

ITEM #:	<u>34</u>
DATE:	<u>03-11-25</u>
DEPT:	<u>P&amp;H</u>

### COUNCIL ACTION FORM

**SUBJECT:**                      **JT WAREHOUSE SUBDIVISION (EAST 13TH STREET)**  
**AGREEMENT CHANGES**

**BACKGROUND:**

The property owners of Lots 1 and 2 in the JT Warehouse Subdivision located at 3910 (Lot 2) and 4098 (Lot 1) East 13th Street (See Attachment A- Location Map) have requested an amendment to the Public Improvements Agreement approved as part of the JT Warehouse Subdivision Final Plat in September 2023. A security in the form of a bond was also posted by the developer. **The request is to amend the deadline for the developer to construct public improvements from the current date of November 1, 2024 to September 27, 2026.** No public improvements were completed by November 1, as there have been delays in starting the project as originally forecasted by the developer.

**The City's Subdivision standards in Chapter 23 allow for Public Improvement guarantees of up to three years from the date of Final Plat approval. The proposed deadline change complies with this standard based upon when the Final Plat was approved in 2023.** The developer is requesting the extension to allow additional time to finish constructing the Public Improvements they are responsible for in anticipation of development occurring at this site. The amended Public Improvement Agreement is attached. (See Attachment B- Amended Public Improvement Agreement)

**"REGIONAL MALL" CONTRACT REZONING AND DEVELOPMENT AGREEMENT:**

**The City Council is also being asked to approve a resolution that site is not subject to the original "Regional Mall" Development Agreement effectuated in 2007 for commercial development under Planned Regional Commercial (PRC) with the Northeast Gateway Overlay (O-GNE) zoning for three sites referred to as the North Site, South Site, and East Barilla site.**

The subject site is part of the East Barilla site legal description in the agreement. **The developer seeks this acknowledgement because the original Agreement prohibits applying for any form of tax abatement related to properties subject to the Agreement.** The developer is approved to build an industrial warehouse on the site under General Industrial zoning and desires to apply for the citywide industrial tax abatement program to facilitate the project. Because the current zoning is industrial and not commercial, there is ambiguity as to the applicability of the Agreement to the site.

The site was originally part of a 2005 rezoning approval to PRC/O-GNE for all of the land, subject to conformance with the development agreement recorded in 2007. Subsequently in 2009, the East Barilla Site was rezoned from PRC to Planned Industrial (PI) with the O-GNE. At that time, the Agreement was not repealed or amended specifically and still shows as recorded on the property title.

This property was more recently rezoned from Planned Industrial with the Northeast Gateway Overlay (O-GNE) to General Industrial (GI) with a Masterplan in 2023 in anticipation of industrial development. At that time there was only a statement that the original agreement has no specific improvement requirements related to the site when zoned PRC originally and no amendment to the Agreement was proposed by the applicant or suggested by staff. The site currently has no commercial

zoning or overlay zoning applying to it.

After review of the Agreement at the request of the developer in February 2025, City staff and the City Attorney believe that it only applies to sites with PRC zoning and O-GNE zoning. Since the agreement was never modified with the industrial rezonings, the legal description of its applicability has carried through as applying to the site despite its rezoning, thus creating the confusion. **Staff believes that with the rezoning of the site in 2023 that removed all forms of zoning for the site related to the original agreement, by its definition of terms for the Rezoning Ordinance referenced in the Agreement, the Agreement does not in any part apply to the current GI zoned land. The proposed Resolution will confirm that the Agreement does not apply and specifically that the language restricting Tax Abatement no longer applies to the current Industrial zoning. This action will allow for the owner of the property to seek industrial tax abatement if they have qualifying improvements in the future.**

**If the City Council does not concur with staff's interpretation of the Agreement's applicability to the site, the developer would then initiate a rezoning process to seek an amendment to the Agreement to remove the tax abatement prohibition. This process would take approximately eight weeks and would be subject to Council approval of a rezoning and amendment to the Agreement.**

#### **ALTERNATIVES:**

1. Approve by resolution:
  - a. Amendment to the Public Improvements Agreement to extend it until September 27, 2026
  - b. Acknowledgment of release of site from Development and Contract Rezoning Agreement

*For this Alternative, the property owners must sign the Public Improvement agreement prior to the Council meeting.*

2. Approve by resolution only the amendment to the Public Improvements Agreement
3. Deny proposed amendments.

#### **CITY MANAGER'S RECOMMENDED ACTION:**

**The developer's request of extension of the public improvements is consistent with City standards and does not impair the ability to serve any other land in the area by granting the extension. The acknowledgement of the release of the site from the original Agreement because the site is not zoned PRC is consistent with the terms of the Agreement and the City's intent with the 2023 rezoning of the site to General Industrial.**

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, as described above.

#### **ATTACHMENT(S):**

[Attachment A- JT Warehouse Subdivision Location Map.pdf](#)

[Attachment B-Draft Amendment to Agr for Public Imps \(2.19.25V2 draft\).pdf](#)