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Mayor

Nancy Berry

Mayor Pro Tem

John Crompton

City Manager

Glenn Brown

Council members

Jess Fields

Dennis Maloney

Katy-Marie Lyles

Lawrence Stewart

Dave Ruesink

Agenda

College Station City Council

Workshop Meeting

Thursday, July 08, 2010 3:00 p.m.

City Hall Council Chambers, 1101 Texas Avenue

College Station, Texas

1. Presentation, possible action, and discussion on items listed on the consent agenda.
2. Presentation, possible action, and discussion regarding the Research Valley Partnership's Ten Year Return on Investment (2000 – 2009).
3. Presentation, possible action, and discussion concerning the City Internal Auditor's Citywide Payroll Audit Phase I report.
4. Presentation, possible action, and discussion regarding development standards for high-density detached single family residential areas.
5. Presentation, possible action, and discussion regarding the formation of a College Station Business Corporation.
6. Council Calendar
 - July 15 Planning & Zoning Meeting in Council Chambers at 6:00 p.m.
 - July 17 Hispanic Forum Scholarship Gala at Brazos Center at 6:00 p.m.
 - July 20 Council Transportation Committee Meeting in Council Chambers at 4:30 p.m.
 - July 21 BVSWMA Inc. Board Meeting at COB Municipal Building - Room 305 at 11:00 a.m.
 - July 21 2010 Exploring History Lunch Lecture Series at CS Conference Center at 11:30 a.m.
 - July 22 Transportation - TAMU Health Science Center - Bryan Campus Dedication at the Brazo County Exposition Complex at 11:00 a.m.
 - July 22 TAMU Health Science Center - Bryan Campus Dedication at the Brazos County Expositio Complex at 11 a.m
 - July 22 Council Workshop/Regular Meeting in Council Chambers at 3:00 & 7:00 p.m.
 - July 23 Business After Hours - Atkinson Toyota in the Council Chambers at 5:30 p.m.
7. Presentation, possible action, and discussion on future agenda items: A Council Member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

City Council Workshop Meeting

Thursday, July 8, 2010

8. Discussion, review and possible action regarding the following meetings: Arts Council of the Brazos Valley, Audit Committee, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Wide Area Communications Task Force, BVSWMA, BVWACS. Cemetery Committee, Code Review Committee, Design Review Board, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Mayor's Council on Physical Fitness, Metropolitan Planning Organization, National League of Cities, Outside Agency Funding Review, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Partnership, Regional Transportation Committee for Council of Governments, Signature Event Task Force, Sister City Association, TAMU Student Senate, Texas Municipal League, Transportation Committee, Wolf Pen Creek Oversight Committee, Zoning Board of Adjustments, (Notice of Agendas posted on City Hall bulletin board).
9. Executive Session will immediately follow the workshop meeting in the Administrative Conference Room.

Consultation with Attorney {Gov't Code Section 551.071}; possible action. The City Council may seek advice from its attorney regarding a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. Litigation is an ongoing process and questions may arise as to a litigation tactic or settlement offer, which needs to be discussed with the City Council. Upon occasion the City Council may need information from its attorney as to the status of a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

Litigation

- a. City of Bryan's application with TCEQ for water & sewer permits in Westside/Highway 60 area, near Brushy Water Supply Corporation to decertify City of College Station and certify City of Bryan
- b. City of Bryan suit filed against College Station, Legal issues and advise on Brazos Valley Solid Waste Management Agency contract, on proposed methane gas contract
- c. Water CCN / 2002 Annexation / Wellborn Water Supply Corporation
- d. Weingarten Realty Investors v. College Station, Ron Silvia, David Ruesink, Lynn McIlhaney, and Ben White
- e. Chavers et al v. Tyrone Morrow, Michael Ikner, City of Bryan, City of College Station, et al
- f. Clancey v. College Station, Glenn Brown, and Kathy Merrill

Legal Advice

- a. Discussion of Legal Issues Regarding: Wellborn Incorporation Request
- b. Contemplated Litigation, Legal remedies available to abate weeds, rubbish, brush and other unsanitary matter from a lot in the College Hills residential area.

Personnel {Gov't Code Section 551.074}; possible action

The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

- a. City Secretary
- b. Council Self-Evaluation
- c. Planning and Zoning Commission
- d. Zoning Board of Adjustments
- e. Parks and Recreation Board

City Council Workshop Meeting
Thursday, July 8, 2010

10. Action on executive session, or any workshop agenda item not completed or discussed in today's workshop meeting may be discussed in tonight's Regular Meeting if necessary.

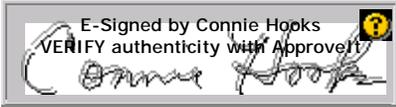
11. Adjourn.

APPROVED:

City Manager

Notice is hereby given that a Workshop Meeting of the City Council of the City of College Station, Texas will be held on the 8th day of July, 2010 at 3:00 pm in the City Hall Council Chambers, 1101 Texas Avenue, College Station, Texas. The following subjects will be discussed, to wit: See Agenda

Posted this 2nd day of July, 2010 at 2:00 pm



City Secretary

I, the undersigned, do hereby certify that the above Notice of Meeting of the Governing Body of the City of College Station, Texas, is a true and correct copy of said Notice and that I posted a true and correct copy of said notice on the bulletin board at City Hall, 1101 Texas Avenue, in College Station, Texas, and the City's website, www.cstx.gov . The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on July 2, 2010 at 2:00 pm and remained so posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

This public notice was removed from the official board at the College Station City Hall on the following date and time: _____ by _____.

Dated this _____ day of _____, 2010.

CITY OF COLLEGE STATION, TEXAS By _____

Subscribed and sworn to before me on this the _____ day of _____,
_____ Notary Public – Brazos County, Texas My commission expires: _____

This building is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive service must be made 48 hours before the meeting. To make arrangements call (979) 764-3517 or (TDD) 1-800-735-2989. Agendas may be viewed on www.cstx.gov. Council meetings are broadcast live on Cable Access Channel 19.

**July 8, 2010
Workshop Agenda Item No. 2
RVP Return on Investment**

To: Glenn Brown, City Manager

From: City Manager's Office

Agenda Caption: Presentation, possible action, and discussion regarding the Research Valley Partnership's Ten Year Return on Investment (2000 – 2009).

Relationship to Strategic Goals: Goal III.11 Utilize RVP and existing partnerships

Recommendation(s): N/A

Summary: Mr. Todd McDaniel, President and CEO, will provide a presentation describing the ten year return on investment on funds provided to the RVP. This item is also being presented to Brazos County and the City of Bryan.

Budget & Financial Summary: The City of College Station Budgets \$300,000 annually for the RVP, as does City of Bryan and Brazos County.

Attachments: N/A

July 8, 2010
Workshop Agenda Item No. 3
Citywide Payroll Audit Phase I Report

To: Mayor and Members of the City Council

From: Ty Elliott, City Internal Auditor

Agenda Caption: Presentation, possible action, and discussion concerning the City Internal Auditor's Citywide Payroll Audit Phase I report.

Recommendation(s): Give staff direction to implement the recommendations contained in the Audit Report.

Summary:

Reason for the Audit: A Citywide Payroll Audit was included in the fiscal year 2010 audit plan based on the results of a citywide risk assessment conducted in October 2007, identifying payroll as a potential audit topic for the fiscal year 2010 audit plan. On September 24, 2009, the City Council approved the City Internal Auditor's audit plan, which included a citywide payroll audit.

Background: The recent economic downturn has resulted in decreasing sales tax revenues. As a result, City departments were asked to reduce their budgets by \$3.9 million. In the first round of budget cuts, seventeen percent of cuts were in salaries and benefits. In some areas, City payroll policies exceed FLSA requirements

Audit Scope and Objectives: The audit addressed city overtime and compensatory time policies, procedures and practices. The report answered the following questions:

- Are city employees complying with applicable laws, policies, and procedures?
- Can the city realize any overtime or compensatory time cost savings through changing employee practices or city policies and procedures?

Audit Results: Cost savings were identified by aligning payroll practices with minimum Fair Labor Standards Act guidelines. Overall, I found that most payroll policies and procedures aligned with FLSA standards. However, a few areas of improvement were identified such as:

1. Adjust overtime and compensatory time policies
 - a. Align city overtime and compensatory time with FLSA minimum requirements.
 - b. Only under very limited circumstances should temporary or seasonal workers be scheduled to work overtime.
 - c. The practice of using compensatory time to earn overtime or additional compensatory time should be eliminated.
2. Parks & Recreation should coordinate with Human Resources to plan hiring processes.
3. Human Resources should develop procedures to ensure secondary employment meets FLSA exemption criteria.

Attachments: Citywide Payroll Audit Report

**Payroll Audit Phase I:
Overtime and Compensatory Time**

May 2010

**City Internal Auditor's Office
City of College Station**

File#: 10.02

Payroll Audit Phase I

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Introduction

The City Internal Auditor conducted this internal audit of the City's overtime and compensatory time policies, procedures and practices pursuant to Article III Section 30 of the College Station City Charter, which outlines the City Internal Auditor's primary duties.

An internal audit is an objective, systematic examination of evidence to assess independently the performance of an organization, program, activity, or function. The purpose of an internal audit is to provide information to improve public accountability and facilitate decision-making. Internal audits encompass a wide variety of objectives, including those related to assessing program effectiveness and results; economy and efficiency; internal control; compliance with legal or other requirements; and objectives related to providing prospective analyses, guidance, or summary information.

The results of a citywide risk assessment conducted in October 2007 identified payroll as a potential audit topic for the fiscal year 2010 audit plan. On September 24, 2009, the City Council approved the City Internal Auditor's audit plan, which included a citywide payroll audit.

In March 2010, payroll policies and procedures were reviewed and a preliminary analysis of payroll data from fiscal year 2007 through 2009 was conducted. During the preliminary review, potential overtime and compensatory time cost savings were identified. In order to provide timely information to city management along with appropriate audit coverage, the citywide payroll audit has been divided into two parts. This audit report (Phase I) focuses primarily on overtime and compensatory time, while Phase II (which will be reported at a later time) will cover all other payroll related issues.

Reason for the Audit

Budget Cuts are Needed Due to Sales Tax Revenue Declines

Historically, the City of College Station has seen increases to its annual budget due to the need to provide additional services to its rising population and the availability of revenue from growing sales tax receipts. However, the recent downturn in the national and local economy has led to sales tax revenue declines, which have put pressure on city departments to make significant budget cuts. Because estimated overtime expenditures are over two million dollars per year, an audit to determine if savings can be realized in overtime and compensatory time expenditures was warranted. Table 1 below summarizes overtime expenditures and the value of compensatory time earned between fiscal years 2007 and 2009.

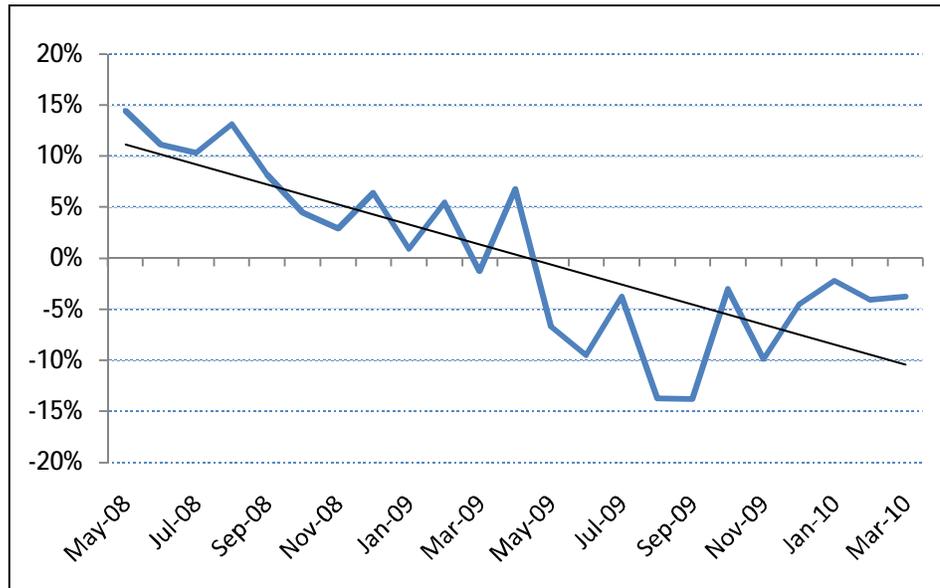
Table 1: Overtime & Comptime Earned from FY07 to FY09

| Fiscal Year | Overtime Expenditures | Value of Comp Earned | Total Value of CE & OT |
|-------------|-----------------------|----------------------|------------------------|
| 2007 | \$ 1,706,000 | \$ 311,000 | \$ 2,017,000 |
| 2008 | \$ 2,026,000 | \$ 315,000 | \$ 2,341,000 |
| 2009 | \$ 2,013,000 | \$ 337,000 | \$ 2,350,000 |

In FY10, departments have been asked to reduce their budgets by \$3.9 million. There have been two budget reductions in fiscal year 2010. The first budget reduction called for approximately \$1,872,000 in cuts. Seventeen percent of the proposed cuts were in salary and benefits (mostly due to holding certain positions vacant). On March 25, 2010, city departments were asked to make another \$2,075,000 in budgetary cuts.

Sales tax revenue has experienced eleven consecutive months of negative growth. Sales tax is the largest single revenue source for the General Fund, accounting for approximately 36 percent of General Fund revenue. In May 2008, sales tax revenue increased 14.47 percent from sales tax revenue received in May 2007. Since May 2008, however, sales tax revenue growth has been steadily declining; and from May 2009 through March 2010, the City witnessed eleven consecutive months of negative sales tax revenue growth. Figure 1 on the next page describes this decline in sales tax revenue growth.

Figure 1: Sales Tax Revenue Declines (May 2008 to March 2010)



Overtime and Compensatory Time Background

FLSA Overtime and Compensatory Time Requirements

The Fair Labor Standards Act (FLSA) requires employers to pay at least one and one-half times the employees' regular rates of pay for all hours *actually* worked over 40 in the work week.

Compensatory time refers to a type of work schedule arrangement that allows workers to take time off instead of, or in addition to, receiving overtime pay. Non-exempt workers must receive one and one half times their normal hourly wage for every hour worked beyond 40 hours in a work week. For example, a worker who clocks 48 hours in one week would forego the 12 hours of overtime pay and instead take 12 paid hours off at some future date.

There are several exemptions from the FLSA for public sector employees. Certain employees in the following examples may be exempt from the overtime requirements of the FLSA:

- employees who solely at their option occasionally or sporadically work on a part-time basis for the same public agency in a

different capacity than the one in which they are normally employed

- employees at their option with approval of the agency, who substitute for another during scheduled work hours in the same work capacity
- employees that meet exemption requirements for executive, administrative, professional or outside sales occupations
- employees working in separate seasonal amusement or recreational establishments such as swimming pools, parks, etc.

Overtime and comptime for sworn firefighters is determined according to the FLSA 207(k) exemption. Section 7(k) of the FLSA provides that employees engaged in fire protection may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For example, fire protection personnel are due overtime under such a plan after 212 hours worked during a 28-day period. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28. The City's firefighters overtime and compensatory time compensation is calculated according to the FLSA 207(k) exemption.

City Overtime and Compensatory Time Policies

According to the City's Employee Handbook, department directors may schedule overtime when necessary to meet essential operating requirements. Employees are not permitted to work overtime, or accrue compensatory time off, without prior authorization and approval by their immediate supervisor or department director.

Non-exempt employees are eligible to receive overtime and comptime. Employees in non-exempt positions with actual work hours that exceed forty in the designated work week are eligible to receive overtime pay or compensatory time off at a rate of one and one-half times their regular rate of pay for the hours worked in excess of forty in a work week. The city policy also states that employees may be entitled to overtime pay for hours worked during a regularly scheduled holiday and for hours worked on an emergency call back basis.

The max accrual for non-exempt comptime is sixty hours.

According to city policy, the accrual of compensatory time off for non-exempt employees is limited to sixty hours, unless otherwise specified by the department. After accruing sixty hours of compensatory time off, an employee receives overtime pay for excess hours in the designated work week.

Leave is included in determining overtime and comptime.

The City's policy includes leave in determining overtime and compensatory time—which is above what the FLSA requires. Specifically, the policy states:

“For the purpose of computing overtime and compensatory time for non-exempt employees, holiday, sick, or vacation time used during the pay period may be included. Upon termination, non-exempt employees will be paid for all accrued overtime and/or compensatory time.”

The city has a policy for the determination of overtime in the case of secondary employment. The City's policy relating to secondary employment is in alignment with the FLSA. According to this policy, if an employee, at his/her own option, works a second job with the City in a different capacity from his/her regular employment and on an occasional and sporadic basis, the hours worked in the two jobs should not be combined for the purpose of determining overtime.

Comptime policies for exempt employees have recently changed. Prior to November 1, 2009, exempt employees were eligible to accrue compensatory time on an hour-for-hour basis for work performed above the normal requirements of the job. The accrual of compensatory time for exempt employees was unlimited, but exempt employees were not to be paid for accrued compensatory time upon termination.

Effective November 1, 2009, exempt employees should not record any new compensatory time. However, department directors may grant employees up to 3 days of comptime (24 hours) when unusually high volume of work is required over an extended period of time. This time must be taken within 90 days of the time granted.

Audit Objectives

This audit addresses city overtime and compensatory time policies, procedures and practices. This report answers the following questions:

- Are city employees complying with applicable laws, policies, and procedures?
- Can the city realize any overtime or compensatory time cost savings through changing employee practices or city policies and procedures?

Scope and Methodology

This audit was conducted in accordance with government auditing standards, which are promulgated by the Comptroller General of the United States. Audit fieldwork was conducted from March 2010 through May 2010. Audit tests were performed using payroll data from fiscal year 2007 through fiscal year 2009, which comprised 77,701 payroll checks for approximately \$116,538,000.

The audit methods included:

- Reviewing the work of auditors in other jurisdictions and researching professional literature to identify best practices regarding overtime and compensatory policies and procedures.
- Interviewing staff responsible for performing various payroll related duties and oversight functions.
- Reviewing applicable city policies and procedures and relevant state and federal laws and regulations.
- Identifying potential overtime and compensatory time cost savings by (1) conducting data analysis using specialized auditing software and (2) reviewing a statistical sample of fiscal year 2009 time sheets.
- Identifying all current fulltime employees who have worked a second job with the City during the period of their fulltime

employment. Reviewing support documentation to determine if these employees' secondary employment met FLSA overtime exemption criteria.

- Interviewing city staff in all departments at the production level of the organization regarding scheduling, workload, overtime, and other payroll related issues; while observing them during the normal course of their workday.

Findings and Analysis

Opportunities to Cut Overtime & Comptime Expenses Exist

Given the forecasted budget shortfalls in the current fiscal year, this audit report was prepared to inform city management of potential savings that could be realized if changes are made in overtime and compensatory time policies.

Overtime Pay Exceeds FLSA Requirements

The FLSA requires that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a work week. City fire protection personnel are due overtime after 212 hours worked during a 28-day period. Hours of work include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer.

Aligning city policy with minimum FLSA requirements could realize significant savings. The city includes leave taken when determining overtime, which is not required by the FLSA. In other words, city employees are paid time and a half when hours actually worked plus any leave is greater than 40 hours in a work week. For example, an employee who is off sick Monday through Thursday and works 10 hours on Friday would get paid time and an half for 2 hours under current city practices.

Changing city practices by drafting an overtime policy in alignment with FLSA minimum requirements would result in significant cost savings. When hours actually worked during a work period do not exceed FLSA requirements for overtime, the City should compensate employees at straight time. By implementing such a policy the City would have saved between \$176,000 and \$191,000 in fiscal year 2009—an 8.7 to 9.5 percent reduction in total overtime cost.

Aligning city policy with minimum FLSA requirements would also reduce the amount of compensatory time earned. For example, the value of the compensatory time that would be saved in fiscal year

2009 (under such a policy) would have been between \$35,000 and \$39,000.

Fire protection personnel overtime calculation exceeds FLSA requirements. In order to accommodate the 24 hour shifts fire protection personnel work, these employees work 216 hours in a 28 day period. Therefore, they should be compensated for 4 hours of overtime for each 28 day period based on FLSA rules. The City, however, is compensating these employees for 5.33 hours of overtime every 28 day period. This overtime compensation is above what is required by the FLSA. As a result, firefighters received overtime overpayments of approximately \$39,460, \$45,110, and \$45,880 in fiscal years, 2007, 2008, and 2009 respectively.

Temporary or Seasonal Employees are Receiving Overtime

Seasonal employment is defined as annually recurring periods of work of at least 6 months, but less than 12 months, during a calendar year. Recurring work that last less than 6 months is generally considered as temporary employment. One of the purposes of seasonal and temporary employees is to reduce overtime costs during forecasted periods of peak workload. Therefore, temporary or seasonal employees typically do not earn overtime. Table 2 below provides a summary of the overtime that has been paid to seasonal or temporary employees over the last three fiscal years.

Table 2:
Temporary/Seasonal Employees Paid Overtime

| Department | FY 07 | FY08 | FY09 |
|----------------|-------------------|------------------|------------------|
| Parks & Rec | \$ 94,919 | \$ 40,985 | \$ 10,472 |
| Gen Govt | 33,658 | 2,658 | 3,588 |
| Fire | 4,029 | 365 | 0 |
| Fiscal | 1,593 | 0 | 0 |
| BVSWMA | 367 | 0 | 0 |
| IT | 0 | 257 | 0 |
| Totals: | \$ 134,566 | \$ 44,264 | \$ 14,949 |

In addition, local government employees working in separate seasonal amusement or recreational establishments such as swimming pools or parks are exempted from FLSA overtime requirements if (1) the establishment does not operate for more than seven months in a calendar year; or (2) during the preceding year, its average receipts

for any six months of the year were not more than 33 1/3 percent of its average receipts for the other six months of that year. Sixty percent of the temporary/seasonal employees who received overtime over the last three fiscal years were seasonal aquatics employees.

Based on interviews with Parks and Recreation staff, some seasonal employees are misclassified. These misclassified seasonal employees work in a variety of capacities year round and are not taken off of the City's payroll. Therefore, these employees should be classified as part-time employees who are not exempt from FLSA requirements.

Overtime is Earned Regardless the Hours of Sick Time Taken

By flexing schedules, instead of approving sick leave, the City could realize significant savings in overtime expenses. The City could have saved between \$156,000 and \$169,000 in fiscal year 2009 overtime expenditures by implementing such a policy. For example, within the scope of my review, I found a city employee who clocked 20 hours of regular time, 36 hours of sick, 12 hours of overtime, and 1.75 hours of compensatory time within a work week. If this employee was required to flex his schedule in lieu of taking sick leave, he would have only been paid for 40 hours of straight time.

Some Second Jobs Don't Meet Overtime Exemption Criteria

As of March 2010, there were 100 fulltime employees who have worked a secondary job with the City during sometime of their tenure. Over 90 percent of the secondary jobs worked by city employees were in the Parks and Recreation Department. Approximately 68 percent of secondary employment is the result of city sponsored special events—37 percent consisted of event staff and 31 percent consisted of police officers working security for special events.

In considering if secondary employment within the City meets FLSA exemption rules, four criteria must be met. When compared to the primary employment, the secondary employment at the same public agency must be (1) occasional and sporadic, (2) part-time, (3) at the employee's option, and (4) substantially different.

I reviewed employment data for all 100 fulltime employees who worked a second job with the City. I found that all secondary employment was part-time in nature and appeared to be at the

employees' option. On the other hand, some records appeared to indicate that the secondary job was recurring and of a similar nature to the employees' fulltime positions. Table 3 below summarizes these results. Further work is needed to determine for certain if all or any of these employees were due any overtime payments.

Table 3: Secondary Employment Review Results

| Number of Employees | Are the jobs in the same department? | Are the jobs' duties similar? | Is secondary employment ongoing? | At least a year in second job? |
|---------------------|--------------------------------------|-------------------------------|----------------------------------|--------------------------------|
| 4 | ✓ | ✓ | ✓ | ✓ |
| 1 | | ✓ | ✓ | ✓ |
| 4 | ✓ | | ✓ | ✓ |
| 7 | | | ✓ | ✓ |
| 8 | ✓ | ✓ | | ✓ |
| 2 | ✓ | ✓ | | |
| 35 | | ✓ | | ✓ |
| 11 | ✓ | | | ✓ |
| 4 | ✓ | | | |
| 20 | | | | ✓ |
| 4 | | | | |

Staff is Using Comptime to Earn Comptime or Overtime

Some city employees are taking compensatory time to earn additional compensatory time or overtime. This can be considered an area of abuse because employees earn compensatory time and overtime at time and a half, but compensatory time is taken on an hour for hour basis. If this practice was abolished, the value of the savings in terms of time or money would be between \$29,000 and \$32,000.

Recommendations

1. The City Manager should consider two options in changing the City's overtime and compensatory time policies.

Option 1:

- a. Align city overtime and compensatory time with FLSA minimum requirements. For the purpose of computing overtime and compensatory time for non-exempt employees, holiday, sick, or vacation time used during the pay period would no longer be included.
- b. Adjust fire personnel overtime pay compensation to reflect a 28 day pay period based on the FLSA 207(k) exemption.
- c. Only under very limited circumstances should temporary or seasonal workers be scheduled to work overtime.
- d. The practice of using compensatory time to earn overtime or additional compensatory time should be eliminated.

Option 2:

In addition to all the policy changes considered in option 1, the City Manager should consider directing departments to utilize flexible scheduling when sick leave and overtime or compensatory time is recorded during the same work week. Table 4 below summarizes the estimated FY 2009 savings that may have been realized if these recommended policies would have been in place.

Table 4: FY09 Estimated Overtime & Comptime Savings

| FY09 Estimated Savings | Option 1 | Option 2 |
|----------------------------------|------------------|------------------|
| Overtime exceeding FLSA laws | \$176,000 | \$121,000 |
| Flexing sick leave in lieu of OT | \$0 | \$156,000 |
| Comptime exceeding FLSA laws | \$35,000 | \$35,000 |
| Fire FLSA 207(k) exemption | \$46,000 | \$46,000 |
| Temp/seasonal overtime savings | \$15,000 | \$15,000 |
| Using comptime to earn OT or CE | \$29,000 | \$29,000 |
| Totals: | \$301,000 | \$402,000 |

When implementing parts or all of this recommendation, the City Manager should consider the possible impact to emergency situations. City supervisors and staff at various departments expressed concern that many employees would become unavailable if they are not guaranteed some sort of premium pay for being called into work during non-scheduled hours. The greatest risk occurs during the rare circumstances a city emergency arises where additional employees (other than the staff who are on-call) are needed to mitigate the situation.

2. The Parks and Recreation Department should coordinate with the Human Resources Department a good deal before the opening of seasonal facilities to better plan the hiring process of temporary and seasonal workers. In addition, the HR Director should take all the necessary steps to (1) create a part-time without benefits employee classification, and (2) ensure that all city employees are appropriately classified.

According to Parks and Recreation supervisors, there are two primary causes why payroll records indicate that there are several temporary and seasonal workers receiving overtime. First, the employment process is complex, sometime taking weeks to complete; therefore, an inadequate number of seasonal workers are hired prior to the opening of seasonal facilities. Second, some employees are employed throughout the year on a part-time basis. These employees are treated as part-time without benefit employees; however, the City does not currently have such a classification—only a part-time with benefits classification exist.

3. The HR Director should develop procedures to ensure that secondary employment within the City meets the four FLSA exemption criteria—the secondary employment must be (1) occasional and sporadic, (2) part-time, (3) at the employee's option, and (4) substantially different. The HR Director should also work with Parks and Recreation staff to develop a solution to meet staffing needs at special events, while complying with the FLSA.

In addition, better record keeping is needed to ensure that secondary employment hire and termination dates are accurate. Therefore, these records will not appear to be on-going, part-time positions when they are actually temporary and sporadic in nature.

Management Response

Date: June 10, 2010
To: Ty Elliot
Through: Glenn Brown, City Manager
From: Alison Pond, Human Resources Director
Cc: Kathy Merrill, Assistant City Manager
Cc: David Neeley, Assistant City Manager
Cc: Jeff Kersten, Chief Financial Officer

Overall, Management agrees with the recommendations of the City Auditor related to implementation or modification of current practices. It should be noted that the savings that are highlighted in these findings are based on a statistical sampling and may not be actual dollars saved by modifying these practices.

Currently pay practices fall under the Fiscal Services Division (Payroll), however the policy of these pay-related items are under the jurisdiction of the Human Resources Division. Thus, the response from this audit comes directly from the Human Resources Director. Based on the findings and recommendations of this audit, the following is a specific response to each of the categories listed in the audit

Item #1: Overtime & Compensatory Time Policies

The four items listed under Item #1 are related, but require an individual response.

a. Align city overtime and compensatory time with FLSA minimum requirements.

Response: Management concurs with this recommendation and will modify the current policy to realign to meet the requirements of FLSA. This rewritten policy will include the understanding that only time worked will be counted towards overtime, to exclude counting vacation, sick, holiday pay—which are not hours worked, but earned.

b. Adjust fire personnel overtime pay compensation to reflect a 28 day pay period based on the FLSA 207(k) exemption.

Response: Firefighter pay is currently calculated based on a formula that includes their 24-hour workday, and calculations are based on the assumption of paying out a yearly rate that is different than typical pay calculations. Texas Law has allowed for a calculation of hours that would include a different assumption of overtime pay. The HR Director and CFO will review the current calculation method used in calculating firefighter pay and submit to the City Manager's office for further review.

c. Only under very limited circumstances should temporary or seasonal workers be scheduled to work overtime.

Response: Management agrees with this finding, and will begin the implementation of a new category of worker, to include part-time, non-benefitted to better account for the various scenarios workers may be working. This additional category would be added for those employees who work longer throughout the year on a part-time basis, but not eligible to receive benefits.

d. The practice of using compensatory time to earn overtime or additional compensatory time should be eliminated.

Response: Management agrees with this finding and will educate supervisors regarding the practice of approving compensatory time, which would exclude the ability to earn overtime on comp time hours.

Item #2: Seasonal/Temporary Employment

Recommendation; *HR Department coordination of hiring for part-time/seasonal employees and creation of part-time employee classification. In addition, HR should ensure that all city employees are appropriately classified.*

Response: Management agrees with adding an additional category of part-time, non-benefitted and will work on the creation of this additional classification and moving employees to the correct classification.

Item #3: Secondary employment within the City.

Recommendation: *The HR Director should develop procedures to ensure that secondary employment within the City meets the four FLSA exemption criteria including: 1) occasional and sporadic, 2) part-time, 3) at the employee's option, and 4) substantially different.*

Response: Management agrees with this recommendation in the criteria of secondary employment as it relates to FLSA regulations. HR Director will review current procedures and make any changes to ensure that this criteria is met regarding any secondary employment within the City. Currently managers oversee the hiring and termination process for seasonal/temp employees, and HR will continue to educate supervisors of the importance of ensuring that employees are terminated from the system in a timely fashion.

July 8, 2010
Workshop Agenda Item No. 4
High Density Single-Family Detached Residential Development Standards

To: Glenn Brown, City Manager

From: Bob Cowell, AICP, Director of Planning and Development Services

Agenda Caption: Presentation, possible action, and discussion regarding development standards for high-density detached single family residential areas.

Relationship to Strategic Goals: Neighborhood Integrity

Summary: The City of College Station regulates the development detached single family development through the use of the UDO and its related zoning districts and standards. The UDO includes the following zoning districts for single-family detached residential development:

- AO-R (Rural Residential) – This is generally for developments of 50 acres or more with lots of one or more acres and is intended for areas with limited access to infrastructure and/or where a more rural development pattern is desired.
- R-1 (Single Family Residential) – This is generally for development of subdivisions with lots as small as 5,000 square feet in area.
- R-1B (Single Family Residential) – This is generally for development of subdivisions with lots with lots at least 8,000 square feet in area.

Nearly all recent single family detached residential developments within College Station have been built under the R1 zoning. Likewise, nearly all existing single family detached neighborhoods are currently zoned R1. Increasingly, the Council has grown concerned with the adequacy of the R1 zoning district and its related standards to sufficiently address the diversity of developments that actually are occurring. Specifically, the concern is associated with high-density development (i.e., developments consisting of lots with areas less than 8,000 square feet).

Often, these developments are constructed explicitly for investment housing (i.e., Aspen Heights, Southern Trace, Sun Meadows, etc.) or have great likelihood that they will experience conversions from owner-occupied to renter-occupied (Horse Haven, Williamsgate, Sonoma, etc). Concerns regarding adequate parking, sufficient open space, etc. for such developments are generally cited as the most common concerns associated with the current development standards.

Staff will outline the issues, identify how the UDO currently attempts to address these concerns, identify potential resolutions to the short-comings of the UDO, and the pros and cons of each of these potential resolutions.

Budget & Financial Summary: N/A

Attachments: N/A

July 8, 2010
Workshop Agenda Item No. 5
College Station Business Corporation

To: Glenn Brown, City Manager

From: Harvey Cargill, City Attorney
David Gwin, Director of Economic and Community Development

Relationship to Strategic Goals: Goal III.6 CS Economic Development Corporation

Agenda Caption: Presentation, possible action, and discussion regarding the formation of a College Station Business Corporation.

Recommendation(s): Staff is seeking Council direction regarding the proposed council.

Summary: The City Council heard this item at their May 17 meeting. It is being brought back for Council to provide staff direction regarding this issue.

Budget & Financial Summary:

Attachments:

1. E-mail from Hub Kennady
2. Resolution - Creating College Station Economic Development Corp.
3. Resolution - Creating A Pool of Volunteers and Ambassadors
4. Articles of Incorporation of College Station Economic Development Corporation, Inc.
5. Bylaws of College Station Economic Development Corporation
6. Bryan Development Foundation Resolution, Articles of Incorporation and By-Laws

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF COLLEGE STATION, TEXAS, AUTHORIZING AND CREATING COLLEGE STATION ECONOMIC DEVELOPMENT CORPORATION, INC.

WHEREAS, the City of College Station is desirous of creating a non-profit corporation to promote economic development on behalf of the City; and,

WHEREAS, the City Council hereby authorizes the creation of a non-profit corporation to act on its behalf to accomplish the public purposes provided in the Articles of Incorporation and Bylaws; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF COLLEGE STATION, TEXAS:

Part 1: That the incorporation of the College Station Economic Development Corporation, Inc., is hereby authorized.

Part 2: That the Articles of Incorporation and Bylaws attached are hereby approved; the initial directors named therein are hereby appointed as directors of the corporation for the term therein stated, and the incorporators are authorized to file the Articles of Incorporation with the Secretary of State.

Part 3: That upon dissolution of the corporation, the City hereby agrees to and shall accept title to any and all real, personal or other property owned by the corporation at such time, subject to all rights third parties may have.

Part 4: That this resolution shall be effective immediately from and after its passage.

ADOPTED this _____ day of _____, 2010.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF COLLEGE STATION, TEXAS, AUTHORIZING AND CREATING A POOL OF VOLUNTEERS, ADVISORS/AMBASSADORS TO FURTHER ECONOMIC DEVELOPMENT FOR THE CITY OF COLLEGE STATION.

WHEREAS, the City Council of the City of College Station wishes to promote and encourage economic development in College Station; and,

WHEREAS, citizens have volunteered to help sell, tell the story of, and promote the City of College Station; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF COLLEGE STATION, TEXAS:

Part 1: That the City Council of College Station, Texas hereby approves the appointment of Hub Kennady and Dick Haddox as advisors/ambassadors to promote economic development for College Station, Texas.

Part 2: That the initially selected advisors/ambassadors and the Economic & Community Development Director shall solicit the assistance of additional volunteers to meet, greet, sell, and tell the story of College Station, and to assist the Economic & Community Development Director, City Manager and City Council.

Part 3: That the activity of the advisors/ambassadors shall be to coordinate with the Economic & Community Development Director and to provide advice and assistance for economic development.

Part 4: That the advisors/ambassadors shall be authorized to individually or in groups solicit and seek economic development opportunities for College Station.

Part 5: That the advisors/ambassadors shall provide and receive from the Economic & Community Development Director technical advice.

Part 6: That this resolution shall be effective immediately from and after its passage.

ADOPTED this _____ day of _____, 2010.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

ARTICLES OF INCORPORATION
OF
COLLEGE STATION ECONOMIC DEVELOPMENT CORPORATION, INC.

WE, THE UNDERSIGNED natural persons, not less than three in number, each of whom is at least 18 years of age and is a qualified elector of the City of College Station, Texas (the "City"), acting as incorporators of a public instrumentality and non-profit economic development corporation (the "Corporation"), with the approval of the City Council (the "City Council") of the City, do hereby adopt the following Articles of Incorporation for the Corporation:

ARTICLE ONE

The name of the Corporation is "College Station Economic Development Corporation, Inc."

ARTICLE TWO

The Corporation is a non-profit economic development corporation.

ARTICLE THREE

Subject to the provisions of Article Eleven of these Articles, the period of duration of the Corporation is perpetual.

ARTICLE FOUR

(a) The purpose of the Corporation is to promote economic development within the City and the State of Texas in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City by developing, implementing, providing, and assisting in the financing of economic development projects.

(b) In the fulfillment of its corporate purpose, the Corporation shall have the power to assist in providing financing to pay the costs of projects, and to acquire, maintain, and lease and sell property, and interests therein, all to be done and accomplished on behalf of the City and for its benefit and to accomplish its public and governmental purposes as authorized by the City Council.

(c) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in paragraph (b) of this Article, together with all of the other powers granted by the City Council, and the Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State of Texas to nonprofit corporations under the Texas Non-Profit Corporation Act, Non-Profit Corporations, V.T.C.A., Bus. Org. Code, Chapter 22 (the "Act")

ARTICLE FIVE

The Corporation has no members and is a non-stock corporation.

ARTICLE SIX

These Articles of Incorporation and the Corporation's bylaws may be amended in either one of the methods proscribed in this Article.

(a) The City Council, by resolution, may amend these Articles of Incorporation and/or bylaws by filing amendments hereto with the Secretary of State as provided by the Act.

(b) The board of directors of the Corporation may file a written application with the City Council requesting approval of proposed amendments to these Articles of Incorporation and/or bylaws, specifying in such application the proposed amendments. If the City Council, by appropriate resolution, finds and determines that it is advisable that the proposed amendments be made, authorizes the same to be made, and approves the form of the proposed amendments, the board of directors of the Corporation may proceed to amend these Articles of Incorporation and/or bylaws.

(c) The board of directors of the Corporation shall not have any power to amend these Articles of Incorporation and/or bylaws except in accordance with the procedures established in paragraph (b) of this Article.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is the City Hall, 1101 Texas Avenue, College Station, Texas 77845, and the name of its initial registered agent at such address is Nancy Berry, Mayor.

ARTICLE EIGHT

The affairs of the Corporation shall be managed by a board of directors which shall be composed of seven (7) persons appointed by the City Council, who are residents of the City of College Station. Four (4) members of the board of directors shall serve an initial term of one (1) year (the "One Year Class") and three (3) members of the board of directors shall serve an initial term of two (2) years (the "Two Year Class"). Thereafter, appointments shall be for a full term of two (2) years. The names and street addresses of the persons who are to serve as the initial directors of the respective classes and the dates of expiration of their initial terms as directors, are as follows:

| NAME | ADDRESS | DATE OF EXPIRATION OF TERM |
|-------|----------------|----------------------------------|
| _____ | _____ _____ | _____ |

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No member shall serve more than two (2) consecutive terms. Each director shall hold office for the term for which the director is appointed unless sooner removed or resigned. Each director, including the initial directors, shall be eligible for reappointment. Directors are removable by the City Council at will. Any vacancy occurring on the board of directors through death, resignation or otherwise shall be filled by appointment by the City Council to hold office until the expiration of the term of the retiring member.

ARTICLE NINE

The name and street address of each incorporator is:

| <i>NAME</i> | <i>ADDRESS</i> |
|---------------------|--|
| Nancy Berry | 1101 Texas Avenue College Station, TX 77840 |
| Glenn Brown | 1101 Texas Avenue College Station, TX 77840 |
| Harvey Cargill, Jr. | 1101 Texas Avenue College Station, TX 77840 |

ARTICLE TEN

(a) The initial bylaws of the Corporation shall be in the form and substance approved by the City Council by resolution. Such bylaws shall be adopted by the Corporation's board of directors and shall, together with these Articles of Incorporation, govern the internal affairs of the Corporation until and unless amended in accordance with this Article.

(b) Neither the initial bylaws nor any subsequently effective bylaws of the Corporation may be amended without the consent and approval of the City Council. The board of directors of the Corporation shall make application to the City Council for the approval of any

proposed amendments, but the same shall not become effective until or unless the same shall be approved by resolution adopted by the City Council.

ARTICLE ELEVEN

(a) The City Council may, in its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation, and it may terminate or dissolve the Corporation, subject to the provisions of paragraphs (b) and (c) of this Article.

(b) No action shall be taken pursuant to paragraph (a) of this Article in any manner or at any time that would impair any contract, lease, right, or other obligation therefore executed, granted, or incurred by the Corporation.

ARTICLE TWELVE

(a) No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered.

(b) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of all debts, claims, and contractual obligations, including any contractual obligations granting rights of purchase of property of the Corporation.

(c) No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate for public office.

ARTICLE THIRTEEN

The City has specifically authorized the Corporation by resolution to act on its behalf to further the public purposes stated in said resolution and in these Articles of Incorporation, and the City has by said resolution approved these Articles of Incorporation. A copy of said resolution is on file among the permanent public records of the City and the Corporation.

NANCY BERRY

GLENN BROWN

HARVEY CARGILL, JR.

INCORPORATORS

THE STATE OF TEXAS
COUNTY OF BRAZOS

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I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on this _____ day of _____, 2010, personally appeared before me NANCY BERRY, GLENN BROWN, and HARVEY CARGILL, JR., who, each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

NOTARY PUBLIC in and for
the STATE OF TEXAS

[SEAL]

BYLAWS OF
COLLEGE STATION ECONOMIC
DEVELOPMENT CORPORATION

ARTICLE I
PURPOSE AND POWERS

Section 1. Purpose. The College Station Economic Development Corporation, Inc. (the "Corporation") is incorporated for the purposes set forth in Article Four of its Articles of Incorporation, the same to be accomplished on behalf of the City of College Station, Texas (the "City") and for its benefit and to accomplish its public and governmental purposes as authorized by the City of Council of the City.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Powers, Number and Term of Office.

(a) The property and affairs of the Corporation shall be managed and controlled by a Board of Directors (the "Board") and, subject to the restrictions imposed by law, by the Articles of Incorporation, and by these Bylaws, the Board shall exercise all of the powers of the Corporation.

(b) The Board shall consist of seven (7) directors, each of whom shall be appointed by the City Council (the "City Council") of the City.

(c) The directors constituting the first Board shall be those directors named in the Articles of Incorporation. Successor directors shall have the qualifications, shall be of the classes of directors, and shall be appointed to the terms set forth in the Articles of Incorporation.

(d) Any director may be removed from office by the City Council at will.

Section 2. Meetings of Directors. The directors may hold their meetings at such place or places in the City as the Board may from time to time determine; provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation as specified in Article V of these Bylaws.

Section 3. Notice of Meetings.

(a) Regular meetings of the Board shall be held without the necessity of notice to directors at such times and places as shall be designated from time to time by the Board. Special Meetings of the Board shall be held whenever called by the president, by the secretary, by a majority of the directors, by the Mayor of the City, or by a majority of the City Council.

(b) The secretary shall give notice to each director of each Special Meeting in person or by mail, telephone or telegraph, at least two (2) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a Special Meeting. At any meeting at which every director shall be present, even though without any notice, any matter pertaining to the purpose of the Corporation may be considered and acted upon consistent with applicable law.

(c) Whenever any notice is required to be given to the Board, said notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any Regular or Special Meeting of the Board need be specified in the notice to directors or waiver of notice of such meeting, unless required by the Board. A waiver of notice in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 4. Quorum. A majority of the directors shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by law.

Section 5. Conduct of Business.

(a) At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

(b) At all meetings of the Board, the president shall preside.

(c) The secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 6. Committees of the Board. The Board may designate two or more directors to constitute an official committee of the Board to exercise such authority of the Board as may be specified in the resolution. It is provided, however, that all final, official actions of the Corporation may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.

Section 7. Compensation of Directors. Directors shall not receive any salary or compensation for their services as directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their official duties as directors.

ARTICLE III
OFFICERS

Section 1. Titles and Term of Office.

(a) The officers of the Corporation shall be a president, a vice president, a secretary and a treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the president shall not hold the office of secretary. Terms of office shall be one (1) year with the right of an officer to be reelected.

(b) All officers shall be subject to removal from office at any time by a vote of a majority of the entire Board.

(c) A vacancy in the office of any officer shall be filled by a vote of a majority of the directors.

Section 2. Powers and Duties of the President. The president shall be the chief executive officer of the Corporation, and, subject to the paramount authority of the Board, the president shall be in general charge of the properties and affairs of the Corporation, shall preside at all meetings of the Board, and may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

Section 3. Vice President. The vice president shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 4. Treasurer. The treasurer shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these bylaws. When necessary or proper, the treasurer may endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations in or drawn upon such bank, banks or depositories as shall be designated by the Board consistent with these Bylaws. The treasurer shall see to the entry in the books of the Corporation full and accurate accounts of all monies received and paid out on account of the Corporation. The treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his duties in such form and amount as the Board or the City Council may require.

Section 5. Secretary. The secretary shall keep the minutes of all meetings of the Board in books provided for that purpose, shall give and serve all notices, may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation, shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of secretary subject to the control of the Board.

Section 6. The president, each vice president, and the secretary shall be named from among the members of the Board. The treasurer and any assistant

secretaries may, at the option of the Board, be persons other than members of the Board, but they must be employees of the City.

Section 7. Compensation. Officers who are members of the Board shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their official duties as officers.

ARTICLE IV FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

Section 1. Duties.

(a) It shall be the duty and obligation of the Board, in coordination with the necessary contracting parties, to assist the City in providing financing to pay the costs of economic development projects and to acquire, maintain, lease and sell property for economic development purposes.

(b) In carrying out its obligations under subsection (a), the Corporation shall be authorized to exercise all rights and powers granted by the City Council with the objective and for the purpose of developing and diversifying the economy of the State of Texas and the City, and the elimination of unemployment in the State and the City and the expansion of commerce within the State.

(c) The Board shall periodically submit reports to the City Council as to the status of its activities in carrying out its obligations under this Section.

(d) Any and all agreements between the Corporation and other parties shall be authorized, executed, approved, and delivered in accordance with applicable law.

Section 2. Annual Corporate Budget. At least 60 days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget shall not be effective until the same has been approved by the City Council.

Section 3. Books, Records, Audits.

(a) The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

(b) At the direction of the City Council, the books, records, accounts, and financial statements of the Corporation may be maintained for the Corporation by the accountants, staff and personnel of the City.

(c) The Corporation, or the City if the option described in subsection (b) is selected, shall cause its books, records, accounts, and financial statements to be audited at least once each fiscal year by an outside, independent, auditing and accounting firm selected by the Corporation and approved by the City Council. Such audit shall be at the expense of the Corporation.

Section 4. Deposit and Investment of Corporate Funds. All monies of the Corporation, if any, shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its treasurer and such other persons as the Board shall designate. The accounts, reconciliation, and investment of such funds and accounts shall be performed by the Fiscal Services Department of the City.

Section 5. Expenditures of Corporate Money. All expenditures of the Corporation shall be made in accordance with and shall be set forth in the annual budget required by Section 2 of this Article or in contracts meeting the requirements of Section 1(d) of this Article.

ARTICLE V MISCELLANEOUS PROVISIONS

Section 1. Principal Office.

(a) The principal office and the registered office of the Corporation shall be the registered office of the Corporation specified in the Articles of Incorporation.

(b) The Corporation shall have and shall continually designate a registered agent at its registered office, as required by the Act.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be the same as the fiscal year of the City.

Section 3. Seal. The seal of the Corporation shall be as determined by the Board.

Section 4. Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5. Approval or Advice and Consent of the City Council. To the extent that these bylaws refer to any approval by the City or refer to advice and consent by the Council, such advice and consent shall be evidenced by a certified copy of a resolution, order or motion duly adopted by the City Council.

Section 6. Services of City Staff and Officers. Subject to the paramount authority of the City Manager under the Charter of the City, the Corporation shall have the right to utilize the services of the City Attorney, the City Secretary, and the staff and employees of the Finance Department of the City, provided (i) that the Corporation shall pay reasonable compensation to the City for such services, and (ii) the performance of such services does not materially interfere with the other duties of such personnel of the City.

Section 7. Indemnification of Directors, Officers and Employees.

(a) The Corporation shall indemnify each and every member of the Board, its officers, and its employees, and each member of the City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys fees, incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation.

ARTICLE VI
EFFECTIVE DATE, AMENDMENTS

Section 1. Effective Date. These Bylaws shall become effective upon the occurrence of the following events:

- (1) the approval of these Bylaws by the City Council; and
- (2) the adoption of these Bylaws by the Board.

Section 2. Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation of the Corporation and these Bylaws may be amended only in the manner provided in the Articles of Incorporation.

RESOLUTION NO. 996

A RESOLUTION AUTHORIZING THE ESTABLISHMENT AND FUNDING OF THE BRYAN DEVELOPMENT FOUNDATION, INC. PURSUANT TO SECTION 12(x) OF THE BRYAN CITY CHARTER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article 12(x) of the City Charter authorizes the establishment and funding of a Board of City Development for the promotion, advertising, growth, or development and increase of taxable value of the City; and

WHEREAS, the citizens of Bryan valued the importance of economic development when the Charter was ratified; and

WHEREAS, the formation of a corporation for purposes of promoting the development of the City would serve a definite public purpose; and

WHEREAS, in connection with such formation of a corporation there will exist an adequacy of consideration in the exchange of service for the stated amount of financial assistance to be paid by the City of Bryan to such corporation; and

WHEREAS, there is a need for the services to be rendered to the City by such corporation; and

WHEREAS, public purposes to be accommodatd by the corporation are the predominate reason for the formation of the corporation and the transactions contemplated in connection therewith;

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

1.

That the City Staff is hereby authorized and directed to form the corporation to be known as the Bryan Development Foundation, Inc. in accordance with the articles of incorporation, bylaws, and written consent in lieu of an organization meeting, a copy of each of which is attached hereto as Exhibit "A" and made a part herefor all purposes.

2.

That this resolution shall become effective immediately upon adoption.

APPROVED AND ADOPTED this 8th day of March, 1982.

ATTEST:

Dorothy D. Mallett
Dorothy D. Mallett, City Secretary

Richard A. Smith
Richard A. Smith, Mayor

APPROVED AS FORM:

Ernest V. Bruchez
Ernest V. Bruchez, City Attorney

ARTICLES OF INCORPORATION

of

BRYAN DEVELOPMENT FOUNDATION, INC.
(Non-Profit Corporation)

We, the undersigned and natural persons of the age of eighteen years or more, and being citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I

CORPORATE NAME

The name of this corporation is BRYAN DEVELOPMENT FOUNDATION, INC.

ARTICLE II

CORPORATE STATUS

The corporation is a non-profit corporation.

ARTICLE III

DURATION

The period of its duration is perpetual.

ARTICLE IV

PURPOSES

The purpose for which this corporation is formed is to buy, erect or repair any building or improvement for the use of any multi-family residential project (50 living units or more), manufacturing, commercial, or industrial enterprise located within, or in the vicinity of, the City of Bryan, Texas, and to

EXHIBIT "A"

accumulate and lend money for said purposes, and to purchase, sell, and subdivide real property in the City of Bryan, Texas or its suburbs, not extending beyond the City of Bryan's extraterritorial jurisdiction (ETJ) as such ETJ may exist from time to time, for the use of multi-family housing projects, commercial, manufacturing, and industrial enterprises and to accumulate and lend money for said purpose and for advertising for general promotional and tourist advertising of the City of Bryan and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the City of Bryan or through contracts with persons or organizations selected by the City of Bryan.

This corporation is formed strictly as a civic undertaking, and the purpose and powers herein granted shall be limited in their application to rendering financial and other assistance to the multi-family housing projects, commercial, manufacturing, and industrial development of the City of Bryan and its suburbs; to render aid to multi-family housing, commercial, manufacturing, and industrial enterprises situated in such area; to induce the location in said City and its suburbs of other multi-family projects, commercial, manufacturing, and industrial establishments; and advertising for general promotional and tourist advertising of the City of Bryan and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the City of Bryan or through contracts with persons or organizations selected by the City of Bryan.

This corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Texas may by law now or hereafter have or exercise; provided that none of the objectives or purposes herein set out shall be construed to authorize the corporation to do any act in violation of said Non-Profit Corporation Act or Part Four of the Texas Miscellaneous Corporation Laws Act, and all such objectives or purposes are subject to said Acts.

ARTICLE V

ADDRESS

The street address of the initial registered office of the corporation is
and the name of its initial registered agent at such address is

ARTICLE VI

DIRECTORS

The affairs of the corporation shall be managed by a Board of Directors, being appointed by the City Council of the City of Bryan. The number of directors shall be, from time to time, as provided by the Bylaws of the corporation. The number of directors constituting the initial board of directors is seven and the names and addresses of the persons who are to serve as the initial directors are:

Name

Address

ARTICLE VII
INCORPORATORS

The name and street address of each incorporator is:

| <u>Name</u> | <u>Address</u> |
|-------------|----------------|
|-------------|----------------|

ARTICLE VIII
DISSOLUTION AND AMENDMENT

Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets, if any, of the corporation shall be granted, conveyed and assigned to the City of Bryan.

Dissolution of the corporation must be approved in writing by not less than two-thirds (2/3) of the Directors.

IN WITNESS WHEREOF, We, the undersigned, have hereunto set out hands this _____ day of _____, 1982.

STATE OF TEXAS §

COUNTY OF BRAZOS §

BEFORE ME, a Notary Public, on this day personally appeared _____ and _____, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, severally declared that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 1982.

Notary Public, State of Texas

BY-LAWS
of
BRYAN DEVELOPMENT FOUNDATION, INC.

ARTICLE 1. DIRECTORS AND OFFICERS

This company shall have the following directors and officers: seven (7) Directors who shall elect from their members a President, a Vice-President, a Secretary, and a Treasurer. All officers shall be required to be directors of the company.

ARTICLE 2. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

The directors shall be appointed by the City Council of the City of Bryan. At the first meeting, appointees shall draw by lot for places one (1) through seven (7). Places one (1) and two (2) shall be for an initial term of one (1) year; places three (3) and four (4) shall be for an initial term of two (2) years; and places five (5), six (6) and seven (7) shall be for an initial term of three (3) years. Thereafter, the term of office for each director shall be for a period of three (3) years.

ARTICLE 3. ELECTION OF OFFICERS

The officers, other than the directors, shall be elected at the annual meeting of the Board of Directors provided for herein and the Directors shall elect said officers as provided for herein from among their number. Each director shall be entitled to one vote and it shall require a majority vote to elect any officer. The officers shall hold office at the pleasure of the Board of Directors.

ARTICLE 4. TERM OF OFFICE OF THE OFFICERS

The officers of the company shall be elected annually in the manner provided for above. The term of the office shall run from January 1 of each year through December 31 of the same year. Each director and officer shall serve from the date of his election and qualification until his successor is elected and duly qualified.

ARTICLE 5. MEETING OF THE BOARD OF DIRECTORS

The Board of Directors shall have one annual meeting at which meeting the President, Vice President, Secretary, and Treasurer shall be elected, said annual meeting to be held on the third Monday in the month of January of each year. In addition the Board of Directors shall meet upon the call of the President or Vice President, as the case may be, and they shall meet at such time and place as directed by the officer calling the meeting. Such calls shall be made by personal notification. A majority of the Board of Directors will constitute a quorum and if a quorum be present, then any manner of business may be attended to and the corporation be bound. The place and time of all Board of Directors meeting shall be set by the President or by the Vice President in the absence of the President.

ARTICLE 6. FILLING OF VACANCIES ON THE BOARD AND OFFICERS

In the case of the death or resignation of any officer or director or the refusal or inability of any officer or director to perform the duties of his office, the Board of Directors shall have the privilege to declare a vacancy on the board or in the office and such vacancy shall be filled for such unexpired term in the same manner as provided for regular appointments; provided however, that any such vacancy in such office so created shall be filled by a vote of the remaining Directors even though they may constitute less than a quorum.

ARTICLE 7. DUTIES OF THE PRESIDENT

The President shall preside at all meetings of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of president of a non-profit corporation. The President shall have the power to sign checks, warrants, and vouchers whereby the funds of the corporation will be disbursed. However, such checks must be, in all cases, countersigned by the Treasurer. The President shall perform such other duties as shall properly relate to his office.

ARTICLE 8. DUTIES OF THE VICE PRESIDENT

The Vice President shall act for and assume the power of the President in the absence of the President or upon refusal or inability of the President to act. The Vice President shall perform such other duties as shall properly relate to his office and such other duties as may be required of him from time to time by the Board of Directors.

ARTICLE 9. DUTIES OF THE SECRETARY

The Secretary shall keep a correct set of written minutes of all meetings of the Board of Directors in a bound book provided especially for that purpose. The said minutes shall be open to the inspection of any director of this corporation or member of the City Council of the City of Bryan at any time. The Secretary shall also have possession of and be responsible for keeping the Seal of the corporation and shall attest and affix the Corporation Seal to every contract in writing executed by the company. The Secretary shall have charge of such books and papers as the Board of Directors may direct; and shall, in general, perform all the duties incident to the office of the Secretary.

ARTICLE 13. AMENDMENTS AND BY-LAWS

The By-Laws may be altered, changed, or amended by the majority vote of all the Directors of the corporation at any Directors meeting especially called for that purpose by the President. Upon written application of a majority of the Board of Directors, the President shall be required to call such a Directors meeting.

ARTICLE 14. NON-PROFIT CORPORATION

This corporation is not organized for profit. No member of the Board of Directors or person from whom the Corporation may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the corporation be paid as a salary or as compensation to, or distributed to or inure to the benefit of any member of the Board of Directors; provided, however, always (1) that reasonable compensation may be paid to any member while acting as any agent or employee of the corporation for services rendered in effecting one (1) or more of the purposes of the corporation, and (2) that any member of the Board of Directors may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the corporation.

ARTICLE 15. PRINCIPAL OFFICE

The principal office of the corporation shall be located at 300 South Washington Street, Bryan, Texas 77801, but may be located at such other suitable and convenient place as shall be permitted by law and designated by the Directors.

ARTICLE 16. CORPORATE SEAL

The Directors shall provide corporate seal which shall be circular in form and shall have inscribed thereon the name of the corporation.

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, complete and correct copy of the By-Laws of Bryan Development Foundation, Inc., a Texas non-profit corporation, as adopted by the initial Board of Directors at its organization meeting on the _____ day of _____, A.D., 1982.

Secretary

BRYAN DEVELOPMENT FOUNDATION, INC.

Unanimous Written Consent of
Directors in Lieu of Organizational Meeting

We, the undersigned, being all of the Directors of Bryan Development Foundation, Inc., a Texas non-profit corporation (the "Corporation"), named as such in the Articles of Incorporation of the Corporation, pursuant to Articles 1396-3.05 and 1396-9.10 of the Texas Non-Profit Corporation Act, do hereby unanimously and severally vote for, adopt, approve and consent to the following resolutions and the actions contemplated thereby, it being our understanding and intention that the execution of this Written Consent is in lieu of the holding of an organizational meeting of the Board of Directors of the Corporation. All of such resolutions shall become effective simultaneously as of the date and year upon which this Consent is executed.

Resolution providing for the election of officers of the Corporation.

RESOLVED, that the persons whose names are hereinbelow listed be and each of them hereby is elected to and declared qualified to occupy the office or offices of the Corporation set forth opposite their respective names; and that such persons shall occupy such offices until their respective successors shall be duly elected and qualified, unless they shall sooner resign or be removed, in accordance with the Bylaws of the Corporation:

President

Vice-President

Secretary

Treasurer

Resolutions approving the Articles of Incorporation and directing that a copy thereof be filed in the Minute Book.

RESOLVED, that the Articles of Incorporation for the Corporation, in the form submitted to the Secretary of State of Texas for filing, be and hereby are approved and adopted, and further

RESOLVED, that the Secretary of the Corporation be and is hereby instructed to file in the Minute Book of the Corporation a certified copy of the Articles of Incorporation of the Corporation, as approved by and filed in the office of the Secretary of State of Texas on 1982.

Resolutions adopting Bylaws and directing that a copy thereof be filed in the Minute Book.

RESOLVED, that the form of Bylaws which has heretofore been inspected and approved by each of the Directors of the Corporation, which consists of () pages and () articles, be, and each section thereof is hereby adopted as the Bylaws of the Corporation; that the Secretary of the Corporation be and is hereby instructed to insert a copy of such form of Bylaws in the Minute Book of the Corporation immediately following the Articles of Incorporation; and that such insertion shall conclusively evidence that the Bylaws so inserted are the Bylaws adopted hereby.

Resolution providing for the adoption of a corporate seal.

RESOLVED, that the form of seal which has heretofore been inspected and approved by each Director of the Corporation be and it hereby is adopted as the corporate seal of the Corporation; that the Secretary of the Corporation be and is hereby instructed to affix an impression of such seal on the page of the Minute Book whereon this resolution is written, on the right margin hereof opposite the text of this resolution; and that such affixing shall conclusively evidence that the impression so affixed is the corporate seal approved and adopted hereby.

Resolution designating a depository for the funds of the Corporation and adopting the resolutions furnished by such depository.

RESOLVED, that , Bryan, Brazos County, Texas, be and is hereby designated as the depository of the funds of the Corporation; that funds of the Corporation be deposited in and withdrawn from said

depository in one or more accounts for any and all purposes of the Corporation upon the signatures of the officers of the Corporation be and are hereby authorized and directed to open such accounts at said depository as they, in their discretion may deem necessary or appropriate, and that the form of resolution furnished by said depository and attached hereto as Exhibit "A" be and is hereby adopted.

Resolution adopting annual accounting period.

RESOLVED, that the annual accounting period of the Corporation shall end on _____ of each calendar year.

Resolution adopting principal office.

RESOLVED, that the principal office of the Corporation shall be located at _____

IN WITNESS of our unanimous vote for, approval and adoption of and consent to the foregoing resolutions, we have executed this Written Consent, to be effective as of the _____ day of _____, 1982. This document may be executed in any number of counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall constitute one and the same document.

ARTICLE 10. DUTIES OF THE TREASURER

The Treasurer of the corporation shall keep an accurate set of records reflecting the financial condition of the corporation at all times. Such records shall be open to inspection by any director of the corporation and any member of the City Council of the City of Bryan. In addition, it shall be the duty of the Treasurer to supervise the expenditure of the funds of the corporation and to countersign all checks issued by the President or Vice President of the corporation, and perform all other duties assigned to the Treasurer by the Board of Directors.

ARTICLE 11. SALE OF REAL ESTATE

All sales or conveyances or mortgages of real estate owned or held by the corporation shall be in writing, signed and acknowledged by the President, or Vice President in case of the absence, refusal, or inability of the President to act, and the Secretary shall attest such conveyance under the official seal of the corporation. No real estate shall be sold, mortgaged, or otherwise disposed of unless the disposition shall first have been ordered by resolution passed by the Board of Directors. These same requirements shall apply to leases made upon the property of the Corporation.

ARTICLE 12. MANAGEMENT

The Board of Directors shall assume supervision over the affairs of the corporation with the exception that the President shall have such authority and power as is necessary to carry on the general everyday business of the company.