

FUNDING AND OPERATING AGREEMENT

This Funding and Operating Agreement (the “Agreement”) is by and between the City of Temple, a Texas home-rule municipality, (the “City”) and Temple Revitalization Corporation (“TRC”), a non-profit corporation created pursuant to Chapter 431 of the Texas Transportation Code and is entered into on 9/1/2022 | 9:39 AM CDT, 2022 (the “Effective Date”). The City and TRC may be referred to individually as a “Party” and collectively as the “Parties.”

Background

The City Council approved the Certificate of Formation and Bylaws of TRC on September 16, 2021. TRC was formed on November 3, 2021, as a non-profit, Local Government Corporation under Texas Transportation Code Chapter 431. TRC was created to aid, assist, and act on behalf of the City in the performance of its governmental functions, to promote the common good and general welfare of the City, including the sale, purchase, development, redevelopment, and revitalization of real property and to help promote, develop, encourage, and maintain employment, commerce, economic development, and public facility development in the City.

The City and TRC desire to enter into this Agreement to create an economic development program to further the goals set forth in TRC’s Certificate of Formation and the goals and activities set forth in the City’s Community Development Program which was adopted on September 2, 2021.

Accordingly, the Parties agree as follows:

Section 1. Authority. The City has the authority to enter into this Agreement pursuant to Texas Local Government Code Chapter 380 and Texas Local Government Code Chapter 373, as well as the City’s adopted Community Development Program. TRC has the authority to enter into this Agreement pursuant to Texas Transportation Code Chapter 431 and TRC’s Certificate of Formation and Bylaws.

Section 2. TRC Obligations.

2.1 Economic Development Activities. TRC will assist the City in carrying out certain economic development initiatives, including, but not limited to (a) acquiring property to be used for economic development; (b) conveying property to third parties to be used for economic development; (c) platting, subdividing, and developing property; (d) contracting for and administering construction services for economic development and infrastructure projects; (e) administering or assisting with the administration of various grant programs to promote residential and commercial development and redevelopment; and (f) performing other tasks or activities as requested by the City (collectively referred to herein as the “ED Activities”). TRC will

comply with all Economic Development programs and activities adopted by the City, including but not limited to the City's Economic Development Ordinance No. 2020-5026 approved on April 2, 2020, as amended by Ordinance No. 2021-0074 approved on December 16, 2021, and any amendments to the ordinance that may be adopted during the Term of this Agreement.

2.2 Community Development Program Activities. TRC will assist the City in carrying out the goals and activities of the City's Community Development Program adopted on September 2, 2021, and as may be updated by the City Council during the Term of this Agreement. The Community Development Program includes the following goals, among others: (1) improve the living and economic conditions of persons of low- and moderate-income; (2) provide benefits to low- or moderate-income neighborhoods; (3) aid in the prevention or elimination of blight; (4) improve access to a variety of housing types; (5) facilitate high quality, safe, and strategic growth in the City's core neighborhoods; and (6) promote infill development and redevelopment growth opportunities. TRC and the City will work together to achieve these goals through the implementation of the Community Development Program activities which include: (1) residential development and redevelopment; (2) economic development; (3) land acquisition and disposition; and (4) educational programming and resource development (collectively referred to herein as the "CDP Activities"). The CDP Activities will be focused in the "Program Areas" as defined by the Community Development Program.

2.3 Annual Report. Before December 31 of each year, TRC will file with the City an annual report describing the ED Activities and CDP Activities undertaken by TRC in the previous fiscal year (October 1 through September 30).

2.4 Expenditures. TRC may make expenditures of TRC funds to carry out the ED Activities, CDP Activities, and administrative activities necessary to operate TRC and to meet TRC's obligations under this Agreement. All expenditures under \$50,000.00 may be approved and made by TRC's President so long as the funds for such expenditures have been allocated and budgeted by the Board of Directors. All expenditures more than \$50,000.00 must be specifically approved by TRC's Board of Directors and once approved may be made by TRC's President.

Section 3. City Obligations.

3.1 City Funds. As consideration for TRC's assistance with the ED Activities and the CDP Activities, the City will provide monetary funding to TRC each year during the Term of this Agreement ("City Funds"). Within 60 days of the Effective Date, the City will pay to TRC the City Funds in the amount of \$35,000.00. During each remaining year of the Term, the City will determine during the City's annual budgeting process the amount of City Funds to be paid to TRC. The City will pay the City Funds by November 1 of each remaining year of the Term. TRC will use the City

Funds to accomplish the ED Activities and the CDP Activities. TRC also may use the City funds to pay for legal and accounting services and any other administrative services that TRC and the City deem reasonable and necessary to carry out TRC's obligations under this Agreement.

3.2 Administrative Support. The City will provide in-kind administrative support to be carried out by City employees that the City designates for such support. City Staff will handle and process any and all requests for information received by TRC pursuant to the Texas Public Information Act, Texas Government Code Chapter 552.

3.3 TRC Income. TRC understands and acknowledges that pursuant to Texas Transportation Code Section 431.107(a) the City is entitled at any time to receive any income earned by TRC that is not needed to pay TRC's expenses or obligations.

Section 4. Compliance with Laws.

4.1 Generally. The City and TRC will at all times comply with all statutes, rules, ordinances, resolutions, or regulations applicable to this Agreement and the Parties' activities under this Agreement. The Parties will maintain, or cause to be maintained, all permits, licenses, or other authorizations required by federal, state, and local law in order to conduct their business under this Agreement.

4.2 Chapter 431. TRC will at all times comply with the requirements of Texas Transportation Code Chapter 431. TRC will comply with all state laws related to the design and construction of projects, including the procurement of design and construction services, that apply to the City. *See* Tex. Transp. Code § 431.101(g).

4.3 Conflicts of Interest. TRC will at all times comply with all applicable conflicts of interest regulations, including but not limited to Texas Local Government Code Chapter 171 and the City's Ethics Code found in the Code of Ordinances, Chapter 2.

Section 5. Books and Records. During the Term, TRC will make available for inspection all corporate books, records, and assets, and otherwise afford to the City reasonable access to all documentation and other information concerning the business, financial and legal conditions of TRC for the purpose of conducting a due diligence investigation thereof. Such due diligence investigation will be for the purpose of satisfying the City as to the business, financial, and legal condition of TRC for the purpose of determining whether TRC can perform its obligations under this Agreement.

Section 6. Term. The Term of this Agreement will begin on the Effective Date and expire on September 30, 2027, unless terminated earlier in accordance with Section 7. The Term of this Agreement will automatically renew for consecutive 5-year terms, unless either party gives written notice of nonrenewal to the other party at least 180 days before the end of the then-current term.

Section 7. Termination.

7.1 Termination for Convenience. The City may, in its sole discretion, terminate this Agreement at any time for convenience and without cause or further liability, by providing at least 30 days' prior written notice to TRC. The City will be under no obligation to pay any additional City Funds after the date of notice of termination.

7.2 For Cause – City. Upon written notice to TRC, the City may, without prejudice to any right or remedy, terminate this Agreement immediately if TRC: (a) breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, TRC does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or (d) is dissolved or liquidated or takes any corporate action for such purpose.

7.3 For Cause – TRC. Upon written notice to the City, TRC may, without prejudice to any right or remedy, terminate this Agreement immediately if the City breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the City does not cure such breach within 30 days after receipt of written notice of such breach.

Section 8. General Provisions.

8.1 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be deemed to have been duly given or served when delivered by hand delivery or by nationally recognized courier service, or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the City:
Attn: Timothy Davis
2 North Main Street, Suite 306
Temple, Texas 76501

If to TRC:

Attn: Brynn Myers
2 North Main Street, Suite 306
Temple, Texas 76501

Or to such other person or address as may be given in writing by either Party to the other in accordance with this provision. If the notice is mailed, it will be deemed delivered within 48 hours after the post mark date.

8.2 Amendment. This Agreement may be amended, supplemented, modified, or altered only by a written instrument executed by all Parties to this Agreement.

8.3 Assignment. Neither Party may assign this Agreement.

8.4 Available Funds. The City will have the right to cancel this Agreement at the end of the then current fiscal period if funds are not allotted for the next fiscal year to continue this Agreement. The City may affect such cancellation by giving TRC written notice of its intention to cancel not less than thirty (30) days prior to the end of the then current fiscal period, stated its reasons for cancellation. Upon cancellation of this Agreement, the City will not be responsible for the payment of any services received which occur after the end of the current fiscal period.

8.5 Waivers. No delay or omission by either of the Parties in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party of any of the provisions of this Agreement will impair any such right or power or be construed to be a waiver of the provision(s). A waiver by either of the Parties of any Agreement term to be performed by the other Party will not be construed to be a waiver of any subsequent breach or of any other Agreement term.

8.6 Governing Law. This Agreement and its interpretation, validity, and performance will be governed by the laws of the State of Texas without regard to its conflicts of laws principles. In the event any court of law of appropriate judicial authority will hold or declare that the law of another jurisdiction is applicable, this Agreement will remain enforceable under the laws of the appropriate jurisdiction.

8.7 Jurisdiction and Venue. The Parties hereto agree that this Agreement has been executed in and is performable in Bell County, Texas. Accordingly, the Parties hereto agree that they are subject to the jurisdiction of the courts of the State of Texas, and any legal proceeding arising out of, under, or in connection with or in any way related to this Agreement or any other agreements executed in connection therewith, will be brought solely in a court of appropriate jurisdiction in Bell County, Texas.

8.8 Parties Bound. This Agreement will be binding on and inure to the

benefit of the Parties and their respective administrators, legal representatives, successors, and assigns when permitted by this Agreement.

8.9 Force Majeure. If either Party is prevented from or delayed in the performance of its obligations under this Agreement by reason of war, strikes, riots, storms, fires, or any other cause beyond the control of the non-performing party, the non-performing party is excused from performance to the extent and during the period of prevention or delay.

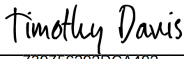
8.10 Construction. In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision in this Agreement.

8.11 Prior Agreements Superseded. This Agreement, together with all exhibits and attachments, constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter of this Agreement.

8.12 Counterparts. This Agreement may be executed in any number of counterparts and contains all the covenants and agreements between the parties with respect to the subject matter of this Agreement. A faxed or electronically scanned signed copy of the Agreement will be enforceable as if were an original.


[Signature Page to Follow]

City of Temple

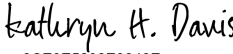
DocuSigned by:

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Timothy Davis
Mayor

Date: 9/1/2022 | 8:37 AM CDT


Attest:

DocuSigned by:

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City Secretary

Approved as to form:

DocuSigned by:

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City Attorney's Office

Temple Revitalization Corporation

DocuSigned by:

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Brynn Myers
President

Date: 9/1/2022 | 9:35 AM CDT