Operations Regulations**
- Sec. 12-16.       Business Registration.**

## **ARTICLE VI. MICELLANEOUS**

- Sec. 12-17.       Establishment of limits of the fire district.**
- Sec. 12-18.       Unauthorized use of fire apparatus.**
- Sec. 12-19.       Injuring or driving over fire hose.**
- Sec. 12-20.       Reward for arrest and conviction of arsonists.**
- Sec. 12-21.       New Materials, processes or occupancies which may require permits.**
- Sec. 12-22.       Exemptions.**
- Sec. 12-23.       Permit Fees.**
- Sec. 12-24.       Enforcement.**



## **Chapter 12**

### **Fire Prevention and Protection**

#### **Article I. In General**

##### **Sec. 12-1. Appointment qualifications, general powers, and duties of the fire chief.**

- a) The fire chief of Temple Fire & Rescue shall be appointed by the city manager, with approval of the city council. The fire chief shall be skilled in the management of the department and in the conduct thereof, and in the fighting and control of fires and conflagrations, and shall devote his entire time to the services of the department under such rules and regulations as may be laid down by the city manager and/or city council from time to time.
- b) The chief, under the direction of the city manager, shall have control of all fire stations and apparatus in the city, shall direct the department and preside over same in its efforts to extinguish all fires and conflagrations, and shall at all times be ready with his department for all the services which are usually expected of an efficient department.
- c) Wherever fire chief appears in this chapter, it shall mean the fire chief or his designee.

##### **Sec. 12-2. Appointment qualifications, general powers, and duties of the fire code official**

- a) The fire prevention division is hereby created. Such division shall be in Temple Fire & Rescue with the fire code official being a member of that division and reporting directly to the chief.
- b) The fire code official shall be appointed by the fire chief. The fire code official shall be skilled in investigations, inspections, management and shall devote his time to educating the public in fire safety while enforcing federal, state, and local laws as they pertain to fire prevention. The fire code official must be a licensed peace officer, in accordance with 2.12 of the Code of Criminal Procedures, unless otherwise approved by the Fire Chief.
- c) Wherever fire code official appears in this chapter, it shall mean the fire code official or his designee.
- d) When, in the opinion of the fire code official, further investigation of a fire is necessary, he shall take or cause to be taken the testimony on oath of all persons

supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing.

- e) The fire code official shall have the power to summons witness before him to testify in relation to any matter which is, by the provisions of this chapter, a subject of inquiry and investigation, and may require the production of any book, paper, document, or information deemed pertinent thereto. The fire code official is hereby authorized and empowered to administer oaths and affirmation to any persons appearing as witnesses before him.
- f) All investigations held by or under the direction of the fire code official may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.
- g) Any witness who refuses to be sworn, or who refuses to appear to testify, or who disobeys any lawful order of the fire code official, or who fails or refuses to produce any book, paper, document or information touching any matter under examinations, or who commits any contemptuous conduct during an investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as provided in this article, may be charged with a misdemeanor, and it shall be the duty of the fire code official to cause all such offenders to be prosecuted.
- h) When the fire code official determines that the condition of any premises creates a serious fire hazard dangerous to human life, he may order the utility company or companies to disconnect the utility service until the hazardous condition is removed. In cases of emergency or in situations where a utility company does not respond to or comply with the order of the fire code official shall have the authority to immediately disconnect or cause the disconnection of utility service. Any person whose property is affected by the act or order of the fire code official shall have the right of direct appeal to the city manager.

### **Sec. 12-3. Definitions.**

#### **In this chapter:**

*Fire Lane* shall mean an off-street area that is accessible to the public and is to remain free and clear of parked and standing vehicles in order to provide access to commercial buildings for emergency response purposes. This term includes specifically marked areas in public parking lots.

*Private Fire Apparatus Access Road* shall mean a road that extends from the property line of a private property to within 150 feet of all points on a commercial building located on

that property, to include private streets and access roadways.

*The route that a fire hose would be laid* shall mean the routing of fire hose from either a public or approved on-site fire hydrant to the fire apparatus along the length of the public roadway and/or approved private fire lanes.

## **Article II. Adoption of Fire Prevention Code**

### **Sec. 12-4. Adoption of fire prevention code.**

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, that certain code known as the International Fire Code 2009, International Code Council, as well as Appendices B, D, E, F, G, H, I, and J as it now exists and as it may be revised from time to time, and the whole thereof, save and except:

- A.** Exclusions as noted in Article III of this chapter;
- B.** Revisions as noted in Article IV of this chapter;
- C.** Additions as noted in Article V of this chapter; and
- D.** Such portions as are hereinafter modified and amended, of which code not less than three (3) copies have been and now are filed in the Office of the Building Official and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date of which this article shall take effect, the provisions thereof shall be controlling within the limits of the City of Temple, Texas.

## **Article III. Exclusions of International Fire Code 2009**

The following provisions of the International Fire Code 2009 are excluded:

- A.** Exclude Chapter 3, "General Precautions Against Fire," Section 307, "Open Burning and Recreation Fires," but see Section 12-14, "Controlled Burning," herein.
- B.** Exclude Chapter 5, "Fire Service Features," Section 505, "Premises Identification," Subsection 505.1, "Address Numbers," but see Chapter 32, "Streets and Sidewalks," Section 32-9, "Residence and Building Address Numbering," from the city code.
- C.** Exclude Chapter 33, "Explosives and Fireworks," in its entirety, but see Section 12-13, "Fireworks," herein.



- D.** Exclude Chapter 5, “Fire Service Features,” Section 507, “Fire Protection Water Supplies”, Subsection 507.5, “Fire Hydrant Systems,”, but see Section 12-16, “Fire Hydrants,” herein.
- E.** Exclude Chapter 1, “Administration,” Section 105, “Permits,” Subsection 105.6, “Required operational permits,” Part 105.6.35, “Private Fire Hydrant Exception,” but see Section 12-16, “Fire Hydrants,” herein.
- F.** Exclude Chapter 3, “General Requirements,” Section 308, “Open Flames,” Subsection 308.3, “Open Flames,” Subsection 308.3, “Open Flames,” Part 308.4, “Open-flame Cooking Devices Exception,” but see Section 12-14 b, “Recreational Fires and Outside Fires for Domestic Purposes,” herein.
- G.** Exclude Chapter 9, “Fire Protection Systems,” Section 906, “Portable Fire Extinguishers,” Subsection 906.1, “Where Required Exception,” but see Section 12-9, Table 906.3 (1), “Fire Extinguishers for Fire Hazards,” and Section 12-10, Table 906.3 (2) “Flammable or Combustible Liquids with Depths of less than or equal to 0.25-inch.”

#### **Article IV. Revisions of International Fire Code 2009**

##### **Sec. 12-5. Adjustment to Chapter 1, “Administration.”**

- a) Adjustment to Chapter 1, “Administration,” Section 101, “General,” Subsection 101.1, “Title,” amended to read as follows:
  - 1) In the title insert “The City of Temple.”
  - 2) Replace all references to “the ICC Electrical Code” with “the currently adopted edition of the City of Temple Electric Code.”
- b) Adjust Chapter 1, “Administration,” Section 105, “Permits,” Subsection 105.1, “General,” Part 105.1.1, “Permits Required,” amend to read as follows:

Permits required by this code shall be obtained from the construction safety division of the city. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

- c) Adjustment to Chapter 1, “Administration,” Section 108, “Board of Appeals,” Subsection 108.1, “Board of Appeals Established,” amended to read as follows:

Refer to Chapter 7, “Buildings,” of the City of Temple Code of Ordinances.

**Sec. 12-6. Replace Table 906.3(1), “Fire Extinguishers for Class A Fire Hazards,” with the following table:**

<b>Fire Extinguisher Requirement Based on Square Footage</b>			
	<b>LIGHT (LOW) HAZARD OCCUPANCY</b>	<b>ORDINATRY (Moderate) HAZARD OCCUPANCY</b>	<b>EXTRA (High) HAZARD OCCUPANCY</b>
<b>Minimum Rated Single Extinguisher</b>	5 lb. ABC	5 lb. ABC	5 lb. ABC
<b>Maximum Floor Area Per Unit</b>	3,000 square feet	1,500 square feet	1,000 square feet
<b>Maximum Travel Distance to Extinguisher</b>	75 feet	75 feet	75 feet

**Sec. 12-7. Replace Table 906.3(2), “Flammable or Combustible Liquids with Depths of Less than or Equal to 0.25-inch,” with the following table:**

<b>TYPE OF HAZARD</b>	<b>BASIC MINIMUM EXTINGUISHER RATING</b>	<b>MAXIMUM TRAVEL DISTANCE TO EXTINGUISHERS (FEET)</b>
<b>Light (Low)</b>	5 lb, ABC	75 feet
<b>Ordinary (Moderate)</b>	5 lb, ABC	75 feet
<b>Extra (High)</b>	5 lb, ABC	75 feet

**Sec. 12-8. Adjustment to Chapter 33, “Explosives and Fireworks,” Section 3307, “Blasting,” Subsection 3307.1, “General,” amend to read as follows:**

Blasting operations shall be conducted only by approved, competent operators familiar with the required safety precautions and the hazards involved and in accordance with the provisions of NFPA 495 and Section 12-23, “Extrication Operations Regulations.”

**Sec. 12-9. Adjustment to Chapter 38, “Liquefied Petroleum Gases,” Section 3801, “General,” 3801.1 “Scope,” amend to read as follows:**

Storage handling and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such use shall comply with this chapter, the

Texas Railroad Commission Rules governing LP-gas and NFPA 58. Properties of LP-gases shall be determined in accordance with Appendix B of NFPA 58.

**Sec. 12-10. Adjustment to Appendix D, “Fire Apparatus Access Roads.”**

a) Section D103, “Minimum Specifications,” amended as follows:

1) Exclude Table D103.4, “Requirements for Dead-end Fire Apparatus Roads.”

2) Subsection D103.4, “Dead-ends,” amend to read as follows:

Public Dead-end fire apparatus access roads in excess of 150 feet (45,720 mm) in length shall be designed in accordance with the City of Temple Design and Development Manual.

3) Subsection D103.5, “Fire apparatus road gates,” amended to read as follows

5. The minimum gate width shall be 20 feet for gates serving as entrance and exit. Gates that are paired and separated by an island are permitted to be a minimum of 16 feet each (one for exit and one for entrance). All electric gates shall be equipped with a device approved by the Fire Code Official to be operated by a designated emergency radio frequency and have a separate manual release. This release will be used by Temple Fire & Rescue personnel for emergency access in the event of a power failure. Any manual release devices used for emergency access to a property shall be approved by the fire code official. Gates that are manned 24 hours a day and 7 days a week are exempt from the radio frequency device, however must have a Fire Department emergency manual release. All existing gates not in compliance with this standard must meet the standard by May 2nd 2014 or be locked in the open position until such time as it can comply with the standard.

4) Adjustment to Section D103.6 Signs amended to read as follows:

Where required by the fire code official, private fire apparatus access roads shall be marked with permanent NO PARKING—FIRE LANE signs complying with Figure D103.6. Signs shall have a minimum dimension of 12 inches (305 mm) wide by 18 inches (457 mm) high and have red letters on a white reflective background. Signs shall be posted on both sides of the private fire apparatus road, where the width of the road surface is less than 28 feet. Obstructions to a fire access roadway such as traffic calming devices may be approved by the fire code official when; such traffic calming devices as lane separating



islands, boulevards, and roundabouts have a minimum back of curb to back of curb distance of 18 feet on each side of the obstruction with signs placed along the obstruction. When approved by the fire code official, fire apparatus access roads may be designated by painting the curb or roadway with a 6-inch red strip with white 4 inch lettering of NO PARKING FIRE LANE every 30 - 40 feet.

b) Section D106, “Multiple-Family Residential Developments,” amend to read as follows:

- 1) D106.1, “Projects having 1-75 dwelling units.” Multiple-family residential projects having 1-75 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the city’s Design & Development Standards Manual.
- 2) D106.2, “Projects having 75-150 dwelling units.” Multiple-family residential projects having more than 75-150 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual. The exception to this sub-section is excluded. See Article II of this chapter.
- 3) D106.3, “Projects having 151-300 dwelling units.” Multiple-family residential projects having more than 151-300 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual.
- 4) D106.4, “Projects having 301 or more dwelling units.” Multiple-family residential projects having 301 or more dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual.

c) Adjustment to Section D107, “One- or Two- Family Dwelling Residential Developments” amend to read as follows:

- 1) D107.1, “Developments having 1-75 dwelling units.” One- or Two-family dwelling residential development having 1-75 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual.
- 2) D107.2, “Development having 76-150 dwelling units.” One- or Two- Family residential having 76-150 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City’s Design & Development Standards Manual. The exception to this subsection is excluded. See Article II of this chapter.

- 3) D107.3, “Developments having 151-300 dwelling units.” One- or Two- Family residential having more than 151-300 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City’s Design & Development Standards Manual.

## **Article V. Additions to International Fire Code 2009**

### **Sec. 12-11. Fireworks**

#### *A. Definitions:*

*Distributor* means a person who:

- a. imports fireworks into this state; or
- b. sells fireworks to:
  1. a jobber, retailer, or other distributor for resale; or
  2. a holder of a single public display permit, a multiple public display permit,  
or another fireworks permit.

*Fireworks* means a composition or device:

1. designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and
2. defined by 49 C.F.R. Section 173.56(j)(1996).

*Fireworks 1.3G* means a large fireworks device:

1. primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and
2. classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

*Fireworks 1.4G* means a small fireworks device:

1. primarily designed to produce visible or audible effects by combustion,  
deflagration, or detonation;
2. that complies with the construction, labeling, and chemical composition  
requirements of the United States Consumer Product Safety Commission in  
16 C.F.R. Part 1507 (1996), or the most recently adopted version of  
that  
rule; and

3. that is classified by the department in 49 C.F.R. Part 173 (1996).

*Illegal fireworks* means a fireworks device possessed, sold, manufactured, discharged, or transported in violation of this chapter.

*Jobber* means a person who purchases fireworks only for resale to retailers.

*Manufacturer* means a person, firm, corporation, or association who makes fireworks.

*Person* means an individual or entity, including an owner, manager, officer, employee, or occupant.

*Public display* means the igniting of Fireworks 1.3G for public or private amusement.

*Pyrotechnic operator* means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

*Pyrotechnic special effects operator* means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

*Retailer* means a person who purchases fireworks for resale only to the general public.

B. *Exemptions:*

This article does not apply to:

- a. a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996).
- b. a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models.
- c. the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;
- d. the use of a fusee or a railway torpedo by a railroad;
- e. the sale of blank cartridges for:
  1. use in a radio, television, film or theater production;



2. a signal or ceremonial purpose in an athletic event; or
3. an industrial purpose; or

f. the use of a pyrotechnic device by a military organization.

- C. *General prohibition against possession, sale, manufacture, discharge, or transportation.* Except as otherwise specifically provided in this article, it shall be unlawful for any person to possess, sell, manufacture, discharge, transport, or otherwise assemble, store, receive, keep, offer or have in his possession with intent to possess, sell, manufacture, transport, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description.
- D. *Permitted transportation.* It shall be lawful for any distributor, jobber, manufacturer, pyrotechnic operator, pyrotechnic special effects operator, or retailer to transport fireworks in accordance with the interstate commerce commission regulations regarding the transportation of explosives and other dangerous articles by motor, rail, and water.
- E. *Illegal fireworks as a nuisance; seizure and destruction, etc.* The presence of any fireworks within the jurisdiction of the city in violation of this section is hereby declared to be a common and public nuisance. The fire code official is directed and required to seize and cause to be safely destroyed any fireworks found in violation of this article and any member of the fire prevention division of the Temple Fire & Rescue Department or any police officer of the city or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the fire code official can be notified in order that such fireworks may be seized and destroyed in accordance with the terms of this section. Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city or the fire code official, or both, for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the jurisdiction of the city and to aid the fire code official in the discharge of his duties and to particularly prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.
- F. *Section provisions to apply within five thousand feet of the city limits.* This section shall also be applicable and in force within the area immediately adjacent and contiguous to the city limits of the City of Temple and extending for a distance outside the city limits for a total of five thousand (5,000) feet, and it shall be unlawful to do or perform any act in violation of this Article within such area of five thousand (5,000) feet outside the city limits; provided that this Article shall not apply within any portion of such five thousand-foot area which is contained within the territory of any other municipal corporation.

- G. *Right of entry to enforce section.* The fire code official is hereby authorized to enter any building where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks; but such authority does not include the right to enter a private dwelling or apartment.
- H. *Public displays; when permitted.* A public display of fireworks shall be-permitted when made in compliance of the terms and conditions of this article.
- I. *Application for permit.* Any adult person or any firm, co-partnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the fire code official at least seventy-two (72) hours in advance of the date of the proposed display. No city permit shall be issued until a permit for said purposes has been issued by the State of Texas.
- J. *Issuance or denial and term of permit; permit non-transferable.* It shall be the duty of the fire code official or his designee to make an investigation as to whether the display as proposed by the applicant for a permit under this article shall be of such a character that it may be hazardous to property or dangerous to any person, and he shall, in the exercise of reasonable discretion, grant or deny the application, subject to the conditions prescribed in this section. In the event the application is approved, a permit shall be issued for the public display by the fire code official. The fire code official shall determine what fire protection safety measures will be required before, during and after the display and it is the responsibility of the permittee to make sure the fire protection measures are enforced, such permit shall be for a period of time designated on the permit but can be extended by the fire code official. The permit is non-transferable and shall only be good for one display. In the event the permit is denied by the fire code official, he shall notify the applicant of the denial, in writing.
- K. *Insurance or bond required.* The applicant for a display permit under this section shall, at the time of making application, furnish proof that he carries compensation insurance for his employees, as provided by the laws of this state, and he shall file with the fire code official a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than one million dollars (\$1,000,000) issued by an insurance carrier authorized to transact business in the state, for the benefit of the person named therein as assured, as evidence of ability to respond to damages in at least the amount of one million dollars (\$1,000,000), such policy to be approved by the City of Temple. In lieu of insurance, the applicant may file with the fire code official, a bond in the amount of one million dollars (\$1,000,000) issued by an authorized surety company approved by the City of Temple, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant or his agents, servants, employees, or subcontractors in the

presentation of the public display. The City of Temple shall also be designated as an insured by the insurance policy and bonded by the bond.

- L. *Only aerial displays permitted.* Any fireworks display authorized under this article shall be limited to an aerial display.
- M. *Storage of material prohibited in the city.* The material to be used for a public display authorized by this article shall not be stored within the city limits, but shall be brought in on the date of the public display and then shall be taken immediately to the place of display for further handling and storage; except that such materials may be stored within the city limits in a secured storage area designated by the fire code official.
- N. *Hazardous conditions prohibited.* Any persons overseeing a display of fireworks under this article shall be a competent, adult person, an experienced pyrotechnic operator, and approved by the fire code official. No person shall handle fireworks at a public display unless such person has been approved by to do so by the fire code official. The names of all experienced pyrotechnic operators shall be designated on the permit issued for the public display.
- O. *Firefighter to be present.* For each public display of fireworks under this section, not less than two (2) firefighters of the city shall be in attendance during the display. The expense of such firefighters at the display shall be borne by the applicant for the permit.

## **Sec. 12-12. Controlled Burning**

- a) *Burning of debris and other inflammable materials, generally.*
  - 1) Permit. It shall be unlawful for any person to burn trash, brush, tree limbs, grass, trees, leaves, paper, boards, planks, lumber, or any other character of debris or inflammable materials whatsoever in the city, except in an incinerator or container which has been approved, in writing, by the fire code official or his designee. An exception shall be considered by the fire code official on an individual basis when and after the Texas Commission on Environmental Quality (T.C.E.Q.) has issued, in writing, a permit to so burn debris and other inflammable materials.
    - i. A copy of the T.C.E.Q. letter of determination or permission to conduct a controlled burning must be presented to the fire code official or his designee.
    - ii. The fire code official or his designee shall inspect the location of a controlled burn and shall determine if the burn can be safely conducted before any actual burning occurs.



- iii. The fire code official may require the following, depending on conditions found during the controlled burn site inspection:
  - a. A specified number of individuals be present with fire extinguishing devices and appliances;
  - b. Fire breaks to be cut around the area to be burned;
  - c. A trench to be dug and any burning be conducted in the trench; or
  - d. Any other requirements that the fire code official may deem necessary to safely conduct the controlled burn.
- 2) A controlled burn that the T.C.E.Q. has authorized and that has been approved by the fire code official must meet criteria as outlined in the remainder of this chapter.
- 3) Burning shall be commenced when the wind will carry smoke and other pollutants away from the city or any residential, recreational, commercial, or industrial area, navigable water, public road, or landing strip which may be affected by the smoke. Burning shall not be conducted when a shift in wind direction is predicted which could produce adverse effects to persons, animals, or property during the burning period. If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post a flag person on affected roads in accordance with the requirements of the Department of Public Safety.
- 4) Burning must be conducted downwind of or at least 300 feet from any structure located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.
- 5) Burning shall be conducted in compliance with the following meteorological and timing considerations:
  - i. The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard conditions. In no case shall the extent of the burn area be allowed to increase after this time.
  - ii. Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period. This information can be obtained by contacting

the Draughon-Miller Central Texas Regional Airport or the National Weather Service.

- 6) Per T.C.E.Q. Rules & Regulations, heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any material which may produce an unreasonable amount of smoke must not be burned.
- 7) Incinerator or container for fire. An incinerator or container used for burning of any material mentioned in this section (12-20) shall be located so that smoke will not become a nuisance to occupants of surrounding building and such incinerator or container shall not create a hazard to surrounding property. All incinerators must meet any regulation set forth by the T.C.E.Q.
- 8) Any and all burning of debris and other inflammable materials will be extinguished immediately if determined by the fire code official to be unsafe or constituting a hazard to the environment or interferes with the reasonable use of any properties.
- 9) The fire code official is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

b) *Recreational Fire and Outside fires for domestic purposes.*

- 1) Open burning in approved containers shall be allowed without a permit at single-family homes, duplexes, and town homes, subject to the regulations contained herein.
- 2) Fires shall be limited to a maximum 3 feet diameter and 2 feet in height, must be contained in a non-combustible chimenea, outdoor fireplace, fire pit, or other method approved by the fire code official.
- 3) All openings in the container or fire pit must be covered with wire mesh or other screening materials that will prevent the passage of sparks and ember.
- 4) Fires must be kept at least 10 feet from any structure or combustible exterior wall.
- 5) Fires must be constantly attended.
- 6) No such fire or container used for an open burning may be used on any porch, deck, balcony, or other portion of a building; within any room space; or under any building overhang.

- 7) The burning of yard waste, leaves, brush, vines, evergreen needles, branches smaller than 3 inches in diameter, untreated lumber, garbage, paper products, or anything other than firewood as set forth herein is prohibited.
  - 8) The fire code official, police officer, or code enforcement officer may order any open fire, or use of a chimenea, outdoor fireplace, or fire pit which creates a nuisance to be extinguished.
  - 9) All chimineas must be extinguished by 1:00 A.M.
- c) *Burning of garbage, petroleum products and motor vehicles prohibited.* The burning of garbage in any form, or petroleum products, or automobiles or other motor vehicles or any part thereof for wrecking or salvage purposes in or on any lot or other premises within the city limits is hereby prohibited.
- d) *Fire prohibited in streets, alleys and on or in public property.* It shall be unlawful for any person to light or have lighted any fire in or on any street, alley, thoroughfare, or public property.

## **Sec. 12-13. Private Fire Apparatus Access Road and Fire Lanes**

### *a) Maintenance*

- 1) A property owner shall at all times maintain and keep in good repair all private apparatus access roads and fire lanes on the premises.
- 2) The owner shall maintain all signs and/or markings in good condition and legible at all times.

### *b) Abandonment of Private Fire Apparatus Access Roads and Fire Lanes.* No owner or person in charge of any premises served by a private fire apparatus access road shall abandon or close any such fire apparatus access road without complying with the following procedure:

- 1) A request to the fire code official shall be made in writing by the owner stating the reason for abandonment of the private fire apparatus access road;
- 2) The fire code official shall determine if said property is no longer subject to the requirements of this code;
- 3) The fire code official shall either approve or deny the request for abandonment and notify the owner in writing within 10 days of receiving the request; and
- 4) No private fire apparatus access road may be abandoned until the fire code official has approved the abandonment, in writing.



- c) *Authority to Determine Location.* The locations of fire lanes/private apparatus access roads shall be determined by the fire code official of the City of Temple or his designated representative, hereinafter called “the authority,” in conformity with the provisions of this article.
- d) *Location of Private Fire Apparatus Access Roads and Fire Lanes.* No building, other than single-family or two-family dwellings, shall be constructed so that any part of the perimeter of the building is greater than one hundred and fifty (150) feet from a public way or public place unless the owner or property manager constructs and maintains a private apparatus access road or fire lane having a minimum width of twenty (20) feet and a minimum overhead clearance throughout of no less than thirteen (13) feet six (6) inches and terminating within one hundred and fifty (150) feet from the furthestmost point of said building. The same being reflected on the first plat of the property.
- e) *Restrictions.*
  - 1) Private apparatus access road or fire lanes shall not be used as loading zones.
  - 2) There shall be no parking in any private apparatus access road or fire lane at any time.
- f) *Posting of Signage and Markings for Fire Lanes.*
  - 1) All required fire lanes shall be conspicuously marked and shall have signage posted that shall read “NO PARKING FIRE LANE,” and all required fire hydrants on private property shall be marked “Fire Hydrant—Do Not Block.”
  - 2) Signage can be either rectangular signs or red striping; this to be determined by fire code official.
    - i) Rectangular signs shall be a minimum of 12” width x 18” height. They will have a white background with red lettering and be made of reflective material.
    - ii) Striping will consist of a 6” wide red strip with 4” high white letters.
  - 3) Required fire lane signage shall be placed no less than thirty (30) feet and no greater than forty (40) feet apart.
  - 4) Required fire hydrant markings shall be placed on both sides of a hydrant and at a distance of no less than fifteen (15) feet from the hydrant.
- g) *Private Dead-end Fire Apparatus Access Roads.* Private dead-end fire apparatus access roads in excess of 150 feet (45 720mm) in length shall be provided with a 120 foot hammerhead, 60 foot “Y”, or 94 foot diameter cul-de-sac in accordance with figure D103.1 of the 2009 International Fire Code.

## **Sec. 12-14. Fire Hydrants**

**A. Authority to determine location.** The fire chief or his designee, hereinafter called “the authority,” shall determine the location of fire hydrants in conformity with the provisions of this article.

**B. Fire hydrants; location.**

- (1) As residential zoned property is developed, fire hydrants shall be located at a maximum spacing of six hundred (600) feet as measured along the length of the roadway and no part of any structure shall be farther than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose would be laid.
- (2) As non-residential zoned property is developed, fire hydrants shall be located a maximum spacing of three hundred (300) feet as measured along the length of the roadway and no part of any structure shall be further than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose is laid.
- (3) Spacing of hydrants along roadways designated by the City of Temple as expressways and major arterials will be required on both sides of the roadway with the maximum distance of 600 feet for residential and 1200 feet for non-residential zoned properties, on each side of the roadway. No part of any structure shall be further than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose is laid.

**C. Restrictions.**

- (1) Type of fire hydrants. All required fire hydrants shall be of the national standard three-way breakaway type no less than five and one-fourth (5 ¼) inches in size and shall conform to the provisions of the latest American Water Works Association (A.W.W.A.) specifications C-502 and shall be placed upon approved water mains of no less than six (6) inches in size.
- (2) Valves shall be placed on all fire hydrant leads.
- (3) Required fire hydrants shall be installed in such a manner that the breakaway point will be more than three (3) inches, and not greater than five (5) inches, above the ground surface.
- (4) A spacing of no less than eighteen (18) inches shall be provided between center of the barrel of the large steamer connection and the finished grade surface.

- (5) No fire hydrant located on a six-inch (6 inch) dead-end water main shall be located more than 1,800 ft. from a six-inch (6 inch) or greater main.
- (6) No six-inch looped water main shall exceed three thousand five hundred (3,500) feet in length.
- (7) Fire hydrants shall be installed on a water main that is separate from the domestic water supply, except when it is determined by the fire code official that the required maximum one (1) hour demand plus the needed minimum fire flow of one thousand (1,000) gallons per minute will be met by alternate installation.
- (8) Fire hydrants located on public property shall be located a minimum of two (2) feet and a maximum of four (4) feet behind the curb line.
- (9) Protection of fire hydrants. All fire hydrants placed on private property shall be adequately protected by either curb stops or concrete posts or other methods, as approved by the fire code official. Such stops or posts shall be maintained by the property owner or manager
- (10) All fire hydrants shall be installed so that the steamer connection faces the fire lane or street.
- (11) Fire hydrants, when placed at intersections or access drives to parking lots, when practical, shall be placed so that no part of a fire truck connected to the hydrant will block the intersection or parking lot access.
- (12) Obstructions. Post, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrant from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.
- (13) Fire hydrants located on private property shall be accessible to the fire department at all times and free of any type of obstruction that would hinder their use (i.e. vegetation). A 3-foot clear space shall be maintained around the circumference of fire hydrants.
- (14) The fire code official shall have the authority to approve a variance of up to 10 percent of the footage requirements found at Sec. 12-23.B. parts (a) and (b).

#### ***D. Maintenance***



(1) All fire hydrants shall be inspected, flushed and painted at least once annually and such inspections, flushing and painting shall be the responsibility of Temple Fire & Rescue. Fire hydrants shall be color coded as follows:

- i. Less than 500 gpm – Red Bonnet
- ii. 500-999 gpm – Yellow Bonnet
- iii. 1000-1499 gpm – Green Bonnet
- iv. Over 1500 gpm – Blue Bonnet

(2) Any maintenance or repairs required to keep a fire hydrant in proper working order, other than the maintenance found at a subsection above, shall be the responsibility of the property owner, or manager of the property on which the fire hydrant is located.

**E. Use; opening and closing.** The chief or his designee shall prescribe the manner in which all fire hydrants shall be opened or closed. No person shall open or close any fire hydrant unless authorized to do so by the chief or his designee.

## **Sec. 12-15. Extraction Operations Regulations**

### **(a) Purpose.**

- (1) In order to promote the health, safety, and welfare of those who work or reside near extraction operations, and to protect air quality and the water resources of the city, the regulations in this section are applicable to extraction operations.
- (2) This section shall apply to all extraction operations conducted within the territorial limits of the city and in the extraterritorial jurisdiction within 5000 feet of said territorial limits.

### **(b) Definitions.**

In this section:

*Blasting* shall mean the practice or occupation of extracting heavy masses of rock, or other materials imbedded in the ground, by means of explosives or blasting agents.

*Extraction operations* shall mean the use of a lot or tract of land primarily for extraction of materials (including, but not limited to, limestone, rock, sand, gravel, or soil, but not oil or natural gas).

*Extraction site* shall mean the location of materials or rock removal or extraction operations as delineated by a site plan or a certificate of occupancy.

*Regulatory authority* shall mean The Temple Fire & Rescue Department

(c) *Blasting*. All blasting activity that falls within the scope of this Article shall comply with the following provisions;

(1) Permit required.

- i. An appropriate blasting or explosives permit must be acquired from the regulatory authority prior to any blasting activity or preparation for blasting activity at an extraction site.
- ii. A blasting or explosives permit will authorize blasting for the extraction of materials (e.g., rock or stone) only at the extraction site designated on the permit.
- iii. The extraction site operator, or designated representative, may apply for a blasting or explosives permit in accordance with the following procedures:
  1. The applicant shall submit a completed permit application form and fee, as required by the regulations contained in the 2009 International Fire Code, as adopted and amended by the City Council. The permit fee shall be in an amount set by resolution of the City Council.
  2. The fire code official shall have thirty (30) days in which to approve or deny a permit application.
  3. Any party aggrieved by the denial of a permit or inaction by the fire code official may appeal such decisions to the Building Board of Appeals, in writing. Upon receipt of an appeal notification, the Board shall take the actions required to review the appeal, in accordance with the 2009 International Fire Code.
  4. The application shall contain the following information:
    1. Name of the operator(s) conducting the blasting;
    2. Identification of extraction site;
    3. Description of conditions, if any, which may cause possible adverse blasting effects;
    4. Normal extraction operations schedule;
    5. Type of explosives or blasting agents to be used;
    6. Type of stemming;

7. Name(s) of licensed blasters on the job;
8. Copy of Mine Safety Health Administration (MSHA) Certificate of Training (Form 5000-23) for all personnel involved in the extraction operations.
9. Copy of Insurance Certificate of Blasting Liability Coverage

(2) Insurance required.

- i. Before a permit is issued, the applicant shall obtain and maintain general liability insurance having limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined with one million dollars (\$1,000,000) or greater annual aggregate throughout the permitted period for the purpose of the payment of all damages to persons or property which arise, or are caused by, the conduct of any act or omission authorized by the permit. The general liability insurance shall name the City of Temple as an additional insured with a waiver of subrogation in favor of the City of Temple. The policy shall contain a provision requiring the insurance company to furnish the City of Temple with written notification on any cancellation or nonrenewal of the policy thirty (30) days prior to the cancellation date or inception date, whichever ever the case may be.
- ii. Evidence of compliance with this requirement shall be considered as having been met when the policy, a copy thereof, or a certificate of insurance has been filed with, and approved by, the fire code official. Such policy shall include an endorsement that the fire code official shall be notified at least thirty (30) days in advance in the event the policy or policies are canceled. The City may cancel a permit for any violation of this section.

(3) Regulatory Compliance. All blasting operations located within an extraction site shall comply with the applicable provisions of the 2009 International Fire Code and with this section, as well as all applicable local, state, and federal regulations concerning industrial noise and dust levels and applicable drainage, water and air standards.

(4) Annual permit renewal required.

- i. In addition to compliance with local, state, or federal regulations, the operator shall be required to comply with the provisions of this section by renewing a permit annually before the anniversary date of the permit.



ii. Upon renewal, the extraction site operator shall:

1. certify in writing that the blasting activities at the permitted extraction site are anticipated to remain materially unchanged from the activities described on the permit application; or
2. provide all relevant information relating to material changes at the permitted extraction site to the fire code official for review;
3. pay the annual permit fee; and
4. file a current certificate of insurance which complies with this section.

iii. A blasting permit will remain in force and effect, provided that the blasting activities at the extraction site specified in the permit are anticipated to remain materially unchanged, the permittee has complied with the requirement of this section during the preceding permit year, and the annual renewal requirements have been met.

(5) Hours of operation. The hours during which extraction operations may take place by blasting shall be at any time during the hours between 8:00 a.m. and 5:00 p.m. Extraction by blasting shall be prohibited on Saturdays, Sundays, and legal holidays unless a variance is obtained from the fire code official based upon public safety concerns or extraordinary economic considerations.

(6) Monitoring of Blasting.

i. The extraction site operator shall monitor each blast to accumulate data with respect to seismographic and air blast effects of the blasting activity, as required by state and federal law. The extraction site operator shall conduct independent monitoring of blasting events, if directed, and to the extent and frequency reasonably required by the regulatory agency.

ii. Information generated in the form of reports or other data from this monitoring shall be submitted to the fire code official within seventy-two (72) hours of each blasting event.

iii. Monitoring information shall include:

1. actual date and time of the blast;
2. type of explosives or blasting agents used;
3. technical data and material safety data sheets for all explosives or blasting agents used;
4. total pounds of explosives used in each blast;
5. number, spacing, stemming and depth of holes;

6. maximum pounds per delay;
7. firing sequence, delay sequence, and typical hole load diagrams;
8. location and distance of extraction operation from seismographs;
9. weather conditions at time and location of blast;
10. seismograph data;
11. and ground vibrations or air blast records which shall include:
  1. Type of instrument, sensitivity and calibration signal of certification of annual calibration.
  2. Exact location of instrument and the date, time and distance from the blast;
  3. Name of person and firm taking the reading as well as the person analyzing the seismic record; and
  4. The vibration and air blast level recorded.

(7) Safety Standards. The extraction site operator is responsible and required to comply with all applicable provisions of any state or federal law or applicable regulations promulgated by the Occupational Safety Health Administration (OSHA), Mine Safety Health Administration (MSHA), Alcohol, Tobacco, and Firearms (ATF), or any other executive agency of the state or federal government relating to use, handling, transportation, storage, or detonation of explosives or blasting agents.

(8) Records and Inspections

- i. The holder of a blasting permit shall make the extraction operations site available to the fire code official for inspection at all times during regular business hours.
- ii. The permittee shall retain a record of all blasts and monitoring information for at least five (5) years past the to include date of a blast.
- iii. All records, including monitoring records referenced in subsection (f)(iii) above, relating to blasting activities shall be made available to the fire code official during normal business hours within seventy-two (72) hours of request.

(d) *Control of Adverse Effects.*

(1) Air Blast (Noise) Limits. For the purpose of this section, the air overpressure and related noise generated by the use of explosives or blasting agents in extraction operations shall be measured by the air blast created thereby. Air blast shall not exceed 134 dB peak ( $\pm$  3dB) at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in subsection (e) of this section.

- (2) Ground vibration. In all blasting operations, except as otherwise authorized in subsection (e) below, the maximum ground vibration shall not exceed one (1) inch per second at the location of any dwelling.
- (3) Monitoring Requirement. The operator shall conduct monitoring to ensure compliance with the air blast standards and ground vibration standards. Air blast and ground vibration measurements of blasts must be performed to the extent required this section.
- (4) Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site beyond the area under the control of the operator.
- (5) Exception. The maximum air blast and ground-vibration standards of this section shall not apply at the following locations:
  - i. At structures owned by the permittee and not leased to another person;
  - ii. At structures owned by the permittee and leased to another person, if a written waiver by the lessee has been obtained.

#### **Sec. 12-16. Business Registration.**

- i. *Purpose*. Business registration is a procedure administered by Temple Fire & Rescue, in conjunction with the Utilities department, which assures that all businesses within the City of Temple are registered for 911 services, inspected and comply with all city codes.
- ii. *Registration prerequisite to doing business in the City of Temple*. All businesses shall comply with the registration requirements of this article as a precondition of initiating or continuing any business within the City of Temple. For the purpose of this article, the term “business” includes any commercial enterprise, school, church or governmental office located within the city limits. Each occupant of a building used by a business shall have responsibility for complying with the registration requirements of this section.
- iii. *Registration procedure*.
  - i. When a business owner applies for utilities he or she shall fill out a business registration form and return to Temple Fire & Rescue prior to the business receiving utilities or opening its doors for business.
  - ii. Registration or re-registration with the city is required prior to changing the name, ownership, operator, location, or use of an existing business.



## **Article VI. Miscellaneous**

### **Sec. 12-17. Establishment of limits of the fire district.**

Beginning at the point of intersection of the south line of Calhoun Avenue with the east line of North 5th Street; thence in southerly direction along the east line of North 5th Street to the south line of Barton Avenue; thence in a westerly direction along said south line of Barton Avenue to the point of intersection with the east right-of-way of the Gulf, Colorado and Santa Fe Railroad; thence in a southeasterly direction along the east line of South 9th Street, if extended; thence in a southerly direction with said line to the north line of Avenue D; thence in a easterly direction with said line to the east line of South 1st Street; thence in a southerly direction along said line to the north line of Avenue E; thence in an easterly direction along said line, if extended, to the west line of 6th Street, if extended; thence in a northerly direction along said west line of 6th Street, if extended, to the north line of Avenue A; thence in an easterly direction along said line to the west line of 8th Street; thence in a northerly direction with said line to the south line of Central Avenue; thence in a westerly direction with said line to the west line of 6th Street; thence in a northerly direction along said line to the south line of Adams Avenue; thence in a westerly direction along said line to the west line of 4th Street; thence in a northerly direction along said line to the south line of Barton Avenue; thence in a westerly direction along said line to the west line of 2nd Street; thence in a northerly direction along said line to the south line of Calhoun Avenue; thence in a westerly direction along said line to the point of beginning.

### **Sec. 12-18. Unauthorized use of fire apparatus.**

It shall be unlawful for any person, under any pretext whatever, other than for the purposes for which they were intended in Temple Fire & Rescue, to take or use any engine, truck, ladder, fire axe, or other apparatus belonging to or in possession of the department, or any member or company thereof, or to break, deface, or injure the same.

### **Sec. 12-19. Injuring or driving over fire hose.**

It shall be unlawful for any person to cut, deface, tear or otherwise injure, or drive any vehicle over any fire hose belonging to the City of Temple or any fire department that is providing mutual aid for the City of Temple.

### **Sec. 12-20. Reward for arrest and conviction of arsonists.**

The city hereby offers a reward of five hundred dollars (\$500) for the arrest and conviction of any person for the crime of arson committed within the city limits of the City of Temple. The sum of five hundred (\$500) is hereby appropriated out of any funds belonging to the city not already appropriated for some other purpose for the payment of such reward.

### **Sec. 12-21. New materials, processes or occupancies which may require permits.**

The fire chief or his designee shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those enumerated in this chapter. The fire chief or his designee shall post such lists in a conspicuous place in their offices, and distribute copies thereof to interested persons.

### **Sec. 12-22. Exemptions.**

Nothing contained in this Ordinance shall be construed as applying to the regular military or naval forces of the United States, the duly authorized militia of the State, or the police and fire departments of the city in the proper performance of their duties.

### **Sec. 12-23. Permit Fees.**

The city council shall, by resolution, set the amount of all permit fees required by this chapter. A copy of any resolution setting permit fees shall be maintained in the office of the fire code official.

### **Sec. 12-24. Enforcement.**

This chapter shall be enforced by the fire chief or his designee.

### **Penalties**

(a) *Criminal Offenses.* Any person or persons, firm or corporation which violates any of the provisions of this chapter may be deemed guilty of a misdemeanor and, upon conviction, shall be fined an amount not exceeding two thousand (\$2,000) dollars for each offense and each violation hereof shall be deemed a separate and distinct offense for each of said days and shall be punishable as such.

(b) The city attorney may seek remedies at law or in equity to prevent a violation of this chapter

~~(Ordinance No. 2011-4485, November 17, 2011)~~

(REVISED: Ordinance No. 2013-4586, May 16, 2013)

**CHAPTER 12**  
**FIRE PREVENTION AND PROTECTION**

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## **Chapter 12**

### **Fire Prevention and Protection**

#### **Article I. In General**

##### **Sec. 12-1. Definitions.**

For the purposes of this Chapter, and as used herein, the following terms will have the meanings as given in this Section:

*Air blast* means an airborne pressure wave resulting from the detonation of explosives.

*Blast* means a detonation of explosive materials or blasting agents.

*Blasting operations* includes blasting and blasting related activities, including, but not limited to, blasting explosives and preparing for blasts, drilling holes for the loading of explosives, loading explosives, setting up of blasting monitoring equipment, posting signs and flags related to blasting, rerouting traffic, erecting barricades, and setting up safety equipment prior to blasting.

*Blasting project* means each blast requiring a separate Fire Marshal inspection. Fire Marshal inspections will be required as deemed necessary by the Fire Marshal to protect the public's health, safety, or welfare or for the protection of property.

*City* means the City of Temple, Texas, the City Council of Temple, Texas, or their representative, employee, agent, or designee.

*City Attorney* means the City's city attorney appointed by the City Council or the City Attorney's designee.

*City Council* means the governing body of the City.

*City Manager* means the City's city manager appointed by the City Council or the City Manager's designee.

*City holidays* means a holiday observed by the City.

*Days* mean calendar days.

*Delay* means a distinct pause of pre-determined time between detonations of single charges or groups of charges.

*Distributor* means a person who:

(a) Imports fireworks into the State of Texas; or

(b) Sells fireworks to:

- (1) A jobber, retailer, or other distributor for resale; or
- (2) A holder of a single public display permit, a multiple public display permit, or any other type of fireworks permit.

*Extraction operations* means the use of a lot or tract of land primarily for extraction of materials (including, but not limited to, limestone, rock, sand, gravel, or soil, but not oil or natural gas).

*Extraction site* means the location of materials, rock removal, or extraction operations as delineated by a site plan or a certificate of occupancy.

*False alarm* means a fire alarm signal from a fire detection or fire alarm system that is not caused by fire, heat, or smoke.

*Fire apparatus access road* means a road that provides fire apparatus access from a fire station to a facility, building, or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane, and access roadway that may be used for access by a fire apparatus.

*Fire Chief* means the fire chief of Temple Fire & Rescue appointed by the City Manager and approved by the City Council or the Fire Chief's designee.

*Fire Marshal* means the Fire Marshal assigned by the Fire Chief or the Fire Marshal's designee.

*Fire lane* means a fire lane as defined by the International Code Council's (ICC) 2015 International Fire Code. This term includes specifically marked areas in public and private parking lots.

*Fire protection personnel* will be defined by Texas Government Code Section § 419.021, as amended.

*Fireworks* will be defined by 27 C.F.R. § 555.11, as amended.

*Fireworks 1.3G* means a large fireworks device:

- (a) Primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and
- (b) Classified as a 1.3G explosive by the United States Department of Transportation in 49 C.F.R. Part 173, as amended.

*Fireworks 1.4G* means a small fireworks device:



- (a) Primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;
- (b) That complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507, as amended; and
- (c) That is classified as a 1.4G explosive by the United States Department of Transportation in 49 C.F.R. Part 173, as amended.

*Jobber* means a person who purchases fireworks only for resale to retailers.

*Manufacturer* means a person who makes fireworks.

*Maximum peak particle velocity* or *maximum PPV* means the maximum peak particle velocity in any seismic trace at the dominant frequency to be allowed at a particular location.

*Peak particle velocity* or *PPV* means the maximum of the three ground vibration velocities measured in the vertical, longitudinal and transverse directions. Velocity units are expressed in inches per second (ips).

*Person* means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other entity or their legal representatives, agents, or assigns.

*Public display* means the igniting of Fireworks 1.3G for public or private amusement.

*Pyrotechnic operator* means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

*Pyrotechnic special effects operator* means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

*Retailer* means a person who purchases fireworks for resale only to the general public.

*Scaled distance* means a factor describing relative vibration energy based on distance and charge-per-delay. For ground vibration control and prediction purposes, scaled distance ( $D_s$ ) is obtained by dividing the distance of concern ( $D$ ) by the square root of the charge-per-delay ( $W$ ) :  $D_s = D/(W)^{1/2}$ .

*Sub-drilling* means the portion of the blasthole that is drilled below or beyond the desired excavation depth or limit. Sub-drilling is generally required to prevent the occurrence of high or tight areas of unfractured rock between blastholes.

*Stemming* means crushed stone, tamped clay or other inert earth material placed in the unloaded collar area of blastholes for the purpose of confining explosive charges and limiting rock movement and air overpressure.

*TCEQ* means the Texas Commission on Environmental Quality.

*Temple Fire & Rescue or the fire department* means the City's fire department.

*The route that a fire hose would be laid* means the routing of fire hose from either a public or approved on-site private fire hydrant to the fire apparatus along the length of the public roadway and approved fire apparatus access roads.

#### **Sec. 12-2. Appointment, qualifications, general powers, and duties of the Fire Chief.**

- (a) The Fire Chief of Temple Fire & Rescue will be appointed by the City Manager, with approval of the City Council. The Fire Chief must be skilled in the management of the fire department and in the conduct thereof and in the fighting and control of fires and conflagrations and must devote their entire time to the services of the fire department under such rules and regulations as may be promulgated by the City Manager and City Council from time to time.
- (b) The Fire Chief, under the direction of the City Manager, will have control of all fire personnel, stations, and apparatus in the City, will direct the fire department and preside over the same in its efforts to extinguish all fires and conflagrations and perform rescues, and must at all times be ready for all the services which are usually expected of an efficient fire department.

#### **Sec. 12-3. Appointment, qualifications, general powers, and duties of the Fire Marshal.**

- (a) The fire prevention and investigation division is hereby created. Such division will be in the Temple Fire & Rescue with the Fire Marshal being a member of that division and reporting directly to the Fire Chief.
- (b) The Fire Marshal will be appointed by the Fire Chief. The Fire Marshal must be skilled in investigations, inspections, and management and will devote their time to educating the public in fire safety while enforcing federal, state, and local laws, rules, and regulations as they pertain to fire prevention. Prior to being appointed to arson investigation duties, the Fire Marshal and any fire protection personnel must comply with all required state laws, rules, and regulations for arson investigators, including possessing a current peace officer license from the Texas Commission on Law Enforcement (TCOLE), if applicable.
- (c) When the Fire Chief or Fire Marshal determines that the condition of any premises creates a serious fire hazard dangerous to human life, either may order a utility company to disconnect the utility service until the hazardous condition is removed. In cases of emergency or in situations where a utility company does not respond to or comply with any such order, the Fire Chief or Fire Marshal has the authority to immediately disconnect or cause the disconnection of utility service. Any person whose property is affected by an act or an order by the Fire Chief or Fire

Marshal under this Section may appeal as provided by Sec. 12-6(c) (*Amendments to Chapter I, "Scope and Administration"*).

## **Article II. Adoption of the 2015 International Fire Code**

### **Sec. 12-4. Adoption of the 2015 International Fire Code.**

- (a) The 2015 International Fire Code, published by the International Code Council, as well as its Appendices B, D, E, F, G, H, I, and J, as this code and appendices now exist and as they may be revised from time to time, is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, save and except:
  - (1) Exclusions as noted in Article III of this Chapter;
  - (2) Amendments as noted in Article IV of this Chapter; and
  - (3) Additions as noted in Articles V and VI of this Chapter.
- (b) The provisions of the 2015 International Fire Code and its appendices B, D, E, F, G, H, I, and J, as modified and amended herein, are incorporated as fully as if set out at length herein from the date the adoption by City Council will take effect, and such provisions will be controlling within the limits of the City.
- (c) A copy of the adopted 2015 International Fire Code and its appendices will be kept on file in the office of the Building Official.

## **Article III. Exclusions from the 2015 International Fire Code**

### **Sec. 12-5. Exclusions from the 2015 International Fire Code.**

The following provisions of the 2015 International Fire Code are excluded:

- (a) Chapter 3, "General Requirements," Section 307, "Open Burning, Recreational Fires and Portable Outdoor Fireplaces," but see Sec. 12-13, "Outdoor Burning," herein.
- (b) Chapter 5, "Fire Service Features," Section 507, "Fire Protection Water Supplies," Subsection 507.5, "Fire Hydrant Systems," but see Sec. 12-15, "Fire Hydrants," herein.
- (c) Chapter 9, "Fire Protection Systems," Section 906, "Portable Fire Extinguishers," Subsection 906.3, "Size and distribution," Table 906.3(1), "Fire Extinguishers for Class A Fire Hazards" and Table 906.3(2), "Flammable or Combustible Liquids with Depths of Less Than or Equal to .25-Inch," but see Sec. 12-7, replacing the 2015 International Fire Code, Table 906.3(1), "Fire Extinguishers for Class A Fire Hazards," and Sec. 12-8, replacing the 2015 International Fire Code, Table 906.3(2) "Flammable or Combustible Liquids with Depths of Less than or Equal to 0.25-inch," herein.



- (d) Chapter 56, “Explosives and Fireworks,” Section 5607, “Blasting,” Subsection 5607.4, “Restricted Hours,” but see Sec. 12-16, “Extraction Operations Regulations,” and Sec. 12-17, “Blasting Operations Regulations,” herein.
- (e) Chapter 56, “Explosives and Fireworks,” Section 5607, “Blasting,” Subsection 5607.5, “Utility notification,” but see Sec. 12-17, “Blasting Operations Regulations,” herein.

#### **Article IV. Amendments to the 2015 International Fire Code**

##### **Sec. 12-6. Amendments to Chapter 1, “Scope and Administration” and Chapter 2, “Definitions.”**

- (a) Chapter 1, “Scope and Administration,” Section 101, “Scope and General Requirements,” Subsection 101.1, “Title,” is amended to read as follows:

These regulations shall be known as “the Fire Code of The City of Temple,” hereinafter referred to as “this code.”

- (b) Chapter 1, “Scope and Administration,” Section 105, “Permits,” Subsection 105.1, “General,” Part 105.1.1, “Permits Required,” is amended to read as follows:

Permits required by this Chapter must be obtained from the department or division of the City designated to issue building permits or the fire department, as applicable. Permit fees, if any, must be paid prior to the issuance of the permit. Issued permits must be kept on the premises designated by the City and be readily available for inspection by the Fire Marshal.

- (c) Chapter 1, “Scope and Administration,” Section 108, “Board of Appeals,” is amended to read as follows:

The City of Temple Building Board of Appeals, as established by Section 7-2, Chapter 7, Buildings, of the City of Temple Code of Ordinances, has the authority and duty to hear appeals brought under this Chapter. Such appeals will be heard and decided as provided by, Chapter 7, Buildings, of the City of Temple’s Code of Ordinances.

A person may appeal a decision of the Fire Department, Fire Chief, or Fire Marshal if:

1. The person believes that the intent of this Chapter or the 2015 International Fire Code or the policies or rules legally adopted hereunder have been incorrectly interpreted or the provisions of this Chapter or the 2015 International Fire Code do not fully apply to a situation or circumstance; or
2. The person is proposing an equivalent method of protection or safety that is not authorized by Fire Department, Fire Chief, or Fire Marshal.

The Building Board of Appeals does not have the authority to waive requirements of this Chapter or the 2015 International Fire Code.

- (d) Chapter 1, “Scope and Administration,” Section 111, “Stop Work Order,” Subsection 111.4, “Failure to Comply,” is amended to read as follows:

Any person who continues any work after having been issued a stop work order commits an offense under this Chapter, unless the person is performing such work as the person is directed by the City to remove a violation or unsafe condition.

- (e) Chapter 2, “Definitions,” Section 202, “General Definitions,” definition of the word “Blaster” is amended to read as follows:

A person qualified in accordance with Section 5601.4 to be in charge of and responsible for the loading and firing of a blast.

**Sec. 12-7. Replacement of Table 906.3(1), “Fire Extinguishers for Class A Fire Hazards.”**

Chapter 9, “Fire Protection Systems,” Section 906, “Portable Fire Extinguishers,” Section 906.3, “Size and Distribution,” Table 906.3(1), "Fire Extinguishers for Class A Fire Hazards," is amended by replacing Table 906.3(1) with the following table:

**TABLE 906.3(1)**  
**FIRE EXTINGUISHERS FOR CLASS A FIRE HAZARDS**

	<b>LIGHT (LOW) HAZARD OCCUPANCY</b>	<b>ORDINARY (Moderate) HAZARD OCCUPANCY</b>	<b>EXTRA (High) HAZARD OCCUPANCY</b>
<b>Minimum Rated Single Extinguisher</b>	5 lb. ABC	5 lb. ABC	5 lb. ABC
<b>Maximum Floor Area Per Unit</b>	3,000 square feet	1,500 square feet	1,000 square feet
<b>Maximum Travel Distance to Extinguisher</b>	75 feet	75 feet	75 feet

**Sec. 12-8. Replacement of Table 906.3(2), “Flammable or Combustible Liquids with Depths of Less than or Equal to 0.25-inch.”**

Chapter 9, “Fire Protection Systems,” Section 906, “Portable Fire Extinguishers,” Section 906.3, “Size and Distribution,” Table 906.3(2), "Flammable or Combustible Liquids with Depths of Less

than or Equal to 0.25-Inch," is amended by replacing Table 906.3(2) with the following table:

**TABLE 906.3(2)**  
**FLAMMABLE OR COMBUSTIBLE LIQUIDS WITH DEPTHS OF LESS THAN OR**  
**EQUAL TO 0.25-INCH<sup>a</sup>**

<b>TYPE OF HAZARD</b>	<b>BASIC MINIMUM EXTINGUISHER RATING</b>	<b>MAXIMUM TRAVEL DISTANCE TO EXTINGUISHERS (FEET)</b>
<b>Light (Low)</b>	5 lb. ABC	75 feet
<b>Ordinary (Moderate)</b>	5 lb. ABC	75 feet
<b>Extra (High)</b>	5 lb. ABC	75 feet

For SI: 1 inch = 25.4 mm, 1 foot = 304.8. m

<sup>a</sup> For requirements on water-soluble flammable liquids and alternative sizing criteria, see Section 5.5 of NFPA 10.

**Sec. 12-9. Amendments to Chapter 56, “Explosives and Fireworks,” Section 5607, “Blasting,” Subsection 5607.1, "General."**

- (a) Chapter 56, “Explosives and Fireworks, Section 5607, “Blasting,” Subsection 5607.1, “General,” is amended to read as follows:

Blasting and extraction operations must only be conducted by approved, competent operators familiar with the required safety precautions and the hazards involved and in accordance with the most current provisions of NFPA 495, Sec. 12-16, “Extraction Operations Regulations,” and Sec. 12-17, “Blasting Operations Regulations.”

- (b) Chapter 56, “Explosives and Fireworks, Section 5607, “Blasting,” Subsection 5607.2, “Manufacturer’s instructions,” is amended to read as follows:

Blasting and extraction operations must be performed in accordance with the instructions of the manufacturer of the explosive materials being used.

**Sec. 12-10. Amendment to Chapter 61, “Liquefied Petroleum Gases,” Section 6101, “General,” Subsection 6101.1,“Scope.”**

Chapter 61, “Liquefied Petroleum Gases,” Section 6101, Subsection 6101.1, “Scope,” is amended to read as follows:

Storage handling and transportation of liquefied petroleum gas (LP-gas) and the installation of



LP-gas equipment pertinent to systems for such uses must comply with this Chapter, the Texas Railroad Commission's rules and regulations governing LP-gas, and NFPA 58. Properties of LP-gases will be determined in accordance with Appendix B of NFPA 58.

**Sec. 12-11. Amendments to Appendix D, "Fire Apparatus Access Roads."**

- (a) Appendix D, "Fire Apparatus Access Roads," Section D103, "Minimum Specifications," is amended as follows:

- (1) Subsection D103.4, "Dead ends," is amended to read as follows:

Public dead-end fire apparatus access roads must be designed in accordance with the City's design and development standards.

- (2) Table D103.4, "Requirements for Dead-end Fire Apparatus Roads" is deleted.

- (3) Subsection D103.5, "Fire apparatus access road gates," Paragraph 1, is amended to read as follows:

1. The minimum gate width must be twenty (20) feet for gates serving as an entrance or exit. Gates that are paired and separated by an island are permitted to be a minimum of sixteen (16) feet each (one for exit and one for entrance).

- (4) Subsection D103.5, "Fire apparatus access road gates," Paragraph 5, is amended to read as follows:

5. All electric gates must be equipped with a device approved by the Fire Marshal to be operated by a designated emergency radio frequency and have a separate manual release and Knox Gate and Key Switch. All manual gates must be equipped with a Knox padlock. Any manual release devices, Knox Gate and Key Switches, and Knox padlocks used for emergency access to a property must be approved by the Fire Marshal. Gates that are manned twenty-four (24) hours a day and seven (7) days a week are exempt from the radio frequency device requirement but must have a separate manual release and Knox and Gate Key Switch or Knox padlock as provided by this Section. All existing gates not in compliance with this Section must meet the requirements of this Section by July 1, 2021 and if not in compliance after this date, be locked in the open position until they comply with this Section's requirements.

- (5) Section D103.6, "Signs," is amended to read as follows:

- A. Where required by the Fire Marshal, fire apparatus access roads must be marked with signs, painted curbs, or striping. Any fire apparatus access road markings must be in accordance with the fire department's policy for such markings.

- B. Islands that separate lanes and boulevards and roundabouts that obstruct fire apparatus

access roads may be approved by the Fire Marshal where there is a minimum back of curb to back of curb distance of eighteen (18) feet on each side of the obstruction with signs placed along the obstruction.

- (b) Section D106, “Multiple-Family Residential Developments,” is amended to read as follows:

Multiple-family residential projects must have residential subdivision Entrance/Access roads designated as required by the City’s design and development standards.

- (c) Section D107, “One- or Two- Family Residential Developments” is amended to read as follows:

One- or two-family dwelling residential developments must have residential subdivision Entrance/Access roads designated as required by the City’s design and development standards.

## **Article V. Additions to the 2015 International Fire Code**

### **Sec. 12-12. Fireworks.**

- (a) This Section does not apply to:

- (1) A toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain no more than an average of twenty-five hundredths (.0025) of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173, as amended;
  - (2) A model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;
  - (3) The sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;
  - (4) The use of a fusee or a railway torpedo by a railroad;
  - (5) The sale of blank cartridges for:
    - A. Use in a radio, television, film, or theater production;
    - B. A signal or ceremonial purpose in an athletic event; or
    - C. An industrial purpose; or
  - (6) The use of a pyrotechnic device by a military organization;
- (b) Unless otherwise provided in this Section, it is unlawful for any person to possess, sell, manufacture, discharge, transport, or otherwise assemble, store, receive, keep, offer or have in

their possession with intent to possess, sell, manufacture, transport, discharge, cause to be discharged, ignite, detonate, fire, or otherwise set in action any fireworks of any description.

- (1) It is an affirmative defense to Subsection (b), above, if a distributor, jobber, manufacturer, pyrotechnic operator, pyrotechnic special effects operator, or retailer transports fireworks in accordance with state and federal laws, rules, and regulations applicable to the transportation of explosives and other dangerous articles by motor, rail, or water.

(c) Unlawful transportation and storage of fireworks.

- (1) The presence of any fireworks within the jurisdiction of the City in violation of this Section is hereby declared to be a nuisance and is unlawful. The Fire Marshal is directed and required to seize and cause to be safely destroyed fireworks found in violation of this Section, and any member of the fire prevention and investigation division of Temple Fire & Rescue and any licensed police officer is authorized to stop the transportation of and detain any fireworks found being transported illegally and to close any building where any fireworks are found stored illegally until the Fire Marshal can be notified in order that such fireworks may be seized and destroyed in accordance with the terms of this Section. All seizures and destruction of fireworks must be in compliance with all state and federal laws, rules, and regulations.
- (2) Regardless of, and in addition to, any penal provision of this Chapter, the City Attorney is authorized to file suit on behalf of the City for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping, or use of fireworks within the jurisdiction of the City, aid the Fire Marshal in the discharge of their duties, and prevent any person from interfering with the seizure and destruction of such fireworks.
- (3) The remedies provided for in this Section are not exclusive. The City may take any, all, or any combination of these remedies against a person who violates this Section.

(d) A public display of fireworks may only be permitted under the terms and conditions of this Chapter and state and federal laws, rules, and regulations.

(e) Any person planning to make a public display of fireworks must first make a written application for a public display permit to the Fire Marshal at least seventy-two (72) hours in advance of the date of the proposed display. The City may not issue a public display permit without the applicant providing proof that they received a public display permit for the fireworks display from the state if required.

(f) It is the duty of the Fire Marshal to make an investigation as to whether a public display of fireworks as proposed by the applicant for a permit under this Section will be of such a character that it may be hazardous to property or dangerous to any person. The Fire Marshal will, in the exercise of reasonable discretion, grant or deny a public display of fireworks application, subject to the conditions prescribed in this Section. In the event the application is approved by the Fire Marshal, the Fire Marshal will issue a permit to the applicant. Such permit will be valid for the



period specified on the permit but may be extended by the Fire Marshal. A public display permit is non-transferable, non-renewable, and is only valid for one display. If a permit is granted, the Fire Marshal will determine what fire protection safety measures will be required before, during, and after the display. It is the responsibility of the permittee to ensure that all fire protection measures are taken. In the event the permit is denied by the Fire Marshal, the Fire Marshal will notify the applicant of the denial in writing.

- (g) The applicant for a display permit under this section must, at the time of making application, furnish proof that he carries workers' compensation insurance for his employees, as provided by the laws of the State of Texas, and he must file with the Fire Marshall a certificate of insurance evidencing the carrying of public liability insurance coverage in an amount not less than one million dollars (\$1,000,000) issued by an insurance carrier authorized to transact business in the State of Texas, for the benefit of the person named therein as assured, as evidence of ability to respond to damages in at least the amount of one million dollars (\$1,000,000), such policy to be approved by the City of Temple. In lieu of insurance, the applicant may file with the Fire Marshal, a bond in the amount of one million dollars (\$1,000,000) issued by an authorized surety company approved by the City of Temple, conditioned upon the applicant's payment of all damages to persons or property which will or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant or his agents, servants, employees, or subcontractors in the presentation of the public display. The City of Temple must also be designated as an insured by the insurance policy and bonded by the bond.
- (h) Any public fireworks display authorized under this Section is limited to an aerial display.
- (i) The material to be used for a public display authorized by this Section may not be stored within the City limits but must be brought in on the date of the public display and then must be taken immediately to the place of display for further handling and storage, unless such materials are stored within the City limits in a secured storage area designated by the Fire Marshal and only for the length of time approved by the same in writing.
- (j) Any persons supervising or conducting a public fireworks display under this Section must be a competent person twenty-one (21) years of age or older, licensed by the state as a pyrotechnic operator, experienced in pyrotechnics, and approved by the Fire Marshal. No person may handle fireworks at a public display unless such person has been approved to do so by the Fire Marshal. The names of all licensed pyrotechnic operators involved in a public display must be listed on the permit issued by the City for the public display.
- (k) For each public display of fireworks conducted under this Section, no less than two (2) firefighters of the City must be in attendance during the display. The expense of such firefighters at the public display must be borne by the permit holder.

#### **Sec. 12-13. Outdoor burning.**

- (a) General outdoor burning prohibition. Unless otherwise provided by this Section, it is unlawful for any person to burn outdoors any material, including trash, brush, tree limbs, grass, trees,

leaves, paper, boards, planks, lumber, or any other type of debris or combustible materials of any kind within the territorial limits of the City.

(b) Permitted outdoor burning.

(1) Fires used for Recreation, Ceremony, Cooking, or Warmth.

- A. Outdoor burning is permitted when used solely for recreational or ceremonial purposes, or in the non-commercial preparation of food, or used exclusively for the purpose of supplying warmth.
- B. A person conducting outdoor burning under this Subsection (b)(1) may not burn:
  - i. Yard waste, including, but not limited to, grass clippings, bushes, shrubs, or clippings from bushes and shrubs; however, a person may burn firewood, small branches and twigs, and wood chunks or chips; or
  - ii. Paper products; however, a person may burn a small amount of paper (less than a ream) to start such fire.
- C. Fires used for recreation, ceremonial purposes, cooking, or warmth under this Subsection (b)(1):
  - i. Are limited to a maximum of three (3) feet diameter and two (2) feet in height and must be contained in an outdoor burn container, such as a non-combustible chimenea, outdoor fireplace, grill, fire pit, or other similar non-combustible container;
    - a. Outdoor burn containers placed on a combustible structure, including a porch, deck, or balcony, must be elevated at least three (3) feet off the structure while in use,
    - b. All openings in outdoor burn containers must be covered by wire mesh, grill grates, or other screening material that prevents the passage of sparks and ember while the container is in use, and
    - c. Outdoor burn containers may not be used indoors.
  - ii. Must be kept at least twenty (20) feet from any structure or combustible exterior wall, fence, or overhang;
  - iii. Are prohibited on any porch, deck, balcony, or any other structure connected to a multi-family dwelling;
  - iv. Must be constantly attended by a competent person thirteen (13) years of age or older;
  - v. Must be extinguished by 12:00 A.M.; and

- vi. Are not permitted when winds are over 20 mph.
  - (2) On-site burning of plant growth. On-site burning of plant growth generated as a result of right-of-way maintenance, landclearing operations, or maintenance along water canals when no practical alternative to burning exists is permitted as provided by 30 Tex. Admin. Code § 111.209, as amended.
  - (3) Crop Residue. Crop residue burning is permitted for agricultural management purposes when no practical alternative exists as provided by 30 Tex. Admin. Code § 111.209, as amended.
  - (4) Fire training. Outdoor burning is permitted for fire training as provided by 30 Tex. Admin. Code § 111.205, as amended.
  - (5) City and County burning. The City or a Bell County employee or agent may burn brush, trees, or other plant growth that causes a detrimental public health and safety condition as provided by 30 Tex. Admin. Code § 111.209, as amended.
- (c) Requirements for outdoor burning.
- (1) All outdoor burns must comply with all applicable terms and conditions imposed by TCEQ and all other applicable local, state, and federal permits, laws, rules, and regulations, including 30 Tex. Admin. Code, Chapter 111, Subchapter B, Outdoor Burning, as amended. If any applicable provision conflicts with another, the stricter provision will control.
  - (2) A person must obtain a permit from the Fire Marshal prior to burning under Subsections (b)(2)-(b)(5), unless otherwise provided below, and comply with the permit's terms and conditions.
    - A. A permit for outdoor burning for fire training or City or County burning is not required if the burn is authorized by the Fire Chief.
    - B. A permit is only valid for the time period specified upon the face of the permit. A person may not conduct a burn under an expired permit. The Fire Marshal may extend an issued permit at the Fire Marshal's discretion.
  - (3) A copy of a TCEQ written authorization to burn, if required by state law, rules, or regulations, must be presented to the Fire Marshal prior to conducting any burn authorized by this Section. The Fire Marshal may not issue a permit for a burn if the applicant fails to provide a required TCEQ written authorization to the Fire Marshal nor may a person conduct any burn without a required TCEQ written authorization.
  - (4) Regardless of whether an outdoor burn is authorized under this Section, a person may not burn electrical insulation, treated lumber (including lumber treated with paint, stain, varnish, clear coat, or any other kind of treatment), plastics, non-wood construction, renovation, or demolition materials, heavy oils, petroleum products, asphaltic materials, potentially



explosive materials, chemical wastes, items containing natural or synthetic rubber, pine needles, trash, garbage, or other type of debris, or motor vehicles or any part thereof within the City unless authorized in writing by TCEQ.

- (5) No person may burn within the City when there is a burn ban in effect for the City or Bell County.
- (6) Any fire permitted under this Section must be extinguished immediately if it is determined by the Fire Marshal to be unsafe, constitute a hazard to the environment, people, or private or public property, cause or contribute to a nuisance or traffic hazard, violate any local, state, or federal law, rule, or regulation, or interfere with the reasonable use of any property. The Fire Marshal is authorized to order any person who received a permit under this Section, any person responsible for the burn, or the fire department to extinguish such burns or fires. Failure to obey any order issued under this Subsection is an offense under this Chapter.

#### **Sec. 12-14. Fire apparatus access roads and fire lanes.**

##### **(a) Location of fire apparatus access roads and fire lanes.**

- (1) The locations of fire lanes and fire apparatus access roads will be determined by the Fire Marshal in conformity with the provisions of this Section and any applicable local or state laws, policies, rules, or regulations.
- (2) No building, other than single-family or two-family dwellings, may be constructed so that any part of the perimeter of the building is greater than one hundred fifty (150) feet from a public way or public place unless the owner or property manager constructs and maintains a private fire apparatus access road or fire lane having a minimum width of twenty (20) feet and a minimum overhead clearance throughout of no less than thirteen (13) feet six (6) inches and terminating within one hundred fifty (150) feet from the furthestmost point of said building.

##### **(b) Restrictions.**

- (1) A person may not use fire apparatus access roads or fire lanes as loading or unloading zones.
- (2) A person may not park, stop, or stand a motor vehicle in a fire apparatus access road or fire lane at any time.

##### **(c) Where required by the Fire Marshal, fire lanes and fire apparatus access roads must be marked with signs, painted curbs, or striping. Any fire lane and fire apparatus access road markings must be in accordance with the fire department's policy for such markings.**

- (1) It is not a defense to prosecution under Subsection (b) if the fire lane or fire apparatus access road markings are not in accordance with the fire department's policy for such markings, if a reasonable person would find that the markings at the time the violation occurred were

clearly marked and legible.

(d) Maintenance.

- (1) A private property owner must maintain and keep in good repair all private fire apparatus access roads and fire lanes on their property.
- (2) A private property owner must maintain all private fire lane and fire apparatus access road markings in good condition and keep such markings legible and in compliance with this Section.

(e) Abandonment of private fire apparatus access roads and fire lanes.

- (1) No private property owner or person in charge of any premises served by a private fire apparatus access road or fire lane may abandon, block, or close any fire apparatus access road or fire lane on their premises without complying with the following procedure:
  - A. Requesting the Fire Marshal in writing to abandon, block, or close the fire apparatus access road or fire lane and providing the reasons for the request; and
  - B. Receiving the Fire Marshal's written approval of such request.
    - i. The Fire Marshal must approve or deny a request for abandonment, blockage, or closure of a private fire apparatus access road or fire lane and notify the property owner of their decision within ten (10) days of receiving a request. If the Fire Marshal does not approve or deny this request within this time period, the request is automatically denied.

(f) Private dead-end fire apparatus access roads must comply with the requirements under the City's design and development standards.

**Sec. 12-15. Fire hydrants.**

(a) Authority to determine location. The Fire Chief or Fire Marshal will determine the location of fire hydrants in conformity with the provisions of this Section.

(b) Fire hydrants; location.

- (1) As residential zoned property is developed, fire hydrants must be located at a maximum spacing of six hundred (600) feet as measured along the length of the roadway, and no part of any structure may be farther than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose would be laid.
- (2) As non-residential zoned property is developed, fire hydrants must be located a maximum spacing of three hundred (300) feet as measured along the length of the roadway, and no part

of any structure may be further than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose would be laid.

- (3) Spacing of hydrants along roadways designated by the City as expressways and major arterials will be required on both sides of the roadway with the maximum distance of six hundred (600) feet for residential and one thousand two hundred (1200) feet for non-residential zoned properties, on each side of the roadway. No part of any structure may be further than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose would be laid.

(c) Restrictions.

- (1) Type of fire hydrants. All required fire hydrants must be of the national standard three-way breakaway type no less than five and a one-fourth (5 ¼ ) inches in size, must conform to the provisions of the latest American Water Works Association specifications C-502, and placed upon City approved water mains of no less than six (6) inches in size.
- (2) Valves must be placed on all fire hydrant leads.
- (3) Required fire hydrants must be installed in such a manner that the breakaway point is more than three (3) inches and no greater than five (5) inches above the ground surface.
- (4) A spacing of no less than eighteen (18) inches must be provided between the center of the barrel of the large steamer connection and the finished grade surface.
- (5) No fire hydrant located on a six- (6-) inch dead-end water main may be located more than one thousand eight hundred (1,800) feet from a six- (6-) inch or greater main.
- (6) No six- (6-) inch looped water main may exceed three thousand five hundred (3,500) feet in length.
- (7) Fire hydrants must be installed on a water main that is separate from the domestic water supply, unless it is determined by the Fire Marshal that the required maximum one- (1-) hour demand plus the needed minimum fire flow of a thousand (1,000) gallons per minute will be met by an alternative installation.
- (8) Fire hydrants located on public property must be located a minimum of two (2) feet and a maximum of four (4) feet behind the curb line.
- (9) All fire hydrants placed on private property must be adequately protected by either curb stops or concrete posts or by other methods as approved by the Fire Marshal. Such stops or posts must be maintained by the property owner.
- (10) All fire hydrants must be installed so that the steamer connection faces the fire lane or street.



- (11) Where feasible, fire hydrants placed at intersections or access drives to parking lots must be placed so that no part of a fire truck connected to the hydrant will block the intersection or parking lot access.
- (12) Post, fences, vehicles, vegetation, trash, storage, and other materials or objects may not be placed, maintained, or kept near fire hydrants, fire department inlet connections, or fire protection system control valves in a manner that would prevent such equipment or fire hydrant from being immediately discernible or accessible. A three- (3-) foot clear space must be maintained around the circumference of fire hydrants. The fire department may not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

(d) Maintenance.

- (1) All fire hydrants within the City must be inspected, flushed, and maintained at least once annually.
  - A. Annual inspections, flushing, and maintenance of public fire hydrants will be the responsibility of Temple Fire & Rescue.
  - B. Annual inspections, flushing, and maintenance of private fire hydrants will be responsibility of the property owner of the property on which the private fire hydrant is located.
    - i. The property owner may complete the requirements of Subsection (d)(1)(B) themselves or through an employee or agent. The property owner must file a signed statement with Temple Fire & Rescue within one week of the time this work is completed providing what work was performed, the date the work was completed, and the name and contact information of the person who performed the work. Any inspection or flushing of a private fire hydrant performed by a property owner or their employee or agent must be performed by a person trained to perform such tasks.
    - ii. A property owner may request Temple Fire & Rescue to complete the requirements of Subsection (d)(1)(B). If this work is performed by Temple Fire & Rescue, the City may charge the property owner for this work.
- (2) The property owner of the property where a private fire hydrant is located is responsible for the maintenance and repairs required to keep the private fire hydrant in proper working order and properly painted.
- (3) The Fire Chief and Fire Marshal may inspect any private fire hydrant and review any maintenance records of a private fire hydrant to ensure that the requirements of this Section are being met.

- (4) If the Fire Chief or Fire Marshal determines that a private fire hydrant is not in proper working order or needs to be painted, flushed, or inspected, they may order the property owner to perform the work necessary to bring the private fire hydrant back into compliance with this Section or cause this work to be performed by Temple Fire & Rescue. If this work is completed by Temple Fire & Rescue, the City may charge the property owner for this work.
- (5) Fire hydrants must be painted as follows:
  - A. Less than 500 gallons per a minute (gpm) – Red Bonnet
  - B. 500-999 gpm – Yellow Bonnet
  - C. 1000-1499 gpm – Green Bonnet
  - D. Over 1500 gpm – Blue Bonnet
- (f) Use; opening and closing. No person may open or close any public fire hydrant within the City unless authorized to do so by the Fire Chief, Fire Marshal, or the Director of Public Works or their designee. A person authorized to open or close a fire hydrant must do so as prescribed by the City.

**Sec. 12-16. Extraction operations regulations.**

(a) Purpose; Applicability.

- (1) The purpose of this Section is to promote the health, safety, and welfare of those who work or reside near extraction operations and to protect air quality and the water resources of the City.
- (2) The regulations in this Section are applicable to extraction operations within the territorial limits of the City.

(b) Blasting.

All blasting activity that falls within the scope of this Section must comply with the following provisions:

- (1) Permit required.
  - A. An appropriate extraction blasting permit must be acquired from Temple Fire & Rescue prior to any blasting activity or preparation for blasting activity at an extraction site.
  - B. An extraction blasting permit will authorize blasting for the extraction of materials (e.g., rock or stone) only at the extraction site designated on the permit.

- C. The extraction site operator, or designated representative, must apply for an extraction blasting permit in accordance with the following procedures:
- i. The applicant must submit a completed permit application form and applicable permit fee to Temple Fire & Rescue.
  - ii. An extraction blasting permit application must contain the following information and documents:
    - a. The legal name, and trade name, if any, of the extraction site operator(s);
    - b. Names and copies of valid licenses for all blasters at an extraction site;
    - c. Copy of Insurance Certificate of Blasting Liability Coverage or the related insurance policy or copy of the insurance policy as required under Subsection (b)(2) (*Insurance Required*);
    - d. Identification of extraction site;
    - e. Description of conditions, if any, which may cause possible adverse blasting effects;
    - f. Normal extraction operations schedule;
    - g. Type of explosives or blasting agents to be used;
    - h. Type of stemming;
    - i. The name, title, and phone number of any individuals actively managing an extraction site and a direct contact phone number to contact them on-site;
    - j. Direct contact phone number for all blasters at an extraction site; and
    - k. Copy of Mine Safety and Health Administration (MSHA) Certificate of Training (Form 5000-23) for all personnel involved in the extraction operations.
- D. New application required.
- i. A permittee or the permittee's designated representative must apply for a new extraction blasting permit, pay the applicable permit fee to Temple Fire & Rescue, and be issued a new permit by the Fire Marshal prior to performing any blasting operation at the extraction site if:



- a. An extraction site operator, blaster, or blasting company for the permitted extraction site changes;
    - b. A blaster for the permitted extraction site has his/her state or federal license to blast expire or revoked;
    - c. There is a change made to an insurance policy filed with, and approved by, Temple Fire & Rescue under Subsection (b)(2) (*Insurance Required*); or
    - d. An insurance policy filed with, and approved by, Temple Fire & Rescue under Subsection (b)(2) (*Insurance Required*) is cancelled or expires.
  - ii. Failure to comply with Subsection (b)(1)D.i, above, may result in the City suspending or revoking the permittee's extraction blasting permit or issuing a stop work order for the extraction site.
  - E. If any information or documents submitted in the permittee's blasting application change, other than the information and documents specified in Subsection (b)(1)D (*New Application Required*), the permittee or the permittee's designated representative must notify the Fire Marshal in writing at least twenty-four (24) hours prior to performing any blasting operation at the extraction site. Failure to do so may result in the City suspending or revoking the permittee's extraction blasting permit or issuing a stop work order for the extraction site.
  - F. The Fire Marshal has thirty (30) days to approve or deny an extraction blasting permit application. If the Fire Marshal has not approved or denied a permit application under this Section within this thirty- (30-) day period, the permit is automatically denied.
  - G. The Fire Marshal may deny an extraction blasting permit for any of the following reasons:
    - i. The submitted application is incomplete or contains incomplete, insufficient, false, or fraudulent documents or information;
    - ii. The information or documentation submitted in a permit application fails to comply with local, state, or federal laws, rules, or regulations;
    - iii. The City determines that issuing an extraction blasting permit will cause or may cause an imminent danger to property or public health, safety, or welfare; or
    - iv. For any other good cause determined by the City.
  - H. An extraction blasting permit issued under this Section is non-transferable.
- (2) Insurance required.

- A. Before a permit may be issued under this Section, the applicant must obtain and maintain general liability insurance having limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined with one million dollars (\$1,000,000) or greater annual aggregate throughout the permitted period for the purpose of the payment of all damages to persons or property which arise, or are caused by, the conduct of any act or omission authorized by the permit. The general liability insurance must name the City of Temple as an additional insured with a waiver of subrogation in favor of the City of Temple. The policy must contain a provision requiring the insurance company to furnish the City with written notification of any cancellation or non-renewal of this policy thirty (30) days prior to the cancellation or expiration date.
- B. Evidence of compliance with this requirement will be considered as having been met when the policy, a copy thereof, or a certificate of insurance has been filed with, and approved by, Temple Fire & Rescue. This policy must include an endorsement that the City will be notified in writing at least thirty (30) days in advance in the event the policy is canceled or expires.

(3) Regulatory compliance.

All blasting operations located within an extraction site must comply with the applicable provisions of the 2015 International Fire Code and with this Section, as well as all applicable local, state, and federal laws, rules, and regulations, including industrial noise, dust levels, applicable drainage, water, and air standards. If there is a conflict between provisions, the stricter provision will control unless preempted by law.

(4) Expiration date of permit.

An extraction blasting permit expires one year after the date of issuance. If a permittee wishes to continue extraction operations after the permit's expiration date, the permittee must apply for a new permit as provided by Subsection (b)(1), above, at least thirty (30) days prior to the permit's expiration date. Failure to timely reapply for an extraction blasting permit as provided by this Subsection may result in the City denying the permit.

(5) Hours of operation.

- A. Blasting may only be performed during the hours of 8:00 AM and 5:00 PM, Central Standard Time, Monday through Friday; however, no blasting may be performed on City holidays.
- B. Regardless of Subsection (b)(5)A, above, blasting may occur outside of the above prescribed hours or days if authorized in writing by the Fire Marshal.

(6) Notification of blast.

An extraction site operator must notify the Fire Marshal a minimum of twenty-four (24) hours prior to a scheduled blast.

(7) Monitoring of blasting.

- A. An extraction site operator must monitor each blast to accumulate data with respect to seismographic and air blast effects of the blasting activity as required by state and federal law. The extraction site operator must conduct independent monitoring of blasting events to the extent and frequency reasonably required by Temple Fire & Rescue.
- B. Information generated in the form of reports or other data from the monitoring required above must be submitted to the Fire Marshal within seventy-two (72) hours of each blasting event.
- C. Monitoring information must include, but is not limited to:
  - i. Actual date and time of the blast;
  - ii. Type of explosives or blasting agents used;
  - iii. Technical data and material safety data sheets for all explosives or blasting agents used;
  - iv. Total pounds of explosives used in each blast;
  - v. Number, spacing, stemming, and depth of holes;
  - vi. Maximum pounds per delay;
  - vii. Firing sequence, delay sequence, and typical hole load diagrams;
  - viii. Location and distance of extraction operation from seismographs;
  - ix. Weather conditions at time and location of blast; and
  - x. Seismograph and air blast data.
- D. Seismograph and air blast data must include the:
  - i. Type of instrument, sensitivity, and calibration signal of certification of annual calibration;
  - ii. Exact location of instrument and the date, time, and distance of the instrument from the blast;
  - iii. Name of person and firm taking the reading as well as the person analyzing the seismic record; and



iv. Ground vibration and air blast levels recorded.

(8) Safety standards.

An extraction site operator is responsible and required to comply with all applicable provisions of state and federal rules and regulations promulgated by the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and any other executive agency of the state or federal government relating to use, handling, transportation, storage, or detonation of explosives or blasting agents.

(9) Records and inspections.

- A. An extraction blasting permittee must make the permitted extraction operation site available to the Fire Marshal for inspection at all times during regular business hours.
- B. The permittee must retain a record of all blasts and monitoring information for each blast for a period of five (5) years after the date of the blast.
- C. All records, including monitoring records referenced in Subsection 12-16(b)(7), above, relating to extraction operations must be made available to the Fire Marshal during normal business hours within seventy-two (72) hours of the Fire Marshal's request.

(c) Control of Adverse Effects.

(1) Air blast limit.

For this Section, the air overpressure and related noise generated by the use of explosives or blasting agents in extraction operations will be measured by the air blast created thereby. Air blast may not exceed one hundred thirty-four (134) dB peak ( $\pm$  three (3) dB) at the location of any dwelling, public building, hospital, school, church, or community or institutional building outside the permit area, unless otherwise provided in Subsection 12-16(c)(5), below.

(2) Ground vibration limit.

In all extraction operations, unless otherwise authorized in Subsection 12-16(c)(5), the maximum ground vibration may not exceed three fourths of an inch (.75") per second at the location of any dwelling.

(3) Monitoring requirement.

An extraction site operator must conduct monitoring to ensure compliance with the air blast standards and ground vibration standards. Air blast and ground vibration measurements of blasts must be performed to the extent required this Section. If determined necessary by the Fire Marshal, an additional air blast and vibration monitor must be installed and monitored

by the extraction site operator and the Fire Marshal. This additional monitor must be paid for by the extraction site operator.

(4) Flyrock.

Flyrock traveling in the air or along the ground may not be cast from the blasting site beyond the area under the control of the extraction site operator.

(5) Non-applicability.

The maximum air blast and ground-vibration limits of this Subsection do not apply to the following:

- A. Structures located within the extraction site;
- B. Structures owned by the permittee and not leased to another person; or
- C. Structures owned by the permittee and leased to another person if a written waiver by the lessee has been obtained by the permittee.

(d) Suspensions, revocations, denial of re-certifications, and stop work orders.

(1) The City may suspend or revoke a permit, deny approval of a permit re-certification, or issue a stop work order for any of the following reasons:

- A. The information or documentation submitted by the permittee in the permittee's extraction blasting permit application or permit re-certification is determined by the City to be incomplete, insufficient, false, or fraudulent;
- B. The permittee does not comply with all provisions of this Section;
- C. The permittee does not comply with all terms and conditions of the permit;
- D. The City determines that the permittee's blasting or extraction operations will cause or may cause an imminent danger to property or public health, safety, or welfare;
- E. The Fire Marshal finds that any work regulated by this Section is being performed in a manner contrary to the provisions of this Chapter, or in a dangerous or unsafe manner;
- F. A local, state, or federal license, certificate, or permit required to conduct a blast or that is related to the blast has expired or is suspended or revoked;
- G. The insurance required under this Section is cancelled or expires without the required thirty- (30-) day notification to the Fire Marshal;
- H. The City discovers new information or new conditions that the City determines requires

the issuance of the stop work order, denial of approval of a permit re-certification, or suspension or revocation of the permit;

- I. As otherwise provided by this Section; or
  - J. For any other good cause determined by the City.
- (2) A stop work order and notification of denial of approval of a permit re-certification or a revocation or suspension of a permit must be in writing and be given to the owner of the property or to the owner's authorized agent, the permittee, or the person doing the work; however, where an emergency exists, the Fire Marshal is not required to give written notice prior to stopping the work.
  - (3) Upon notification that a permit has been suspended or revoked, a permit re-certification has been denied, or a stop order has been issued, all blasting operations as specified by the City must immediately cease and all explosive materials must be removed from the permit area immediately; however a person may perform work to remove a violation or unsafe condition as directed by the City.
  - (4) The City may reinstate a suspended extraction blasting permit, approve a permit re-certification, or rescind a stop work order if the conditions that caused the suspension, denial, or issuance of the stop work order have been corrected. If the conditions have not been corrected within thirty (30) days of service of the notice of suspension or denial of approval of re-certification or issuance of the stop work order, the permit may be revoked.
  - (5) A permit that is revoked may not be reinstated. The holder of a revoked permit must submit a new extraction blasting permit application to resume blasting or extraction operations on a site where a permit has been revoked.
- (e) Appeal.
- Any person aggrieved by an action or inaction of the Fire Department, Fire Chief, Fire Marshal, or City taken under this Section may appeal such decision to the Building Board of Appeals in writing. Upon receipt of an appeal notification, the Board will take the actions required to review the appeal in accordance with Sec. 12-6(c) (*Amendments to Chapter 1, "Scope and Administration"*).
- (f) Applicability of Ordinance No. 2020-5030 to existing permittees.

A person holding an existing and valid extraction blasting permit as of July 2, 2020 must comply with either: (1) the amendments to extraction operations regulations adopted under Ordinance No. 2020-5030, or (2) the extraction operations regulations imposed under this Chapter prior to the adoption of Ordinance No. 2020-5030, until such permit expires or is revoked, whichever occurs first. After such a permit expires or is revoked, the permittee must apply for a permit as



required by Ordinance No. 2020-5030 and comply with all provisions of Ordinance No. 2020-5030.

**Sec. 12-17. Blasting operations regulations.**

(a) Purpose.

The purpose of this Section is to establish requirements for blasting operations, blast limitations, explosive materials, equipment, labor, and supervision for use of explosives, drilling, and charging of blast holes, protection of existing structures, facilities, and other property, and repair of damage due to blasting operations within the City.

(b) Applicability.

This Section does not apply to extraction operations, which will be governed by Sec. 12-16, (*Extraction Operations Regulations*).

(c) Definitions.

(1) The following definitions apply to this Section:

- A. The definitions set forth in the 2015 ICC International Fire Code, Chapter 56, Explosives and Fireworks, Section 5602.
- B. The definitions set forth in most recent version of the National Fire Protection Association (NFPA) 495, Explosive Materials Code, and any amendments thereto, are adopted by reference.
- C. *Permit area* means the area within the perimeter of the property on which a blast site is authorized by a permit under this Section.

(2) Whenever any conflict exists between definitions, the most restrictive definition will apply, unless otherwise preempted under law.

(d) Permit required.

- (1) No person may be in possession of explosive materials, transport explosive materials, or perform an activity involving explosive materials, including the loading and firing of explosive materials, in the City without a City blasting permit or as otherwise permitted under this Chapter or other law.
- (2) A person may not sell, give, deliver, or transfer explosive materials within the City to a person not in possession of a City blasting permit or who is not otherwise permitted to buy, receive, accept, or possess explosive materials under this Chapter or other law.

(3) A City blasting permit does not take the place of any other license or permit required by other law.

(4) A City blasting permit is required for each blasting project.

(e) Blasting permit application.

(1) To apply for a blasting permit a person must submit to the City a completed City application form. The following documents and information must also be submitted to the City with the completed application form for the blasting permit application to be deemed complete:

A. A transportation plan as provided under Subsection (f) (*Transportation Plan*);

B. A traffic control plan as provided under Subsection (g) (*Traffic Control Plan*);

C. A blasting plan as provided under Subsection (h) (*Blasting Plan*);

D. A liability waiver and indemnification agreement executed by the applicant; and

E. Any other information deemed necessary by the City.

(2) If any information or documentation required in Subsection (e)(1), above, changes, the applicant, or the permittee if the permit has been issued, must notify the City within three (3) days of the change. An applicant or permittee may not perform any blasting operations until the City is notified and approves the change.

(3) All applicable departments will review completed blasting applications. After review, the City will approve or deny permits.

(f) Transportation plan.

(1) Vehicles used to transport explosive materials, and the operation of such vehicles, must comply with all local, state, and federal laws, rules, and regulations for the transport of explosive materials.

(2) A plan that addresses the transportation of explosive materials within the City must be included with blasting permit application as provided under Subsection (e) (*Blasting Permit Application*), above.

(3) The City may require the below information to be included in the applicant's transportation plan:

A. Routes used for explosive material deliveries and returns;

- B. Hours of explosive material transport;
- C. Maximum quantities of explosive materials being transported, and the types of explosive materials being transported;
- D. Types of vehicles to be used for transporting explosive materials; and
- E. Any other information deemed necessary by the City.

(g) Traffic control plan.

- (1) A traffic control plan must be included with a blasting permit application as provided under Subsection (e) (*Blasting Permit Application*), above.
- (2) The City may require the below information related to blasting operations to be included in the applicant's traffic control plan:
  - A. Locations, type, and quantity of signs, flags, and barricades;
  - B. Road closures;
  - C. Detour routes for traffic; and
  - D. Any other information deemed necessary by the City.
- (3) If any road closures are proposed, the traffic control plan must account for school bus schedules; blasting operations may not delay school buses on regularly scheduled routes.

(h) Blasting plan.

- (1) A blasting plan must be included with a blasting permit application as provided under Subsection (e) (*Blasting Permit Application*), above. An applicant's blasting plan must include detailed plans for pre-blast notifications, pre-blast inspections, post-blast inspections, and blast monitoring that comply with the requirements of this Section.
- (2) In addition to the information required under Subsection (h)(1), above, the City may require the applicant to provide the following information as part of the applicant's blasting plan:
  - A. The location where the blasting is to occur;
  - B. The approximate total volume of material to be blasted;
  - C. The incremental volumes, per blast, of material to be blasted;



- D. The types and packaging of explosive materials to be used;
- E. The drill hole diameters, depths, patterns, sub-drilling depths, and drill hole orientations to be used;
- F. The initiation system, the incremental delay times, and the location of the primers in the explosive column;
- G. The stemming depths and stemming material for the various estimated depths of drill holes to be blasted;
- H. The approximate types and quantities of explosive materials anticipated to be used;
- I. The fly-rock control procedures and equipment, if any, to be used;
- J. The maximum number of blasts to be made in any one day;
- K. The blast warning sound system and equipment to be used;
- L. The scheduled start date and finish date of blasting operations; and
- M. Any other information deemed necessary by the City.

(3) Applicable distances.

- A. The distances from the blasting for which pre-blast notification, pre-blast structural inspection, and blast monitoring are required will be determined by the scaled distance formulas set forth below:
  - i. Distance from the blast within which pre-blast notification to all property owners and homeowner and property owner associations is required:  $D_a = 90W$ .
  - ii. Distance from the blast within which pre-blast inspection of all properties is required:  $D_b = 75W$ .
  - iii. Distance from the blast within which monitoring of selected structures is required:  $D_c = 60W$ .
- B. In the above scaled distance formulas:
  - i.  $D_a$ ,  $D_b$ , and  $D_c$  are the actual distances in feet from the closest point in the blast; and

- ii. “W” is the square root of the maximum weight of the explosives in pounds detonated with a minimum eight millisecond delay from another detonation event in a sequentially delayed blast.

(4) Pre-blast notifications to property owners and HOAs and POAs.

- A. The permittee must mail pre-blast notifications to all property owners and homeowner and property owner associations within a specified distanced as provided under Subsection (h)(3), above, and a copy of the mailed notification provided to the City, no less than seven (7) days prior to the start of blasting and no more than thirty (30) days prior to the start of blasting.
- B. The City may require the pre-blast notification to include the following information:
  - i. General description of the blasting operations;
  - ii. Why the blasting is necessary;
  - iii. Name of the blasting company and blaster’s contact information;
  - iv. Name of the applicant and the applicant’s contact information;
  - v. The anticipated duration of blasting;
  - vi. An anticipated schedule for blasts, including estimated dates and times of blasting;
  - vii. Measures to be taken for the control of ground vibrations, air blast, fly rock, fumes, and dust;
  - viii. Where the blasting will be conducted;
  - ix. A map showing the location of blasting;
  - x. Description of warning signals for blasting and all clear signal; and
  - xi. Any other information deemed necessary by the City.
- C. When no blasting occurs for a period of thirty (30) days or more, a new pre-blast notification must be mailed as provided by this Subsection.

(5) Pre-blast notification to utilities.

The permittee must call Texas811 at least seventy-two (72) hours prior to blasting and comply with all Texas811 instructions.

(6) Pre-Blast Inspections.

- A. The permittee must mail a notification to all property owners within a specified distanced as provided under Subsection (h)(3), above, that notifies the property owners of their right to request a pre-blast inspection and the procedure for requesting such inspection. This notification must be mailed to the required property owners, and a copy provided to the City, no less than seven (7) days prior to the start of blasting and no more than sixty (60) days prior to the start of blasting.
- B. All pre-blast inspections requested must be completed at least forty-eight (48) hours prior to the permittee's first blast.
- C. Pre-blast inspections must be performed by an independent Texas licensed Professional Real Estate Inspector or Texas licensed engineer, who is not an employee of the permittee, at the permittee's expense.
- D. The pre-blast inspector must determine the condition of the property and must document with scaled photographs and any supplemental sketches any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Documentation must include foundation and building construction details, other improvements, and landscape features.
- E. Written report of pre-blast inspections must be signed by the pre-blast inspector.
- F. The permittee must submit to the City a copy of the individual pre-blast inspection reports and a log of all photos taken during pre-blast inspections as well as any written owner refusals of pre-blast inspections at least forty-eight (48) hours prior to the permittee's first blast.
- G. Pre-blast inspections are valid for sixty (60) days. After sixty (60) days from the date an inspection is completed, if a permittee wishes to blast, the permittee must re-perform all the requirements of this Subsection (h)(6).

(7) Post-blast inspections.

- A. Property owners may request an inspection of their property, if following a blast, the property owners feel that the blasting caused damage to their property. This request may be made regardless of whether the property was outside of the pre-blast inspection specified distance provided under Subsection (h)(3), above.
- B. The property owner must request the permittee to perform a post-blast inspection in writing.



- C. The post-blast inspection must be performed by the permittee within ten (10) days of the property owner's request.
  - i. If a pre-blast inspection was performed, the post-blast inspection report must consist of scaled photographs of any alleged damages and a written report comparing the pre-blast photographs with the post-blast photographs. If a pre-blast inspection was not performed, the post-blast inspection report must consist of scaled photographs of any alleged damages and a written report describing the alleged damage.
  - ii. A copy of the post-blast inspection report must be timely provided to the property owner and to the City.
- D. If no agreement is arrived at between the permittee and the property owner after a post-blast inspection performed under Subsections (h)(7)A-C, above, the permittee must arrange for an independent Texas licensed Professional Real Estate Inspector or Texas licensed engineer, who is not an employee of the permittee, to perform a post-blast inspection and prepare a post-blast inspection report. The post-blast inspector must timely submit the post-blast inspection report to the permittee, the property owner, and the City.
  - i. The cost of this additional post-blast inspection and post-blast inspection report must be borne equally by the property owner and the permittee, unless the post-blast inspector finds that the sole cause of the damage was due to the blasting, in which case the permittee must bear the full cost of the post-blast inspection and post-blast report.

(8) Monitoring.

- A. The permittee must monitor each blast to accumulate data with respect to the seismographic and air blast effects of the blasting operation and must conduct independent monitoring of blasting events as directed by the City and to the extent and frequency reasonably required by the City.
- B. Within seventy-two (72) hours of each blast, the permittee must submit seismograph and air blast data to the Fire Marshal.
- C. Seismograph or air blast data submitted to the Fire Marshal must include the:
  - i. Type of instrument, sensitivity, and calibration signal of certification of annual calibration;
  - ii. Exact location of instrument and the date, time, and distance of the instrument from the blast;

- iii. Name of person and firm taking the reading as well as the person analyzing the seismic record; and
  - iv. Ground vibration and air blast levels recorded.
- D. Ground vibration and air blasts monitoring and limits.
- i. Ground vibrations and air blasts must be monitored with blasting seismographs that conform to guidelines provided by the City.
  - ii. Blasting seismographs must be deployed in the field according to guidelines provided by the City.
  - iii. Permittees must place blasting seismographs at all locations specified by the Fire Marshal.
  - iv. The maximum charge-per-delay in all blasts must be sized to conform with the maximum PPV limits and minimum scaled distance limitations shown in Table 1, below. The most restrictive minimum scaled distance limitation must be used at all locations.

**Table 1**

<b>Location</b>	<b>Maximum PPV (in/s)</b>	<b>Minimum Scaled Distance Limitation (ft/lb<sup>1/2</sup>)</b>
Dwellings, Schools, and Hospitals	.75	60
Industrial Buildings	.75	40
Railroad Tracks	2.0	30
Buried Pipes and Utilities	4.0	15

- E. Air Blast Limit. For the purpose of this Section, the air overpressure and related noise generated by the use of explosives or blasting agents in blasting operations will be measured by the air blast created thereby. Air blast may not exceed one hundred thirty-four (134) dB peak ( $\pm$  three (3) dB) at the location of any dwelling, public building, hospital, school, church, or community or institutional building outside of the permit area.
- F. Within twenty-four (24) hours of each blast, the permittee must submit a shot report to the Fire Marshal containing the following information:
- i. Date, time, and location of the blast;

- ii. Type of explosives or blasting agents used;
  - iii. Total pounds of each type of explosive used;
  - iv. Technical data and material safety data sheets for all explosives or blasting agents used;
  - v. Number, spacing, stemming, diameter, and depth of holes;
  - vi. Sub-drill depth;
  - vii. Amount and type of stemming material;
  - viii. Maximum pounds of explosives detonated in any eight-millisecond time interval;
  - ix. Firing sequence, delay sequence, and typical hole load diagrams;
  - x. Schematic showing drill hole pattern;
  - xi. Initiation delay sequence;
  - xii. Weather conditions at time and location of blast;
  - xiii. Type and size of any fly-rock protection devices used, if any; and
  - xiv. Any other information required by the Fire Marshal.
- (9) The City may waive property owner notification and inspection requirements and maximum air blast and ground vibration limits and standards required under this Section for property owned by the permittee or by the permit area property owner if requested in writing by the applicable party.
- (i) Blasting permit denial.
- (1) The issuance of a blasting permit is a discretionary action on the part of the City and as such the City has the right to deny a blasting permit.
  - (2) Blasting permit applications will be subject to review and approval by the Fire Chief and the City's public works department and any other person or department designated by the City Manager.
  - (3) The City's denial of a blasting permit must be in writing and must state the reason for the denial.
  - (4) The City may deny a blasting permit for any of the below reasons:



- A. The applicant does not comply with Subsection (e) (*Blasting Permit Application*) or the submitted application information or documentation is incomplete, insufficient, false, or fraudulent;
  - B. The information or documentation submitted under Subsection (e) (*Blasting Permit Application*) fails to comply with applicable local, state, or federal laws, rules, and regulations;
  - C. The City determines that issuing a blasting permit will cause or may cause an imminent danger to property or public health, safety, or welfare;
  - D. The applicant does not provide proof of a valid local, state, or federal license, certificate, or permit required to conduct a blast or that is related to the blast; or
  - E. For any other good cause determined by the City.
- (5) A person may appeal a permit denial as provided by Sec. 12-6(c) (*Amendments to Chapter I, "Scope and Administration"*).
- (j) Insurance required.
- (1) If the City approves a blasting permit, the City may not issue the permit to the applicant until the applicant provides to the City proof of a commercial general liability insurance with a minimum limit of one million dollars (\$1,000,000) per occurrence. Such insurance must not exclude explosion, collapse, and underground (XCU) coverage. The City reserves the right upon review of a permit application, and in its sole discretion, to require higher minimum liability amounts and coverage endorsements (e.g. environmental liability) based on project specifics and potential hazards.
  - (2) If the applicant does not provide the proof of insurance to the City within the time period prescribed by the City, the City may rescind the approval of the permit and deny the permit application.
  - (3) A permittee must carry such insurance throughout the term of the permit. The permittee must not cancel or materially change such insurance coverage or allow such insurance coverage to expire or lapse without notification to and approval from the City.
- (k) Non-transferable blasting permit.
- (1) Blasting permits are not transferable.
  - (2) Any change of ownership of the permittee will require that a new permit be issued.

(l) Length of time a blasting permit is valid.

- (1) A blasting permit is valid for thirty (30) days; however, a blasting permit may be extended over thirty (30) days for extenuating circumstances at the discretion of the Fire Marshal. In no case may a blasting permit be extended more than thirty (30) days past the date the permit was originally issued.
- (2) A permittee wishing to extend a permit must submit a written request to the Fire Marshal and receive written approval from the Fire Marshal for the extended date.
- (3) After a permit expires, a person wishing to blast must apply for a new blasting permit as provided by Subsection (e) (*Blasting Permit Application*).

(m) Permittee requirements.

- (1) A permittee must comply with all:
  - A. Applicable federal, state, and local laws, rules, and regulations, including, but not limited to, all laws, rules, and regulations applicable to obtaining, owning, possessing, transporting, storing, handling, and using explosive materials;
  - B. Permit terms and conditions imposed by the City;
  - C. City contract provisions; and
  - D. The permittee's plans submitted and approved under Subsection (e) (*Blasting Permit Application*).
- (2) If any of the provisions in Subsection (m)(1) conflict, the strictest provision will prevail, unless otherwise preempted by law.
- (3) The City may impose additional requirements on the permittee, or supplement any existing permit term or condition, whenever, in the opinion of the City, later information or newly discovered conditions justify such actions.

(n) Work hours.

- (1) Blasting operations may only be performed during the hours of 8:00 AM and 5:00 PM, Central Standard Time, Monday through Friday; however, no blasting operations may be performed on City holidays.
- (2) Regardless of Subsection (n)(1), the permittee may perform blasting operations outside of above prescribed hours or days if authorized by the City in writing.

(o) Storage and handling of explosives within the City.

- (1) Explosive materials may not be stored within the City limits, unless otherwise authorized by local, state, or federal law, rule, or regulation.
- (2) Permittees under this Section must transport explosive materials into the City at the beginning of each workday. Unused explosive materials must be removed from the City at the end of the same workday.
- (3) Explosive materials must remain in the vehicle that the explosive materials were transported in until the explosive materials are loaded or deployed.
- (4) The permit area must be on standby during loading of explosive materials.
- (5) Blast holes loaded with explosive materials must be shot on the day the holes are loaded.

(p) Fire Marshal notification and inspections.

- (1) The permittee must notify the Fire Marshal at least twenty-four (24) hours prior to blasting. Notification must be made per the Fire Marshal's policy.
- (2) The permittee must allow the Fire Marshal to conduct an inspection of the permit area for each blasting project prior to blasting.
- (3) Fire Marshal inspections may be required for every blast until the permittee can demonstrate an ability to safely blast in conformance to the blast plan and control the extraneous effects of blasting such as fly-rock, noise, and air blast and ground vibration. Additional inspections may be required for any blaster or permittee who is unable or does not comply with the approved blasting plan or control the extraneous effects of blasting.
- (4) If more than two Fire Marshal inspections are required for a blasting project, an additional fee may be assessed against the permittee.
- (5) No person may blast within the City without passing a Fire Marshal inspection and receiving approval from the Fire Marshal to blast.
- (6) Permittees must allow the City access to the permit area during reasonable times to inspect for compliance with all applicable local, state, and federal laws, rules, and regulations.

(q) Damage and complaints.

- (1) Upon completion of blasting, the permittee must perform a permit area inspection to determine if any damage or injury resulted from the blasting.



- (2) The permittee must immediately notify the City in writing of any damage or injury resulting from the permittee's blasting operations.
- (3) The permittee must notify the City in writing of any complaint reported to the permittee related to the permittee's blasting operations within twenty-four (24) hours of receiving a complaint.

(r) Permit suspension and revocation; stop work order.

- (1) The City may suspend or revoke a blasting permit or issue a stop work order for any of the following reasons:
  - A. The information or documentation submitted by the permittee under Subsection (e) (*Blasting Permit Application*) is determined by the City to be incomplete, insufficient, false, or fraudulent;
  - B. The permittee fails to notify the City within three (3) days of a change to the information or documentation required under Subsection (e) (*Blasting Permit Application*) or blasting operations occur before the City is notified or approves such change;
  - C. The permittee does not comply with all provisions of this Section;
  - D. The City determines that the permittee's blasting operations will cause or may cause an imminent danger property or public health, safety, or welfare;
  - E. The Fire Marshal finds that any work regulated by this Section is being performed in a manner contrary to the provisions of this Chapter, or in a dangerous or unsafe manner;
  - F. A local, state, or federal license, certificate, or permit required to conduct a blast or that is related to the blast has expired or is suspended or revoked;
  - G. The insurance required under Subsection (j) (*Insurance Required*) is cancelled, lapses, or expires or is materially changed without notification to or approval from the City;
  - H. A stop work order is issued for the site in which the blasting would occur;
  - I. The City discovers new information or new conditions that the City determines requires the issuance of the stop work order or suspension or revocation; or
  - J. For any other good cause determined by the City.
- (2) A stop work order and notification of a revocation or suspension of a blasting permit must be in writing and be given to the owner of the property or to the owner's authorized agent,

the permittee, or the person doing the work; however, where an emergency exists, the Fire Marshal is not required to give written notice prior to stopping the work.

- (3) Upon notification that a permit has been suspended or revoked or a stop order, all blasting operations as specified by the City must immediately cease and all explosive materials must be removed from the permit area immediately; however a person may perform work to remove a violation or unsafe condition as directed by the City.
  - (4) The City may reinstate a suspended blasting permit or rescind a stop work order if the conditions that caused the suspension or issuance of the stop work order have been corrected. If the conditions have not been corrected within thirty (30) days of service of the notice of suspension or stop work order, the permit may be revoked.
  - (5) A permit that is revoked may not be reinstated. The holder of a revoked permit must submit a new blasting permit application to resume blasting operations on a site where a permit has been revoked.
  - (6) Any person aggrieved by an action or inaction of the Fire Marshal or City taken under this Article may appeal such decision to the Building Board of Appeals in writing. Upon receipt of an appeal notification, the Board will take the actions required to review the appeal in accordance with Sec. 12-6(c) (*Amendments to Chapter 1, "Scope and Administration"*).
- (s) No assumption of liability to the City.
- (1) By the passage this Section or the issuance of any permit under this Section, the City assumes no responsibility for any damage caused by persons blasting within the City under this Section's provisions or under any permit issued under this Section.
  - (2) This Section will be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
  - (3) It is the intent of this Section to place the obligation of complying with its requirements upon the permittee. No provision of or any term used in this Section is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

#### **Sec. 12-18. Business registration.**

- (a) Business registration is administered by Temple Fire & Rescue, in conjunction with the Utilities department, which assures that all businesses within the City of Temple are registered for 911 services, inspected, and comply with all City codes.
- (b) All businesses must comply with the registration requirements of this Section as a precondition of initiating or continuing any business within the City of Temple. For the purpose of this

Section, the term “business” includes any commercial enterprise, school, church, or governmental office located within the City limits. Each occupant of a building used by a business is responsible for complying with the registration requirements of this Section.

(c) Registration procedure.

- (1) When a business owner applies for utilities, they must fill out a business registration form and return the form to Temple Fire & Rescue prior to the business receiving utilities or opening its doors for business.
- (2) Registration or re-registration with the City is required prior to changing the name, ownership, operator, location, or use of an existing business.

## **Article VI. Miscellaneous Additions to the 2015 International Fire Code**

### **Sec. 12-19. Reserved.**

### **Sec. 12-20. Unauthorized use of fire apparatus.**

It is unlawful for any person, unless authorized by the Fire Chief, to take or use or break, deface, damage, or destroy any engine, truck, ladder, fire axe, or other fire apparatus belonging to or in possession of Temple Fire & Rescue or any fire department that is providing mutual aid to the City of Temple.

### **Sec. 12-21. Injuring or driving over fire hose.**

It is unlawful for any person, unless as authorized by the Fire Chief, to break, cut, deface, tear, damage, or destroy or drive any vehicle or machinery over any fire hose belonging to or in possession of Temple Fire & Rescue or any fire department that is providing mutual aid to the City of Temple.

### **Sec. 12-22. Failure to comply with orders.**

It is unlawful for any person to fail to comply with the Fire Chief or Fire Marshal’s orders made during the course of their official duties.

### **Sec. 12-23. New materials, processes, or occupancies which may require permits.**

The Fire Chief has the authority to determine and specify, after giving the public an opportunity to be heard, any new materials, processes, activities, or occupancies that will require permits issued by Temple Fire & Rescue, in addition to those enumerated in this Chapter. The Fire Chief must post such permit lists in a conspicuous place in their offices and stations and distribute copies to interested persons.

### **Sec. 12-24. False alarms; duty to notify of testing and correct malfunctions.**

(a) Persons in charge of buildings or properties must:

- (1) Notify the Fire Marshal prior to working on or testing sprinkler and fire alarm systems; and
- (2) Promptly correct fire alarm malfunctions.

(b) The Fire Marshal may issue a citation to the person in charge of a building or property for each false alarm after three (3) false alarms in a one-year period due to the person's failure to comply with Subsection (a), above.

(c) Failure to comply with Subsection (a) is a Class C misdemeanor and is punishable by a fine of up to \$150 for each violation. Each occurrence of a violation per a day is a separate offense.

(d) Proof of a culpable mental state is expressly waived for this offense.

**Sec. 12-25. False alarms; Causing false alarms.**

(a) It is an offense for a person to intentionally, knowingly, or recklessly cause a false alarm.

(b) A violation of Subsection (a) is a Class C misdemeanor and is punishable by a fine of up to \$1000 for each violation. Each occurrence of a violation per a day is a separate offense.

**Sec. 12-26. Burning or hazardous activity without a permit.**

(a) It is an offense for a person to burn or perform any hazardous activity or operation without a permit required under this Chapter that causes an emergency response.

(b) A violation of Subsection (a) is a Class C misdemeanor and is punishable by a fine of up to \$500 for each violation. Each occurrence of a violation per a day is a separate offense.

(c) Proof of a culpable mental state is expressly waived for this offense.

**Sec. 12-27. Exemptions.**

Nothing contained in this Chapter may be construed to apply to any local, state, or federal authority in the performance of their official duties, except as otherwise provided by this Chapter.

**Sec. 12-28. Fees.**

City Council will, by resolution, set the amount of all fees, including permit fees, imposed under this Chapter or related to fire prevention or rescue. A copy of any resolution setting fees will be maintained in the office or station of the Fire Marshal.

**Sec. 12-29. Enforcement.**

The Fire Chief, any licensed peace officer, City code enforcement officer, and any person designated



by the City Manager has the authority to enforce this Chapter.

**Sec. 12-30. Penalties.**

- (a) Criminal Prosecution. Unless otherwise provided by this Chapter, a person who violates any provision of this Chapter commits a Class C misdemeanor and upon conviction will be fined an amount not exceeding \$500 unless proof of a culpable mental state is pled, in which case the fine upon conviction may not exceed \$2000. Proof a culpable mental state is expressly waived when a fine of \$500 or less is sought for the offense. Each occurrence of a violation per a day is a separate offense.
- (b) Civil remedies. The City may:
  - (1) Seek all available civil remedies in a court of competent jurisdiction for violations of this Chapter; and
  - s
  - (2) Suspend or revoke any City permit granted to a person who has committed a violation under this Chapter.
- (c) The remedies provided for in this Section are not exclusive. The City may take any, all, or any combination of these remedies against a person who violates this Chapter.

**Sec. 12-31. Severability.**

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional, such holding will not affect the validity of the remaining portions of this Chapter.

ORDINANCE NO. 2020-5030

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING THE CITY'S CODE OF ORDINANCES CHAPTER 12, "FIRE PREVENTION AND PROTECTION"; PROVIDING A REPEALER; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, as part of the City's continuing effort to update the City's Code of Ordinances and to bring the City's code up to date with current City policies and to better protect citizens against fire, City Staff recommends amending Chapter 12, Fire Prevention and Protection, of the City's Code of Ordinances;

**Whereas**, this item was presented at the June 4, 2020 City Council Meeting for first reading and public hearing and after the public hearing and City Council discussion, this item was tabled - Staff revised the proposed amendments to Chapter 12 to incorporate the feedback that Staff received from the City Council during the June 4, 2020 meeting;

**Whereas**, paragraphs (h)-(k) summarize the new proposed amendments that incorporate this feedback - the proposed amendments include:

- a) General housekeeping such as reformatting and renumbering the Chapter, updating City Staff titles, and removing obsolete sections;
- b) Adopting the 2015 International Code Council International Fire Code;
- c) Revising the Appeals section of the Chapter to help deter frivolous appeals and ensure uniform application of fire safety regulations;
- d) Requiring fire apparatus access road gates to be equipped with Knox gate and key switches or padlocks approved by the Fire Marshal to ensure access to private properties in cases of emergency;
- e) Updating the controlled burning section of the Chapter to comply with state law's requirements for outdoor burning and providing exceptions and regulations for allowed outdoor burning;
- f) Requiring private property owners to annually perform testing and maintenance on all private fire hydrants located upon their property;
- g) Amending the extraction operations section to reduce the maximum ground vibration limit from 1-inch per second to  $\frac{3}{4}$ -inch per second at the location of any dwelling;
- h) Amending the extraction operations regulations section to require an extraction blasting permittee to reapply for a permit if:
  - 1. An extraction site operator, blaster, or blasting company for the permitted extraction site changes,
  - 2. A blaster for the permitted extraction site has his/her state or federal license to blast expire or revoked,
  - 3. There is a change made to the extraction blasting permittee's required insurance policy,

4. The extraction blasting permittee's required insurance policy is cancelled or expires;
- i) Amending the extraction operations section to require the extraction blasting permittee to notify the Fire Marshal in writing at least 24 hours prior to performing any blasting operation if there are any changes to the information provided by the permittee on the permittee's extraction blasting permit application other than the changes to the information specified under Paragraph (h), above;
- j) Providing that the City may suspend or revoke a permittee's extraction blasting permit or issue a stop work order for the extraction site if the permittee fails to comply with the requirements in Paragraphs (h) and (i), above;
- k) Requiring annual permit application and permit fee for extraction blasting permittees;
- l) Providing that a permittee with an existing, valid extraction blasting permit as of July 2, 2020 must either comply with: (1) this Ordinance's amendments to extraction operations regulations or (2) the extraction operations regulations as they existed prior to the adoption of this Ordinance, until the permittee's permit expires or is revoked, whichever occurs first, and, after such a permit is expired or revoked, providing that the permittee must comply with all provisions of this Ordinance regulating extraction operations;
- m) Creating a new blasting regulation section to regulate blasting related to construction, tunneling, and demolition;
- n) Removing a section offering a reward for the arrest and conviction of arsonists;
- o) Creating new offenses for false alarms and burning without a permit; and
- p) Updating the penalties section to require the pleading of a culpable mental state for offenses with a fine over \$500;

**Whereas,** Staff recommends Council amend the Code of Ordinances Chapter 12, "Fire Prevention and Protection," as outlined in Exhibit 'A,' attached hereto and incorporated herein for all purposes; 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, THAT:**

**Part 1: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**Part 2:** The City Council amends the Code of Ordinances Chapter 12, "Fire Prevention and Protection" as outlined in Exhibit 'A,' attached hereto and incorporated herein for all purposes.

**Part 3:** All Ordinances or parts of Ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

**Part 4:** 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 5:** 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:** It is hereby officially found and determined that the meeting at which this Ordinance was 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.

TABLED on First Reading and Public Hearing on the **4<sup>th</sup>** day of **June, 2020.**

PASSED AND APPROVED on Second Reading on the **18<sup>th</sup>** day of **June, 2020.**

PASSED AND APPROVED on Third Reading on the **2<sup>nd</sup>** day of **July, 2020.**

THE CITY OF TEMPLE, TEXAS

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TIMOTHY A. DAVIS, MAYOR

ATTEST:

APPROVED AS TO FORM:

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Stephanie Hedrick  
Interim City Secretary

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Kathryn H. Davis  
City Attorney