Bastrop, TX City Council Meeting Agenda

Bastrop City Hall City Council Chambers
1311 Chestnut Street
Bastrop, TX 78602
(512) 332-8800

BASTROPTX
Heart of the Lost Pines / Est. 1832

April 9, 2019 at 5:00 P.M.

City of Bastrop City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at (512) 332-8800 or write 1311 Chestnut Street, 78602, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

The City of Bastrop reserves the right to reconvene, recess, or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

PLEASE NOTE: ANYONE WISHING TO ADDRESS THE COUNCIL MUST COMPLETE A CITIZEN COMMENT FORM AND GIVE THE COMPLETED FORM TO THE CITY SECRETARY PRIOR TO THE START OF THE REGULAR SESSION OF THE CITY COUNCIL MEETING AT 6:30 P.M.

1. CALL TO ORDER – EXECUTIVE SESSION – 5:00 P.M.

2. EXECUTIVE SESSION

2A. City Council shall convene into closed executive session pursuant to Section 551.074 of the Texas Government Code to discuss the appointment of an Associate Judge.

2B. City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to confer with City Attorney regarding status of Building Bastrop Codes.

3. TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION

4. CALL TO ORDER – REGULAR SESSION – 6:30 P.M.

5. PLEDGE OF ALLEGIANCE – The "Addams Family" Cast – Bastrop High School

TEXAS PLEDGE OF ALLEGIANCE
Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

6. INVOCATION – Grady Chandler, Police Chaplain

7. PRESENTATIONS

7A. Mayor's Report

7B. Councilmembers' Report

7C. City Manager's Report

7D. Proclamation of the City Council of the City of Bastrop, Texas recognizing the month of April as National Sexual Assault Awareness Month for the City of Bastrop.

7E. Proclamation of the City Council of the City of Bastrop, Texas recognizing April 18, 2019 as National Lineman Appreciation Day.

7F. Proclamation of the City Council of the City of Bastrop, Texas recognizing April 14 - 20, 2019 as National Public Safety Telecommunicators Week for the City of Bastrop.

7G. Proclamation of the City Council of the City of Bastrop, Texas recognizing April 2019 as National Fair Housing Month.

7H. Receive presentation and hold discussion regarding proposed changes to the Hotel Occupancy Tax Ordinance from Justin Bragiel with Texas Hotel & Lodging Association.

8. WORK SESSION/BRIEFINGS

8A. Update and discussion of current Legislative Session and its impact on local municipalities.

8B. Hold discussion regarding Storm Drainage Design Manual & Ordinance as it relates to water quality.

8C. Hold policy discussion regarding the current and proposed Street lighting standards.

8D. Hold discussion regarding Parking Standards for Building Bastrop Codes.

8E. Provide an update on the Chicken Relocation Project in Downtown Bastrop, Texas.

8F. Continue discussion from the February 26, 2019 work session regarding the creation of rates and standardized contracts for future wholesale water and wastewater customers.

8G. Hold discussion regarding "grandfathered status" under Chapter 245 of the Texas Local Government Code.

9. STAFF AND BOARD REPORTS

9A. Receive Presentation and Update from the YMCA of Austin/Bastrop Branch.

9B. Receive Presentation and Update from the Bastrop Opera House.

9C. Receive Presentation and Update from the Bastrop County Historical Society.

10. CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Council meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible future action.

To address the Council concerning any item on the agenda, please submit a fully completed request card to the City Secretary prior to the start of the meeting.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of the Council, as a body, or any member or members of the Council individually or collectively, or members of the City's staff. Accordingly, profane, insulting or threatening language directed toward the Council and/or any person in the Council's presence will not be tolerated.

11. CONSENT AGENDA

The following may be acted upon in one motion. A Councilmember or a citizen may request items be removed from the Consent Agenda for individual consideration.

11A. Consider action to approve City Council minutes from the March 26, 2019, meeting.

11B. Consider action to approve second reading of Ordinance No. 2019-05 of the City Council of the City of Bastrop, Texas amending the City of Bastrop, Texas Code of Ordinances, Chapter 3 Building Regulations, Article 3.17 Flood Damage Prevention, Section 3.17.007 Administration to allow the City Manager to appoint a designee to serve as Floodplain Administrator; repealing conflicting provisions; providing for severability; proper notice and meeting; and establishing for an effective date.

12. ITEMS FOR INDIVIDUAL CONSIDERATION

12A. Consider action and approve Resolution No. R-2019-34 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules)

12B. Consider action to approve Ordinance No. 2019-08 of the City Council of the City of Bastrop, Texas, Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; repealing all ordinances and actions in conflict herewith; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

12C. Consider action to approve Ordinance No. 2019-09 of the City Council of the City of Bastrop, Texas, authorizing the First Supplemental Ordinance to the Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; authorizing the issuance of the City of Bastrop, Texas Water and Wastewater Utility System Revenue Bonds, Series 2019; approving an official statement, a paying agent/registrar agreement and other agreements relating to the sale and issuance of the bonds; and ordaining other matters relating to the issuance of the bonds; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

12D. Consider action to approve Resolution No. R-2019-35 of the City Council of the City of Bastrop, Texas adopting a Purpose Statement for the International Code Review Process; and establishing for an effective date.

12E. Hold public hearing and consider action to approve the first reading of Ordinance No. 2019-06 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit to allow a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, an area zoned SF-9, Single Family 9, within the city limits of Bastrop, Texas; as shown in Exhibits A and B; setting out conditions; including a severability clause; establishing an effective date, and move to include on the April 23, 2019 Consent Agenda for second reading.

12F. Consider action to approve Resolution No. R-2019-31 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3E Final Plat, being 3.787 acres out of the Mozea Rousseau Survey, Abstract 56, located west of the extension of Trailside Lane, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

12G. Consider action to approve Resolution No. R-2019-30 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3D Final Plat, being 13.336 acres out of the Mozea Rousseau Survey, Abstract 56, located north of the extension of Childers Drive, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

12H. Consider action to approve the first reading of Ordinance 2019-07 of the City Council of the City of Bastrop, Texas ("city") implementing a pilot program to authorize the sale of food from mobile food vendors within the City limits and to establish a mobile food vendor permit process for the pilot program; providing for findings of fact, purpose, expiration date; enactment, variance, repealer, severability, effective date, and proper notice and meeting.

12I. Consider action to approve Resolution R-2019-36 of the City Council of the City of Bastrop, Texas authorizing the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to communicate with the Office of the Governor and Texas Legislature on behalf of the City of Bastrop Texas; and establishing an effective date.

12J. Consider Action to approve the first reading of Ordinance Number 2019-11 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, Chapter 2 Titled "ANIMAL CONTROL," Article 2.01 Titled "GENERAL PROVISIONS," Sections 2.01.001 Titled "DEFINITIONS"; amending the definitions of "Feral," "Livestock," "Poultry /Fowl," and Wild Birds" and 2.01.007 Titled "Injury or destruction of wild birds;" amending the provision amending the provision for the exclusion of certain birds from this section by adding chickens and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer,

severability, and proper notice and meeting and move to include on the April 23, 2019 agenda for a second reading.

13. ADJOURNMENT

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City's website, www.cityofbastrop.org and said Notice was posted on the following date and time: Friday, April 5, 2019 at 4:00 p.m. and remained posted for at least two hours after said meeting was convened.

Ann Franklin, City Secretary

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 2A

TITLE:
City Council shall convene into closed executive session pursuant to Section 551.074 of the Texas Government Code to discuss the appointment of an Associate Judge.

STAFF REPRESENTATIVE:
Lynda K. Humble, City Manager

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 2B

TITLE:
City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to confer with City Attorney regarding status of Building Bastrop Codes.

STAFF REPRESENTATIVE:
Lynda K. Humble, City Manager

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 3

TITLE:
Take any necessary or appropriate action on matters posted for consideration in Closed/Executive Session.

STAFF REPRESENTATIVE:
Lynda K. Humble, City Manager

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7A

TITLE:
Mayor's Report

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

(1) expressions of thanks, congratulations, or condolence;
(2) information regarding holiday schedules;
(3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
(4) a reminder about an upcoming event organized or sponsored by the governing body;
(5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
(6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

ATTACHMENTS:

- Power Point Presentation

Mayor's Report
April 9, 2019

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Latest Activities

March 15 - 28

Events in 2019: 79





Texas Legislative Conference

Ross Ramsey/Sen Watson/Sen Bettencourt



Waternow Alliance Conference



US Global Leadership Coalition



Colorado River Collegiate Academy
Mr. Marion's Class



Monday Mentoring
Gateway School

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Planned Events

March 28 – April 9

- March 29
  - BEST Breakfast: Workforce Solutions
  - TML Board Meeting (Austin)
- March 30 –
  - YMCA Re-Launch Air Fitness Unit (Bob Bryant Park)
  - Friends of the Library – Plant Sale
- April 1 –
  - Great Places in Texas
  - Library Board Meeting
- April 2 –
  - Texas Colorado River Floodplain Coalition Board Meeting
  - Old Towne & Piney Creek Chophouse 5th Anniversary
- April 3 – Chamber Luncheon
- April 9 - City Council Meeting

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Upcoming Events & City Meetings

- April 10 –
  - King's Portable Thrones & Simply Favored Vinyl Ribbon Cutting
  - Transportation Rodeo
  - Drainage Rodeo
- April 11 – Career Day Red Rock Elementary
- April 12 – Youth Career Day (Performing Arts Center)
- April 13 – Bastrop Market Days (Mayfest Park)
- April 14 – Spring Gala (Lost Pines Art Guild)
- April 15 – BEDC
- April 16 – Candidate Forum
- April 18 – FCI Quarterly Community Luncheon
- April 22 – EARLY Voting Starts!
- April 23 - City Council Meeting

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STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7B

TITLE:
Councilmembers' Report

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

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(6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7C

TITLE:
City Manager's Report

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

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(2) information regarding holiday schedules;
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(6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

STAFF REPORT

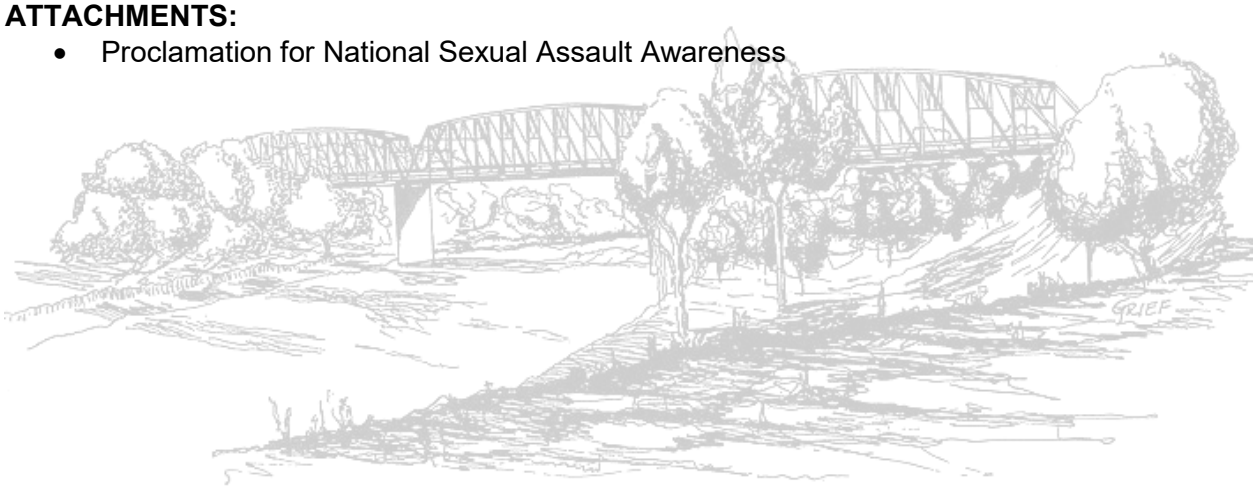
MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7D

TITLE:
Proclamation of the City Council of the City of Bastrop, Texas recognizing the month of April as National Sexual Assault Awareness Month for the City of Bastrop.

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

ATTACHMENTS:

- Proclamation for National Sexual Assault Awareness



PROCLAMATION

BASTROPTX
Heart of the Lost Pines / Est. 1832

WHEREAS, sexual Assault in the City of Bastrop, Bastrop County and in the State of Texas is intolerable and must be stopped, Sexual Assault Awareness Month (SAAM) calls attention to the fact that sexual violence is widespread and impacts every person in this community; and

WHEREAS, the Family Crisis Center Sexual Assault Awareness campaign for 2019 calls attention to the fact that sexual violence is widespread and impacts every person in this community. The goal of SAAM is to raise public awareness about sexual violence and educate communities on how to prevent it. Rape, sexual assault, and sexual harassment harm our community, and statistics show one in five women and one in 67 men will be raped at some point in their lives (Smith et al., 2017). Child sexual abuse prevention must be a priority to confront the reality that one in six boys and one in four girls will experience sexual assault before age 18 (Dube et al., 2005). On campus, one in five women and one in 16 men are sexually assaulted during their time in college (Krebs, Lindquist, Warner, Fisher, & Martin, 2007); and

WHEREAS, in order to address this crime, an active response to sexual assault must engage the entire community including city government, law enforcement, prosecutors, advocates, educators, reporters, and neighbors. By working together, our community can become more responsive to victims of this crime and safer for all; and

WHEREAS, programs designed to educate and provide information to individuals about ways to help prevent sexual assault are encouraged throughout the community, while also providing survivors with safety, help, and justice through services and resources.

NOW THEREFORE, that the City of Bastrop joins the Family Crisis Center, victim advocates, and other support service programs in the belief that all City of Bastrop residents must be part of the solution to end sexual assault and I, Mayor Connie B. Schroeder, do hereby proclaim April as:

NATIONAL SEXUAL ASSAULT AWARENESS MONTH

And reaffirm this City's commitment to ending Sexual Assault in our community.

IN WITNESS WHEREOF, I have here unto set my hand and caused the Seal of the City of Bastrop, Texas to be affixed this 9th day of April 2019.

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Connie B. Schroeder, Mayor

STAFF REPORT

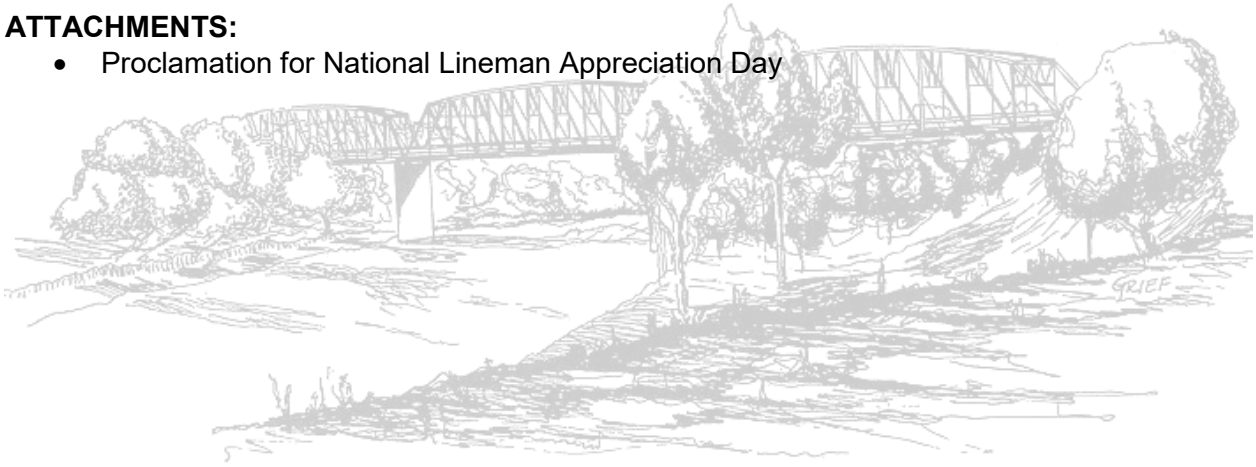
MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7E

TITLE:
Proclamation of the City Council of the City of Bastrop, Texas recognizing April 18, 2019 as National Lineman Appreciation Day.

STAFF REPRESENTATIVE:
Trey Job, Managing Director of Public Works & Leisure Services
Curtis Ervin, Director – Bastrop Power & Light

ATTACHMENTS:

- Proclamation for National Lineman Appreciation Day



PROCLAMATION

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WHEREAS, in 2012, the United States Senate first recognized the important role that lineman play in ensuring reliable electricity by bringing attention to linemen's history and role in society by creating the first National Linemen Appreciation Day; and

WHEREAS, the Power Lineman Trade began in 1879 with the invention of the Edison lightbulb; and

WHEREAS, Ezra Cornell, the first lineman in the United States, built the Morse Telegraph Line and later founded Cornell University, and

WHEREAS, there are approximately 155,000,000 electric customers in the United States served electrical power over 9 million miles of wire, hung on 170 million wood poles and 2.7 million transmission towers, and maintained by approximately 115,000 linemen; and

WHEREAS, National Lineman Day is a time to express our utmost appreciation to the great men and women that work on a daily basis in ensuring reliable electricity, a role that is performed almost invisibly; and

WHEREAS, the City of Bastrop is especially proud of the hard-working linemen of Bastrop Power and Light, who have allowed us to become accustomed to having very few outages lasting a short amount of time; and

WHEREAS, the City Council encourage all residents to also recognize the vital role our linemen play in providing safe, reliable, affordable electricity by expressing your thanks on social media using #ThankALineman.

NOW, THEREFORE, I, Connie Schroeder, Mayor of the City of Bastrop, do hereby recognize April 18, 2019 as**:**

National Lineman Appreciation Day

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 9th day of April 2019.

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Connie B. Schroeder, Mayor

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7F

TITLE:
Proclamation of the City Council of Bastrop, Texas recognizing April 14 - 20, 2019 as National Public Safety Telecommunicators Week for the City of Bastrop.

STAFF REPRESENTATIVE:
James K. Altgelt, Director of Public Safety/Chief of Police

BACKGROUND/HISTORY:
Across the nation in times of intense personal crisis and community-wide disasters, the first access point for those seeking all classes of emergency services is 9-1-1. The local and county emergency communications centers that receive these calls have emerged as the first and single point of contact for persons seeking immediate relief during an emergency.

National Public Safety Telecommunicators Week began in 1981 in California. It is celebrated the second week of April each year and offers a time for much-deserved thanks for our dispatchers and recognition for the crucial role they play assisting first responders. The importance of recognizing and celebrating the hard work of these dedicated professionals at every level is immeasurable.

ATTACHMENTS:
- Proclamation for National Public Safety Telecommunicators Week

PROCLAMATION

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WHEREAS, emergencies can occur at any time that require police, fire or emergency medical services; and

WHEREAS, when an emergency occurs the prompt response of police officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and

WHEREAS, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the Bastrop County Emergency Communications Center; and

WHEREAS, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and

WHEREAS, Public Safety Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information, and insuring their safety; and

WHEREAS, Public Safety Telecommunicators of Bastrop County have contributed substantially to the apprehension of criminals, suppression of fires, and treatment of patients; and

WHEREAS, each dispatcher has exhibited compassion, understanding, and professionalism during the performance of their job in the past year;

NOW THEREFORE, I, Connie Schroeder, Mayor of the City of Bastrop, do hereby proclaim the week of April 14 through 20, 2019 as:

NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 9th day of April 2019.

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Connie B. Schroeder, Mayor

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7G

TITLE:
Proclamation of the City Council of Bastrop, Texas recognizing April 2019 as National Fair Housing Month for the City of Bastrop.

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

BACKGROUND/HISTORY:
Sponsored by the U.S. Department of Housing and Urban Development (HUD), the National Fair Housing Month Campaign includes efforts to end housing discrimination and raise awareness fair housing rights in communities across the country.

National Fair Housing Month in April increases efforts to end housing discrimination and raises awareness of fair housing rights. The month also remembers the assassination of Rev. Dr. Martin Luther King Jr. in 1968 and his contributions to the Civil Rights Movement. The Fair Housing Act also celebrates its anniversary during April.

In 2018, the Fair Housing Act celebrated its 50th anniversary. Designed to protect Americans from discrimination in the sale, rental and financing of housing based on color, race, national origin and religion, the act later extended to sex, disability and family status.

ATTACHMENTS:
- Proclamation for National Fair Housing Month

PROCLAMATION

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WHEREAS, April 2019 marks the 51st Anniversary of Title VIII of the Civil Rights Act of 1968, known as the Civil Rights Fair Housing Act; and

WHEREAS, when this Act provides equal housing opportunity for all Americans regardless of race, color, religion, sex or national origin, as well as to ensure fair practice in the sale, rental or financing of property; and

WHEREAS, the Fair Housing Amendments Act of 1988 added new rights, remedies, monetary penalties, and strengthened its enforcement procedures; and

WHEREAS, the Fair Housing Amendments Act seeks to provide equal housing opportunities, to affirmatively further housing choices, to eliminate legal barriers to equal housing and to emphasize equal housing as a fundamental human right for all; and

WHEREAS, individuals in the city have the right to choose where to live without discrimination based on race, color, religion, age, sex, disability, gender identity, familial status or national origin; and

WHEREAS, the City of Bastrop fully supports the intent and purpose of the Federal Fair Housing Act, local fair housing laws and follows policies and practices in order to achieve its goal:

NOW THEREFORE, I, Connie Schroeder, Mayor of the City of Bastrop, do hereby proclaim April 2019 as:

NATIONAL FAIR HOUSING MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 9th day of April 2019.

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Connie B. Schroeder, Mayor

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 7H

TITLE:
Receive presentation and hold discussion regarding proposed changes to the Hotel Occupancy Tax Ordinance from Justin Bragiel with Texas Hotel & Lodging Association.

STAFF REPRESENTATIVE:
Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:
The City established through ordinance, a local Hotel Occupancy Tax of 7%, setting rules that include the collection, reporting, and auditing of Hotel Occupancy Tax payers. This ordinance was last revised in 2009. Since that time, Chapter 351 of the Tax Code has gone through several updates. Some of the major changes to the Tax Code are the definition of a hotel, exceptions to collecting the tax, frequency of reporting and paying the tax, and laws regarding purchasing of a hotel. A revision to the City's ordinance is required to be in compliance with this chapter of the Tax Code.

The update of the ordinance is the first step in an overall Hotel Occupancy Tax review. City staff is looking for a firm to contract with for administrative, discovery, and auditing services. The administrative services will allow the tax payers to report and pay online. The City will be better able to track occupancy and tax information across fiscal years. The discovery service will start to identify "hotels" by definition in our ETJ that are not in compliance with our ordinance. Lastly, the audit service will be a multi-year contract that will audit two (2) to three (3) hotels per year confirming that they understand the ordinance, applying the exceptions correctly, and are paying the proper amount of tax.

The proposed time line is below:

- April – Legal review of selected vendor's contract, execution of contract.
- April 23 – 1st reading of Hotel Occupancy Tax Ordinance.
- May 14 – 2nd reading of Hotel Occupancy Tax Ordinance.
- May/June – Set up of online administrative portal, letter to hotels informing them of Ordinance revision and new online reporting.
- July 1 – Go live with online reporting.
- August – Start audit and discovery services.

POLICY EXPLANATION:
Chapter 351 of the Tax Code establishes the rules for imposing and collecting Hotel Occupancy Tax for Municipalities. The City's Hotel Occupancy Tax codes are in Article 11.04 of the City Code of Ordinance.

ATTACHMENTS:
- Article 11.04 Hotel Occupancy Tax red-lined version

ARTICLE 11.04 - HOTEL OCCUPANCY TAX

Sec. 11.04.001 - Definitions.

The following words, terms and phrases are defined as follows:

Consideration. The cost of the room in a hotel only if the room is ordinarily used for sleeping, and not including the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Hotel. As defined by Section 156.001, Texas Tax Code, a "hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. For purposes of the imposition of a hotel occupancy tax, "hotel" includes a short-term rental. In this article, "short-term rental" means the rental of all or part of a residential property to a person who is not a permanent resident. The term "hotel" does not include:

(1) a hospital, sanitarium, or nursing home;

(2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Texas Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or

(3) an oilfield portable unit, as defined by Section 152.001 of the Texas Tax Code.~~Any building or buildings in which the public may for a consideration obtain sleeping accommodations, including hotels, motels, tourist homes, houses of courts [tourist courts], lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but not including hospitals, sanitariums or nursing homes.~~

Occupancy. The use or possession, or the right to the use or possession, of any room ~~or rooms~~ in a hotel ~~if the room is one which is ordinarily used for sleeping and if the occupant is other than a permanent resident as hereinafter defined~~.

Occupant. Anyone who, for ~~a~~ consideration, uses, possesses, or has a right to use or possess any room ~~or rooms~~ in a hotel under any lease, concession, permit, right of access, license, contract or agreement~~, other than a permanent resident as hereinafter defined~~.

Permanent resident. Any occupant who has or shall have the right to use or possess ~~occupancy of any~~a room ~~or rooms~~ in a hotel for at least thirty (30) consecutive days, so long as there is no interruption of payment for the period ~~during the calendar year or preceding year~~.

~~*Person.* Any individual, company, group, organization, entity (including government entities), corporation or association owning, operating, managing or controlling any hotel, as the term hotel is defined by state and local law.~~

Commented [JB1]: I recommend removing this definition. The ordinance makes subsequent references to a "person," and this definition would seem to only apply to a hotel operator. It seems the City would want the tax to apply to a "person" who is renting the room (see Section 11.04.002).

Quarterly period. The regular calendar quarters of the year, the first quarter being composed of the months of October, November and December; the second quarter being the months of January, February and March; the third quarter being the months of April, May and June; and the fourth quarter being the months of July, August and September.

Tax collector. The ~~director of finance~~Chief Financial Officer of the city.

(1995 Code, § 1.1201; Ord. No. 2009-7, 2-24-09)

Sec. 11.04.002 - Levied; amount; exemptions.

(a) There is hereby levied a tax of 7% of the consideration paid by the occupant of ~~price paid for~~ a room in a hotel ~~on every person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel~~, that costs $2 or more each day, and is ordinarily used for sleeping. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services

performed by the hotel for the person except those services related to the cleaning and readying of the room for possession.

(b) Exceptions ~~are as follows~~:

(1) No tax shall be imposed upon a permanent resident, or upon ~~a permanent resident~~a person or entity as described by Section 351.006 of the Texas Tax Code.

(2) A person or entity shall be exempt from the tax or apply for a refund of the tax as provided by Section 351.006 of the Texas Tax Code.~~No tax shall be imposed for federal or state employees traveling on official business.~~

~~(3) No tax shall be imposed for diplomatic personnel who present a tax exemption card issued by the United States Department of State.~~

~~(4) No tax shall be imposed for federal or state military personnel traveling on official military business. This exemption does not cover military staff on leave or between stations.~~

(1995 Code, sec. 1.1202)

Sec. 11.04.003 - Collection.

Every person owning, operating, managing or controlling any hotel shall collect the tax levied by this article for the city and ~~deliver same~~report and pay the tax to the tax collector~~, the director of finance for the city~~.

(1995 Code, sec. 1.1203)

Sec. 11.04.004 - ~~Quarterly~~ Monthly (or quarterly if qualify) reports to tax collector.

On the 20th ~~last~~ day of the month following each ~~quarterly~~ monthly period, every person required by this article to collect the tax ~~imposed hereby~~ shall file a report with the ~~collector of taxes~~tax collector showing the price paid for all room occupancies in the preceding ~~quarter~~month, the amount of the tax collected on such occupancies, and any other information the collector may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report. The report shall be in a form prescribed by the collector. Additionally, the person shall file a copy of the ~~quarterly~~ monthly report filed with the state hotel occupancy tax. If a taxpayer owes less than $500 for a calendar month or $1,500 for a calendar quarter, the taxpayer qualifies as a quarterly filer having a reporting period of a calendar quarter and the taxes due and payable on the 20th day after the end of the quarterly period. The collector is hereby authorized and directed to do all such things necessary or convenient to carry out the terms of this article. The tax collector shall have the authority to request and receive within a reasonable time, documentation for information contained in the report to the city by the hotel.

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(1995 Code, sec. 1.1204)

Sec. 11.04.005 - Rules and regulations of tax collector; access to books and records.

The tax collector shall have the power to make such rules and regulations as are reasonable and necessary to effectively collect the tax levied hereby, and shall upon reasonable notice have access to books and records necessary to enable him/her to determine the correctness of any report filed as required by this article, and the amount of taxes due under the provisions of this article.

(1995 Code, sec. 1.1205)

Sec. 11.04.006 - Penalties.

(a) If any person shall fail to file a report as required herein or shall file a false report or shall fail to pay to the tax collector the tax as imposed herein when said report or payment is due, he shall forfeit 5% of the amount due as penalty, and after the first thirty (30) days he shall forfeit an additional 5% of

such tax. However, such penalty shall never be less than $10. Delinquent taxes shall draw interest at the rate of 10% per annum beginning sixty (60) days from the due date.

(b) Any person violating any of the provisions of this article, including hotel operators who fail to collect the tax, fail to file a return, or file a false return, or who are delinquent in their tax payment, shall be guilty of a misdemeanor and shall, upon conviction, be fined as provided for in the general penalty provision found in section 1.01.009 of this code, and each twenty-four (24) hours of any such violation shall constitute a separate offense.

(1995 Code, § 1.1206)

Sec. 11.04.007 - Additional remedies.

The city is hereby authorized to take the following actions against any person required to collect the tax imposed hereby and pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due:

(1) Bring suit against the hotel for noncompliance; and/or

(2) Bring suit against the hotel seeking any other remedies provided under state law.

Sec. 11.04.0101 – Tax collection on purchase of a hotel.

(a) If a person who is liable for the payment of a tax under this article is the owner of the hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the tax due until the seller provides a receipt from the director showing that the amount has been paid or a certificate stating that no tax is due.

(b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may request that the City issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The City shall issue the certificate or statement not later than 60 days after receiving the request. If the City fails to issue the certificate or statement within the period provided by Subsection (c) of this section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

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(1995 Code, § 1.1207)

Sec. 11.04.008 - Additional authorization to bring suit for violations.

The City Attorney or as appropriate, an appointed Assistant City Attorney, is hereby authorized to bring suit against any person required to collect the tax imposed hereby and required to pay the collection over to the city and who has failed to file a report, or filed a false report, or failed to pay the tax when due, at the direction of the city manager and concurrence of the Council, when necessary. Such suit may seek to collect such tax not paid or to enjoin such person from operating a hotel in the city until the tax is paid or the report is filed, or both, as applicable and as provided in the injunction.

(1995 Code, § 1.1208; Ord. No. 2016-16, pt. 1, 10-28-16)

Sec. 11.04.009 - Use of revenue.

(a) ~~The revenue derived from any hotel occupancy tax imposed and levied by this article may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following (as mandated by state law, V.T.C.A. Tax Code, ch. 351):~~

~~(1) The acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities (as such is defined in V.T.C.A. Tax Code, § 351.001);~~

~~(2) The furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;~~

~~(3) Advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;~~

~~(4) The encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; and~~

~~(5) Historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:~~

~~(A) Which are at or in the immediate vicinity of convention center facilities; or~~

~~(B) Which are located elsewhere in the municipality or its vicinity that would be frequented by tourists, convention delegates, or other visitors to the municipality.~~

~~(b) R~~Revenue derived from the hotel occupancy tax shall be expended only in a manner which directly enhances and promotes tourism and the convention and hotel industry ~~as hereinbefore delineated~~. Additionally, hotel tax revenue may only be expended for any of the applicable purposes enumerated in Chapter 351 of the Texas Tax Code. Use of hotel occupancy tax rev revenues shall be subject to the limitations stated in that state statute. Such revenue shall not be used for the general revenue purposes or general governmental operations of the municipality which are not directly related to promoting the hotel and convention industry or tourism in the municipality. The City Council may establish a Tourism Advisory Committee (TAC) to advise and make recommendations to the City on how hotel occupancy tax revenues shall be expended.

(1995 Code, § 1.1209)

Sec. 11.04.010 - Authority to contract for administration of funded programs.

(a) The City Council may, by contract, delegate to a person, including another governmental entity or a private organization, the management or supervision of programs and activities funded with revenue from the hotel occupancy tax. The City Council shall approve in writing in advance the annual budget of the entity to which its delegates those functions, and shall require the entity to make periodic reports to the City Council at least annually listing the expenditures made by the entity of revenue from the tax provided by the municipality.

(b) The entity must maintain the revenue provided by the municipality from the tax in a separate account established for that purpose and may not commingle that revenue with any other money or maintain it in any other account.

(c) The municipality may not delegate to any person or entity the management or supervision of its convention and visitors programs and activities funded with revenue from the hotel occupancy tax other than by contract as provided herein.

(d) The approval by the City Council of the annual budget of the entity to which these functions are delegated creates a fiduciary duty in the person or entity with respect to the revenue provided by the municipality to the person or entity under the contract.

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(e) A person or entity with whom the municipality contracts to conduct authorized activities shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person or entity and, on request of the City Council or other person, shall make the records available for inspection and review.

(f) Hotel occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses, and other administrative costs only if those administrative costs are incurred directly in the promotion and servicing of expenditures hereinbefore authorized. The portion of the total administrative costs for activities for which hotel occupancy tax revenue may be used may not exceed the administrative costs actually incurred in conducting the authorized activities.

(g) Hotel occupancy tax revenue may not be spent for travel for a person to attend an event or conduct an activity the primary purpose of which is not directly related to the promotion of the person's job in an efficient and professional manner.

(1995 Code, § 1.1210)

Sec. 11.04.011 - Applicability in extraterritorial jurisdiction.

The provisions of this article shall apply equally to hotels within the corporate limits of the city and to hotels in the extraterritorial jurisdiction of the city pursuant to state law, V.T.C.A. Tax Code, § 351.0025.

(1995 Code, § 1.1211)

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8A

TITLE:
Update and discussion of current Legislative Session and its impact on local municipalities.

STAFF REPRESENTATIVE:
Lynda K. Humble, City Manager

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8B

TITLE:
Discussion regarding Storm Drainage Design Manual & Ordinance as it relates to water quality.

STAFF REPRESENTATIVE:
Trey Job, Managing Director of Public Works & Leisure Services

BACKGROUND/HISTORY:
During the March 26, 2019 City Council meeting, questions were raised about the new Stormwater Design Manual and how it relates to water quality. There was interest in the overall process of this ordinance will work and how it will impact our citizenry, along with where the City gets it authority to regulate stormwater quality within the City limits and the Extra Territorial Jurisdiction (ETJ). There was also question about the City's authority to voluntarily adopt a water pollution control plan prior to reaching a population of 10,000. After a discussion with the City Attorney, the more specific answers are as follows:

- Texas Water Code§ 26.177 gives cities the authority to adopt a water pollution control and abatement plan. The plans are to address pollution from generalized discharges of waste from non-specific sources, such as storm sewer discharges and urban runoff from rainwater.
- The Courts have addressed the addressed a City's authority to voluntarily adopt a water pollution control and abatement plan and it has been upheld by courts for 20 years.
- A 2010 Attorney General's opinion further supports a City's authority to voluntarily adopt and enforce a water pollution control and abatement program in its ETJ.
- It should be noted that we are not required by the Texas Commission on Environmental Quality (TCEQ) to do so until we reach a population of 10,000 or if the TCEQ is aware of a pollution problem.

The proposed ordinance and design manual will provide the necessary structure to the development process that will help control water quality. However, it is not the same as a water pollution control and abatement plan (WPCAP). While there will likely be a large amount of overlap with the plan and the Stormwater Design Manual, the WPCAP will require a general permit from the TCEQ, and require certain criteria established in the Texas Administrative Code Chapter 216 subchapter (B).

POLICY EXPLANATION:
The Texas Water Code 26.177 grants the City Council the authority to establish the water pollution control and abatement plan (WPCAP) within the City limits and the ETJ. The Stormwater Drainage ordinance that will be on the April 23, 2019, agenda will also apply within the ETJ.

Stormwater and Water Quality

Building Bastrop Purpose Statement:

"Create a fiscally sustainable community through land-use regulations that are authentic Bastrop and geographically sensitive."

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Stormwater and Water Quality

Topics from the March 26,2019
Council meeting:

What is the law and process regarding a city's adoption of water pollution control and abatement plan?

MS4 when is it required?

Is there any limitation on the applicability of a water pollution control and abatement plan in a city's ETJ?

Why are we using 1.5" of rainfall as a water quality requirement?

Where did the 10,000 sqft. of land disturbance come from?

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Stormwater Drainage Design

What is our authority?

Texas Water Code§ 26.177 gives cities the authority to adopt a water pollution control and abatement plan.

The plans are to address pollution from generalized discharges of waste from non-specific sources, such as storm sewer discharges and urban runoff from rainwater.

The courts have addressed the addressed a city's authority to voluntarily adopt a water pollution control and abatement plan and it has been upheld by courts for 20 years.

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What is our authority?

A 2010 Attorney General opinion further supports a city's authority to voluntarily adopt and enforce a water pollution control and abatement program in its ETJ.

MS4 when is it required? – We are not required by the Texas Commission on Environmental Quality (TCEQ) until we reach a population of 10,000 or if the TCEQ is aware of a pollution problem.

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Stormwater and Water Quality

Is there any limitation on the applicability of a water pollution control and abatement plan in a city's ETJ?-

TWC § 26.177 gives cities the discretion to establish a water pollution control and abatement program (WPCAP) that encompasses the entire city and areas within its ETJ.1

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What is our authority?

Chapter 42 of Local Government Code

Our ordinance and design manual will provide:

- Structure to the development process.
- It will help control water quality and lower total suspended solids (TSS)
- However, it is not the same as a water pollution control and abatement plan (WPCAP).

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- There will be overlap a but the manual is not a plan regulated by TCEQ
- A (WPCAP) also requires a discharge permit (much like a WWTP)

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Stormwater and Water Quality

What are my choices with the new manual?



1. Bioretention
2. Enhanced swales
3. Alum treatment detention
4. Filters (sand or organic)
5. Infiltration basins and trenches
6. Dry detention/Extended detention dry basins
7. Stormwater ponds
8. Rain barrel/Cistern
9. Disconnected imperviousness

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Example of Water quality Techniques

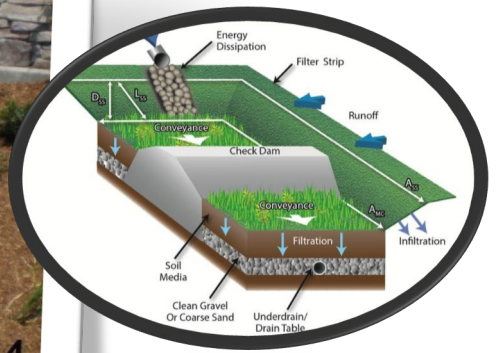












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Stormwater Drainage Design

Authentic Bastrop
Where did the 1.5” requirement come from?

- The 1.5” proposed in the new ordinance & Drainage Design Manual is a State average.
- Rainfall events for the entire state were collected, sorted and the 85th percentile is equal to the 1.5”.

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Stormwater Drainage Design

Authentic Bastrop
Where did the 1.5” requirement come from?

- In an effort to be as authentic as possible, we used the rainfall data collected from 2008-2018 specific to Bastrop.
- There were 926 rain events from 2008 to 2018.
- The 85th percentile of those events is .84”.

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Stormwater Drainage Design

Water Quality: What's Authentic to Bastrop?

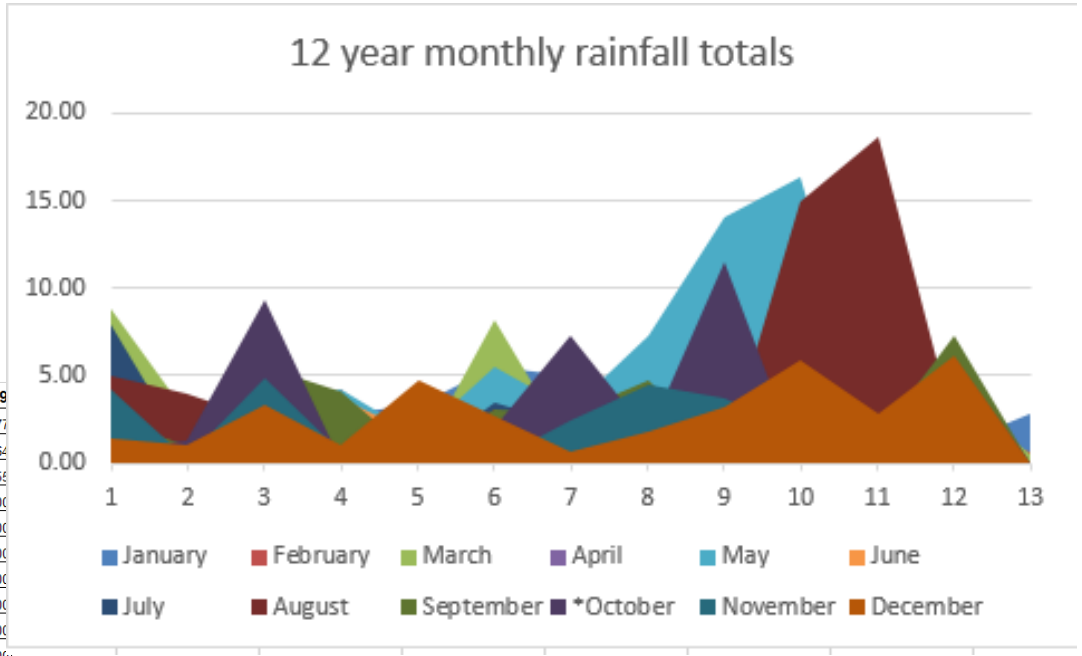
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	85th percentile
January	5.83	1.45	0.37	2.87	3.34	5.48	4.93	0.47	4.54	0.74	2.88	1.05	0.84
February	0.10	1.31	1.13	4.19	0.65	4.13	0.32	1.39	0.56	1.71	2.97	1.95	
March	8.88	2.77	2.76	2.95	0.28	8.17	0.85	1.91	4.72	3.92	4.25	4.12	
April	3.99	2.08	4.85	1.92	0.09	0.24	2.55	0.44	7.86	10.74	2.80	1.57	
May	5.55	0.25	3.37	4.18	1.48	5.51	3.09	7.24	14.11	16.32	1.05	3.04	
June	6.59	0.03	0.12	3.66	1.52	1.29	0.59	4.09	2.73	1.50	1.76	1.59	
July	7.91	0.69	0.24	3.84	0.32	3.47	2.16	2.92	0.88	2.64	0.35	0.86	
August	5.01	3.96	2.42	1.77	0.14	3.13	0.78	0.63	0.33	14.95	18.69	2.11	
September	2.48	1.04	5.44	4.11	0.22	3.09	2.84	4.70	0.34	3.73	1.49	7.35	
*October	0.76	1.33	9.29	0.10	1.67	1.99	7.28	1.62	11.45	0.06	1.52	5.98	
November	4.16	0.25	4.83	0.62	3.18	0.14	2.44	4.54	3.72	1.71	1.03	3.08	
December	1.36	1.01	3.35	1.06	4.68	2.65	0.69	1.76	3.20	5.89	2.88	6.14	
Annual Total	52.62	16.17	38.17	31.27	17.57	39.29	28.52	31.71	54.44	63.91	41.67	38.84	
Annual Avg.	4.39	1.35	3.18	2.61	1.46	3.27	2.38	2.64	4.54	5.33	3.47	3.24	

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Stormwater Drainage Design

Water Quality: What's Authentic to Bastrop?

2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
5.83	1.45	0.37	2.87	3.34	5.48	4.93	0.47	4.54	0.74	2.88	1.05	2.77
0.10	1.31	1.13	4.19	0.65	4.13	0.32	1.39	0.56	1.71	2.97	1.95	0.64
8.88	2.77	2.76	2.95	0.28	8.17	0.85	1.91	4.72	3.92	4.25	4.12	0.55
3.99	2.08	4.85	1.92	0.09	0.24	2.55	0.44	7.86	10.74	2.80	1.57	0.00
5.55	0.25	3.37	4.18	1.48	5.51	3.09	7.24	14.11	16.32	1.05	3.04	0.00
6.59	0.03	0.12	3.66	1.52	1.29	0.59	4.09	2.73	1.50	1.76	1.59	0.00
7.91	0.69	0.24	3.84	0.32	3.47	2.16	2.92	0.88	2.64	0.35	0.86	0.00
5.01	3.96	2.42	1.77	0.14	3.13	0.78	0.63	0.33	14.95	18.69	2.11	0.00
2.48	1.04	5.44	4.11	0.22	3.09	2.84	4.70	0.34	3.73	1.49	7.35	0.00
0.76	1.33	9.29	0.10	1.67	1.99	7.28	1.62	11.45	0.06	1.52	5.98	0.00
4.16	0.25	4.83	0.62	3.18	0.14	2.44	4.54	3.72	1.71	1.03	3.08	0.00
1.36	1.01	3.35	1.06	4.68	2.65	0.69	1.76	3.20	5.89	2.88	6.14	0.00



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Stormwater Drainage Design

Authentic Bastrop

Where did the 10,000 sqft. of land disturbance come from?

- The 10,000 sqft. is a number that is used as an industry standard.
- Bastrop has lot sizes as follows:
  - SF7 – 778
  - SF9 – 168
  - SF20 – 80
  - MF1 & MF2 – 72
  - HCPD Res. 483
  - Neighborhood services 576
  - Pecan Park PD 53

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Fiscally Sustainable Drainage

What are we doing to meet fiscal sustainability?

- Runoff to the river can cause pollution levels in the river that could impact future wastewater discharge limits.





- The river is an incredible resource for tourism and our citizenry.

VISIT BASTROP EST. 1832 Texas

Stormwater Drainage & Water Quality

Geographic sensitivity is our responsibility and our policy



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Stormwater Drainage Design Manual

We can't forget we are not the only one that enjoy the river.





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Stormwater Drainage Design Manual

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STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8C

TITLE:
Presentation and policy discussion regarding the current and proposed street lighting standards

STAFF REPRESENTATIVE:
Trey Job, Managing Director of Public Works & Leisure Services

BACKGROUND/HISTORY:
The City of Bastrop City Council and staff have worked tirelessly over the past year to ensure the City's future is secure. Not only has City Council committed to fixing infrastructure issues related to drainage, wastewater, water treatment, and street maintenance, Council has committed to planning for the next 100 years. As part of that effort, street lighting is an important component to planning the City's future.

The City's current Street Lighting Policy lights intersections, dangerous curves, and dead-end streets. Said differently, the City's current lighting standards are for traffic, not people. However, City streets are not just a place for vehicular traffic. These streets also function as a connector of neighborhoods and people. The City Street Lighting Policy needs to change as mobility needs change. If walkability is part of fiscal sustainability, then establishing a lighting standard that meets multiple modes of transportation is a must. City Council feedback is needed so Staff can develop a lighting standard policy that meets the goal of multiple modes of transportation, which is one of City Council's nine focus areas.

On multiple occasions in the past and again more recently, a request has been made to place more street lighting in North Bastrop. I started my review of North Bastrop's lighting in my truck, and thought the policy seems fine to me. Next, I decided to park my vehicle and walk the streets in North Bastrop. Once I began my walk, I noted some areas were well lit and others could use improvement. As a result of my newly found perspective, I decided to walk multiple areas of the city.

I have been to every area of the City and can tell you the City is meeting its current standards of lighting intersections, dangerous curves, and dead-end street. There are areas in town that have additional lighting, which can be attributed to either project specific lighting or a night watchmen's service. More specifically while exploring Bastrop at night, I found the only areas with increased lighting are specific to sidewalk/trail improvements such as: The June Pape River Walk, the Main Street improvements, the walking trail along Old Austin Hwy, and of course the downtown improvements along Chestnut Street. The remaining areas can be attributed to private improvement or the night watchmen service that places a standard light within the right of way facing private property, or if the property owners so choses and can afford it, a light can be placed on his/her property.

ATTACHMENTS:

- PowerPoint Presentation

Review proposed lighting standards

FIRST OF SEVERAL POLICY DISCUSSIONS ON STREET LIGHTING STANDARDS

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Review proposed lighting standards

What do we want to accomplish with the new lighting standards?

"Create a fiscally sustainable community through land-use regulations that are geographically sensitive and authentic Bastrop."

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Residential Street Light - Current



What is the current standard?

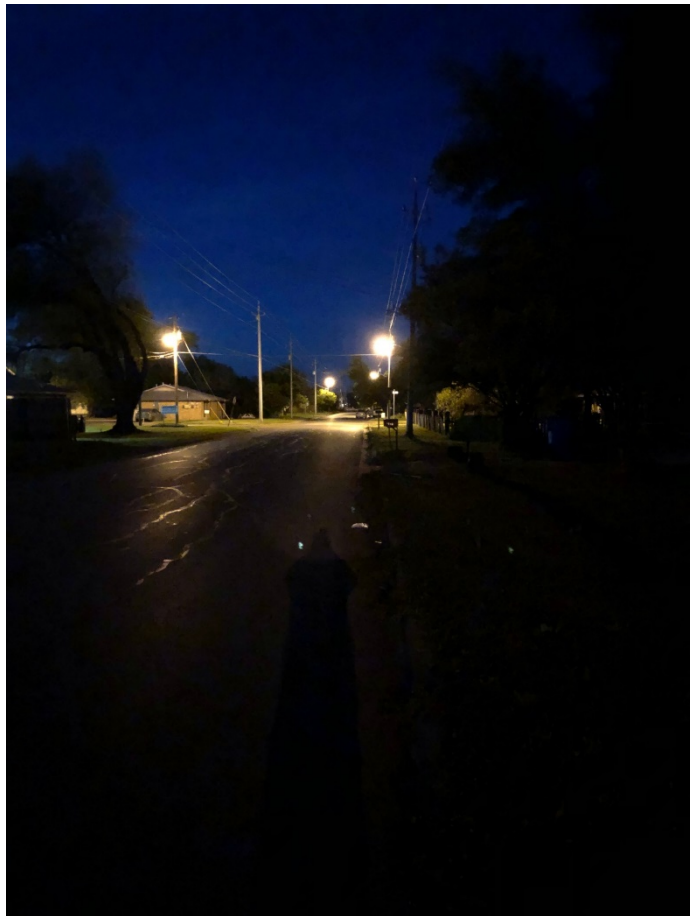
Street lighting is placed at:

- Street intersections
- Dead-end streets
- Dangerous curves

Customers desiring additional lighting may elect “Night Watchman” service, which is a contracted service with the City, payable monthly. (approximately 45)

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Residential Street Light - Current



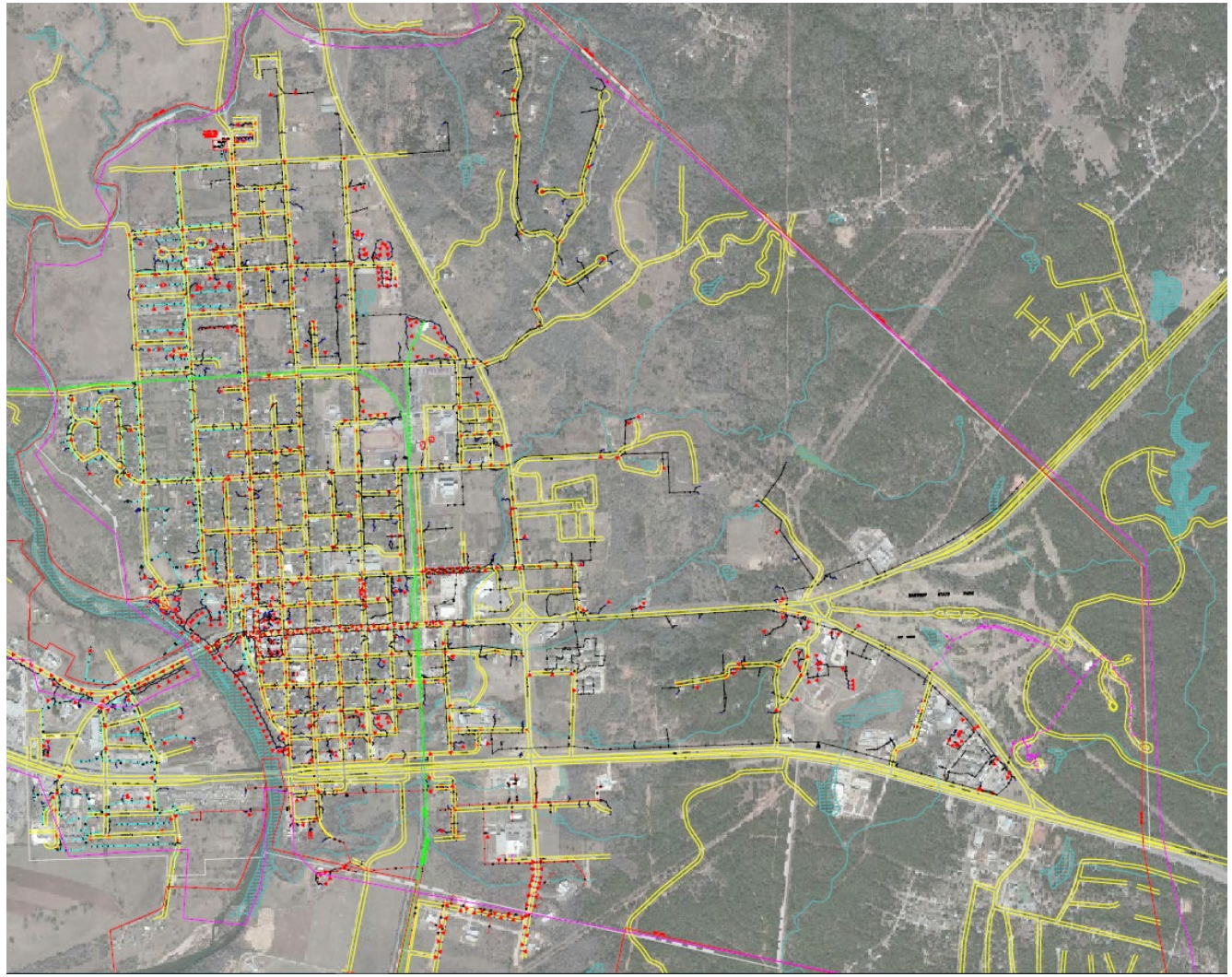
Why do some areas seem to have more light?

Variances in the current standard are as follows:

- “Night Watchman” lights
- Areas of the City that are part of a walkability project. (Example is Chestnut Street)

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Bastrop Power & Light Service Territory Streetlight Map



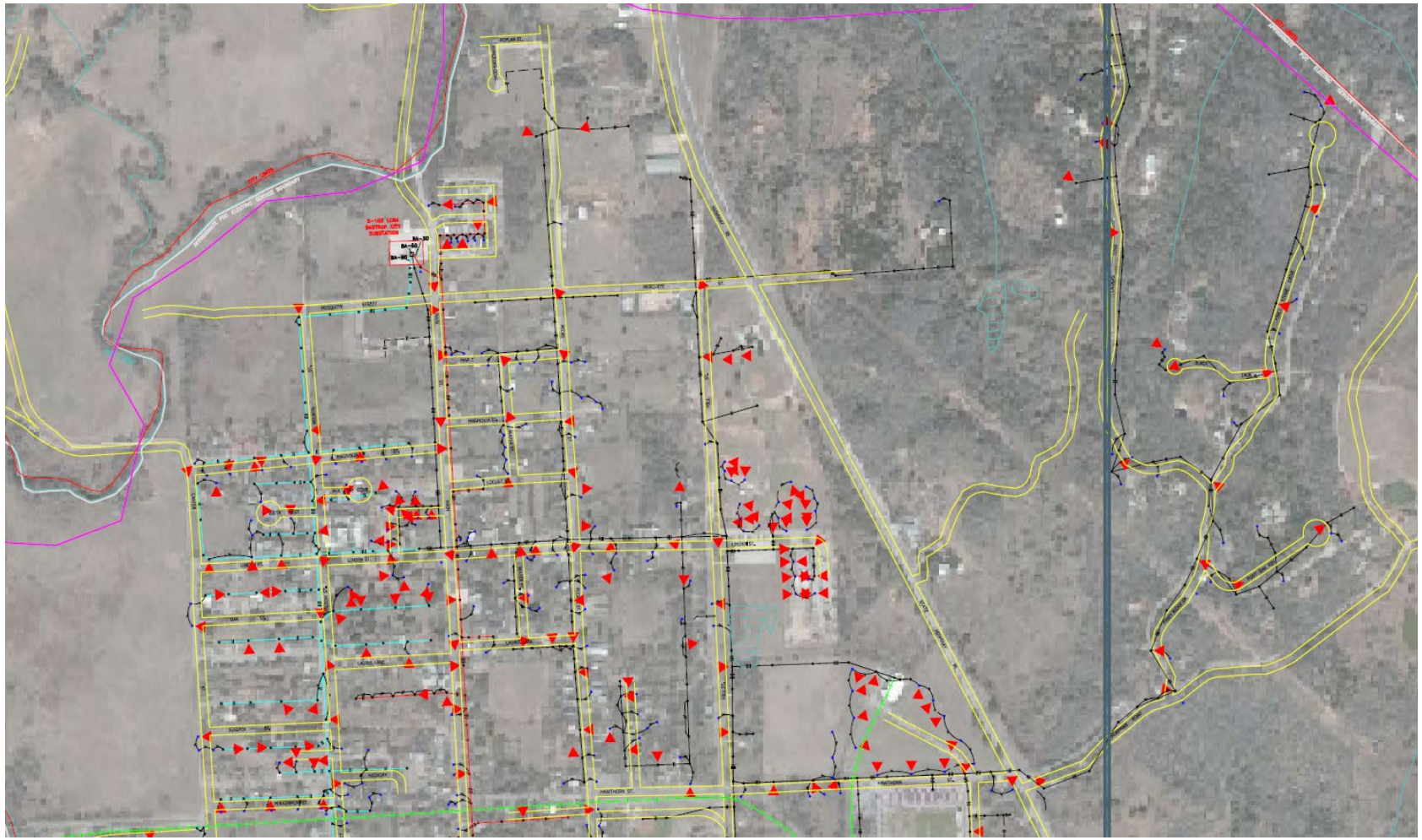
Current Street Lighting meets existing policy, which is to place street lighting at:

- Street intersections
- Dead-end streets
- Dangerous curves

NOT to light sidewalks and streets for safety.

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Bastrop Power & Light Service Territory Streetlight Map



North Bastrop:
124 lights,
584 address points,
84 Building Blocks

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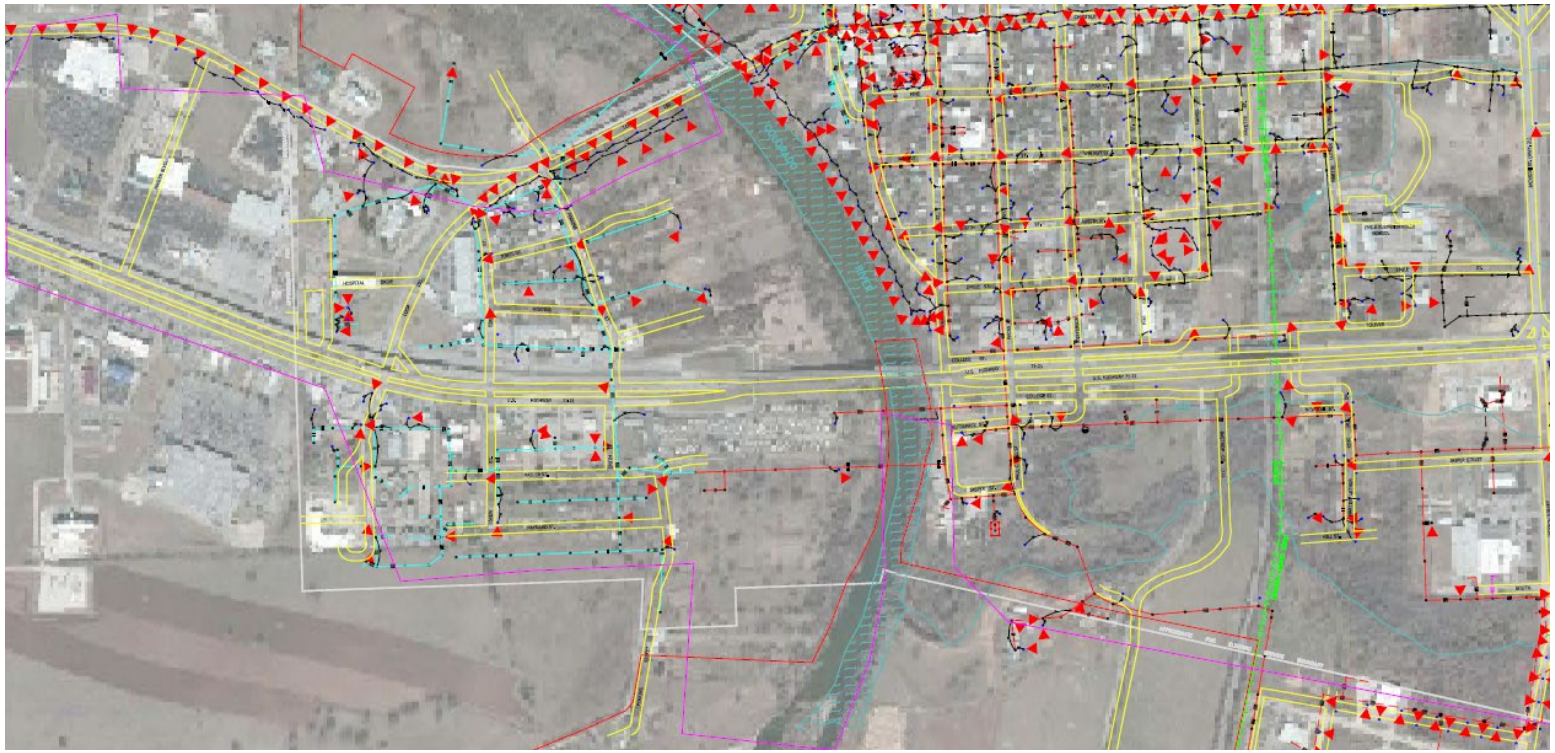
Bastrop Power & Light Service Territory Streetlight Map



Downtown
(Hawthorne to Farm):
149 lights,
579 address points,
104 Building Blocks

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Bastrop Power & Light Service Territory Streetlight Map

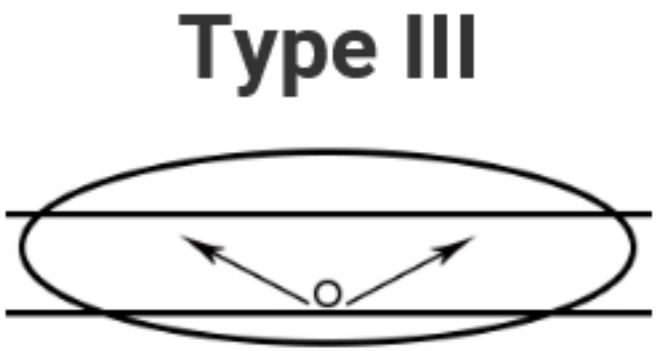


Downtown
(Pine to College):
80 Lights,
273 address points,
39 Building Blocks

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Residential Street Light - Current

We are transitioning to an LED Light fixture - all Type III:

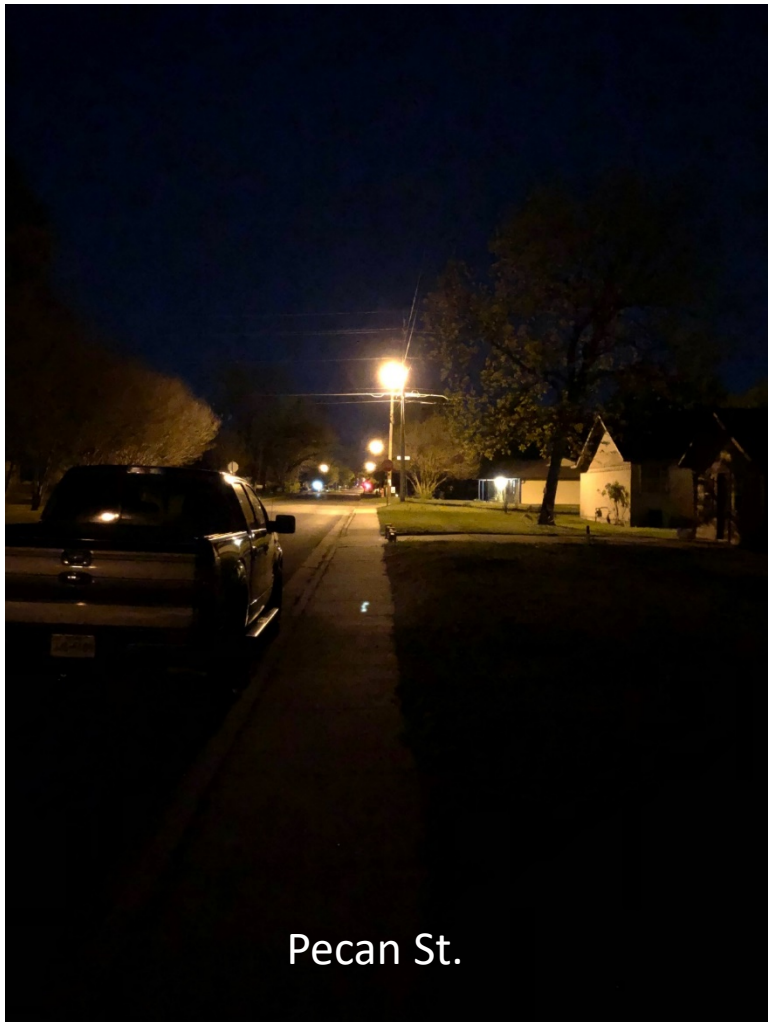


The type III distribution is meant for roadway lighting, general parking areas and other areas where a larger area of lighting is required. Type III lighting needs to be placed to the side of the area, allowing the light to project outward and fill the area. This produces a filling light flow.

Type III light distributions have a preferred lateral width of 40 degrees. This distribution is intended for luminaires mounted at or near the side of medium width roadways or areas, where the width of the roadway or area does not exceed 2.75 times the mounting height.

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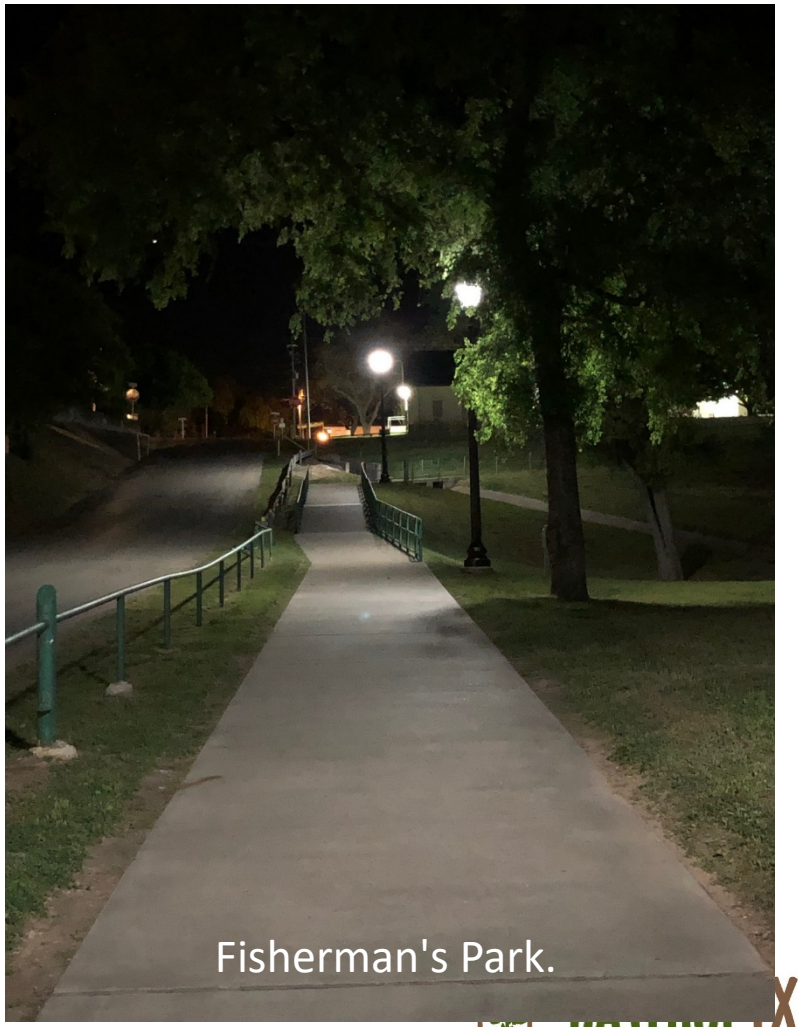
Residential Street Light - Current



Pecan St.



Linden St.



Fisherman's Park.

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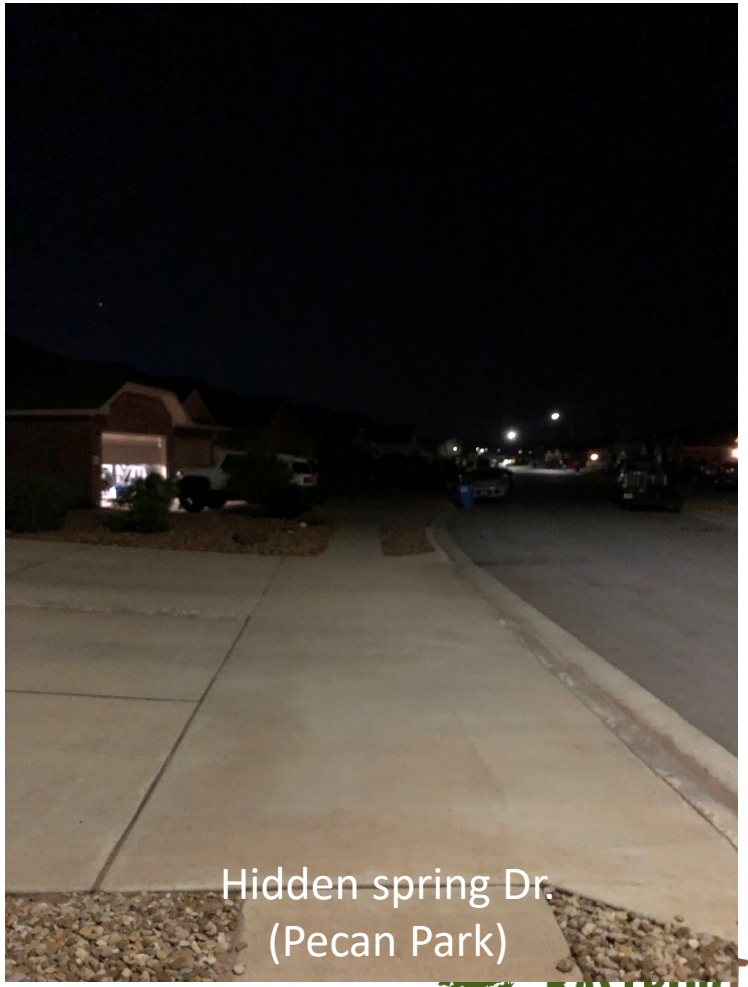
Residential Street Light - Current



Pecan St.



Main St.

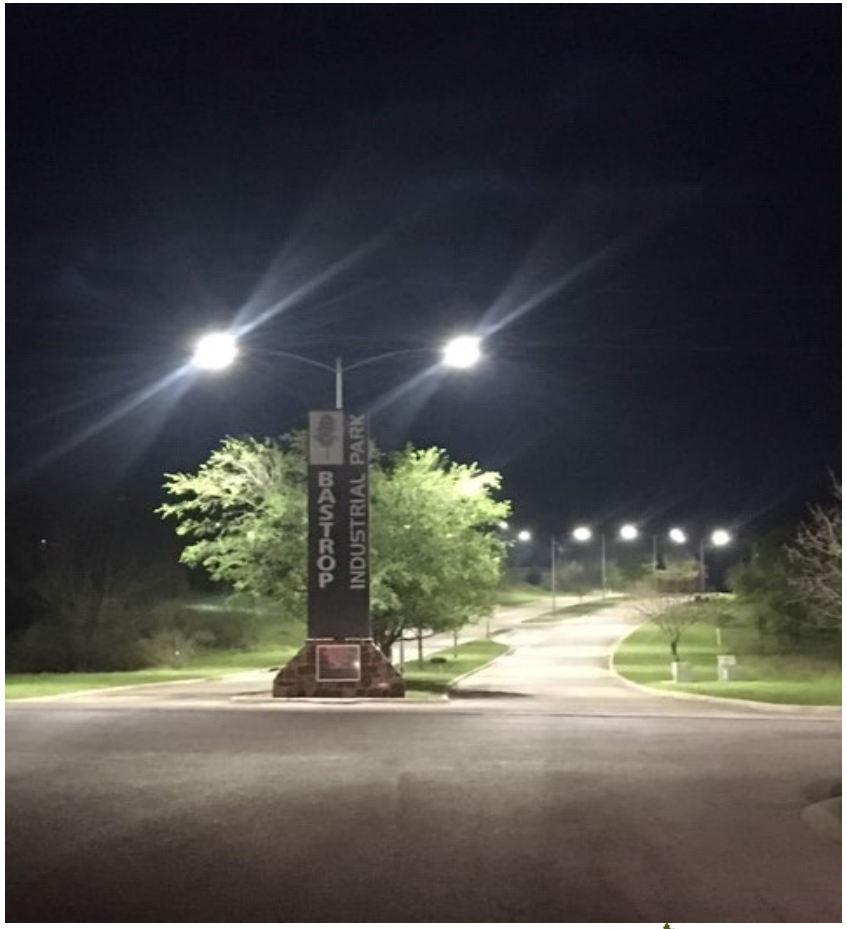


Hidden spring Dr.
(Pecan Park)

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Industrial Lighting - Current

- Used in Industrial Park & Buccees



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Lighting for multiple modes of transportation

Policy Discussion

What does walkable lighting mean?

Will the increased lighting be a nuisance to the neighbors?

How can we be fiscally sustainable and increase lighting?

Should the transportation plan include lighting and be more than just roads?

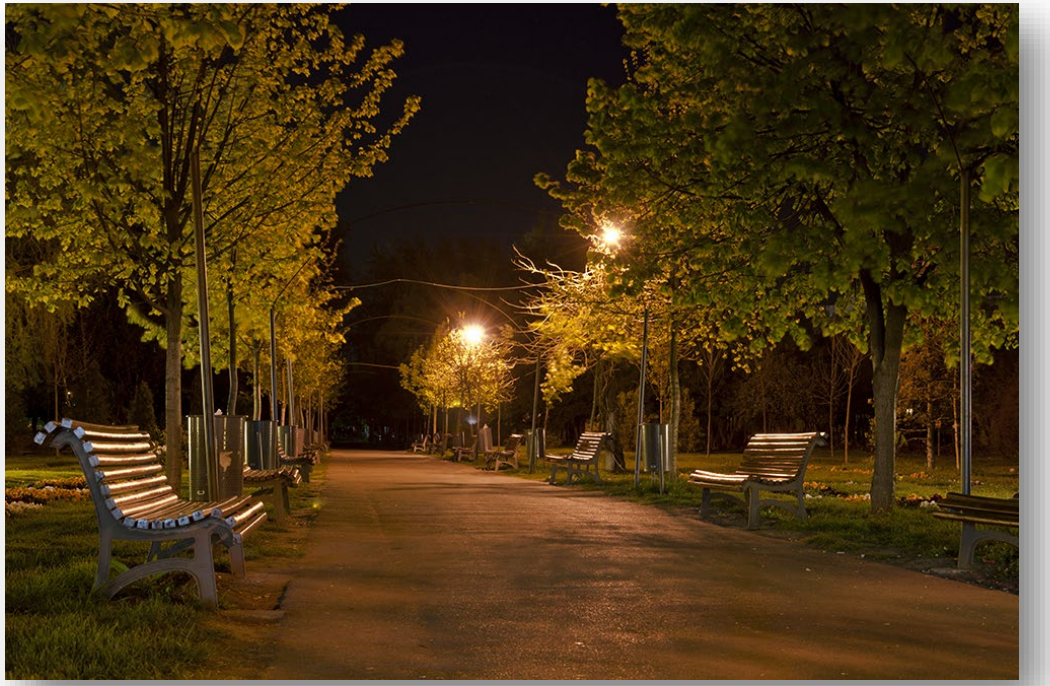
Should it include sidewalks/trail and lighting ?

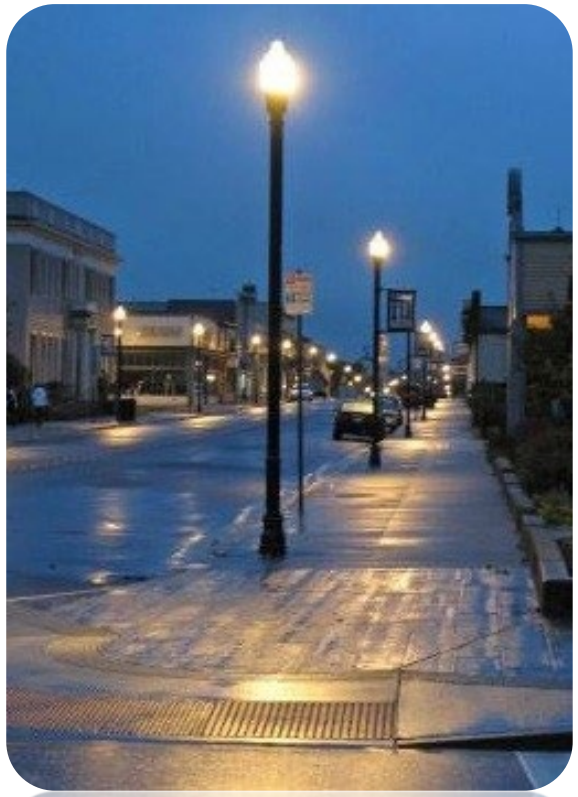
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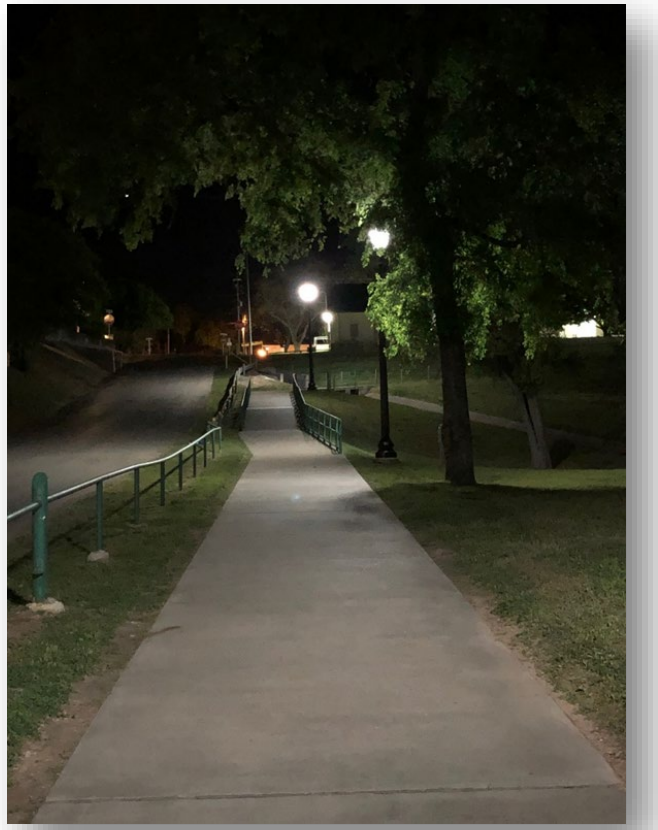
Lighting for multiple modes of transportation

Policy Discussion

What does walkable lighting mean?





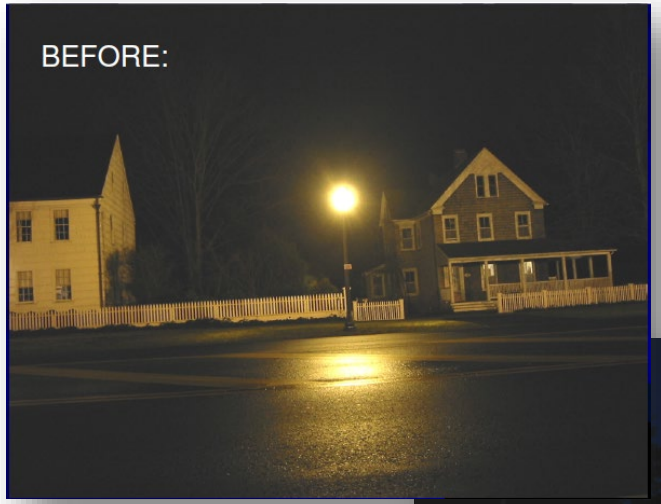


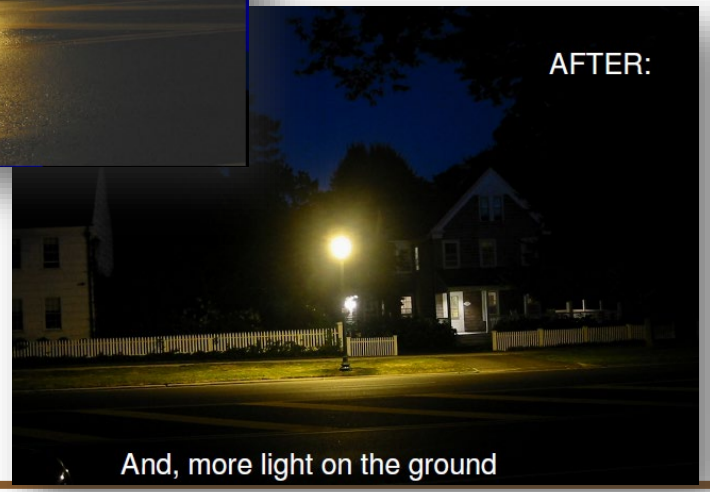
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Lighting for multiple modes of transportation

Policy Discussion

Will the increased lighting be a nuisance to the neighbors?









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Lighting for multiple modes of transportation

Policy Discussion

How can we be fiscally sustainable and increase lighting?

- High Pressure Sodium
  - 100 watt HPS 9,500
  - 150 watt HPS 15,800

- LED lumens
  - 100 watt 4,532
  - 250 watt 15,500
  - 400 watt 24,067

Approximately 50% less to operate

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Lighting for multiple modes of transportation

Policy Discussion

How can we be fiscally sustainable and increase lighting?

Cost of Street Lighting in BP&L territory	**Cost of street Lighting in Bluebonnet territory**
Per month $502.81	Per month $ 2,472.80
Average cost per light $0.77 per light	Average cost per light $16.48
Number of metered lights 651	Number of metered lights approximately 150
Approximately 100 unmetered lights	

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Lighting for multiple modes of transportation

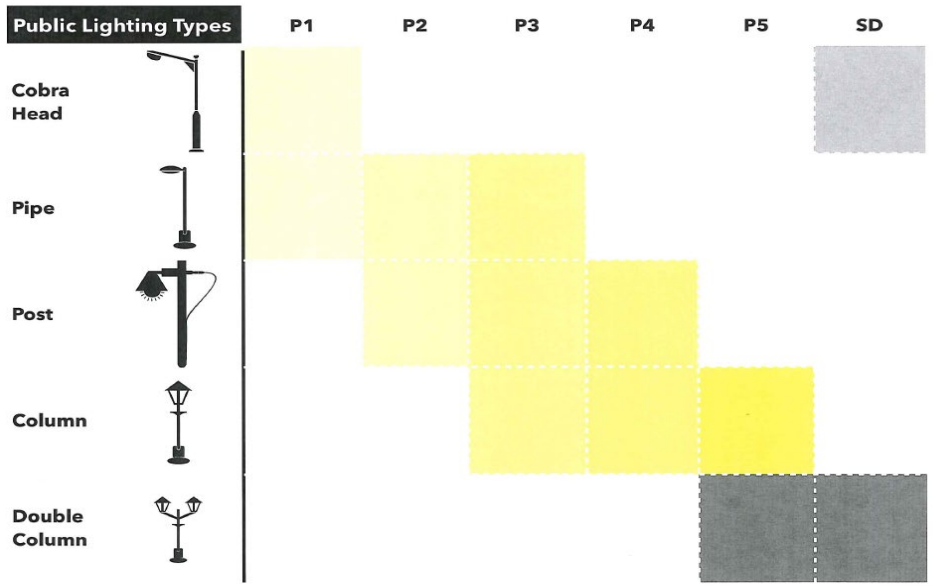
Policy Discussion

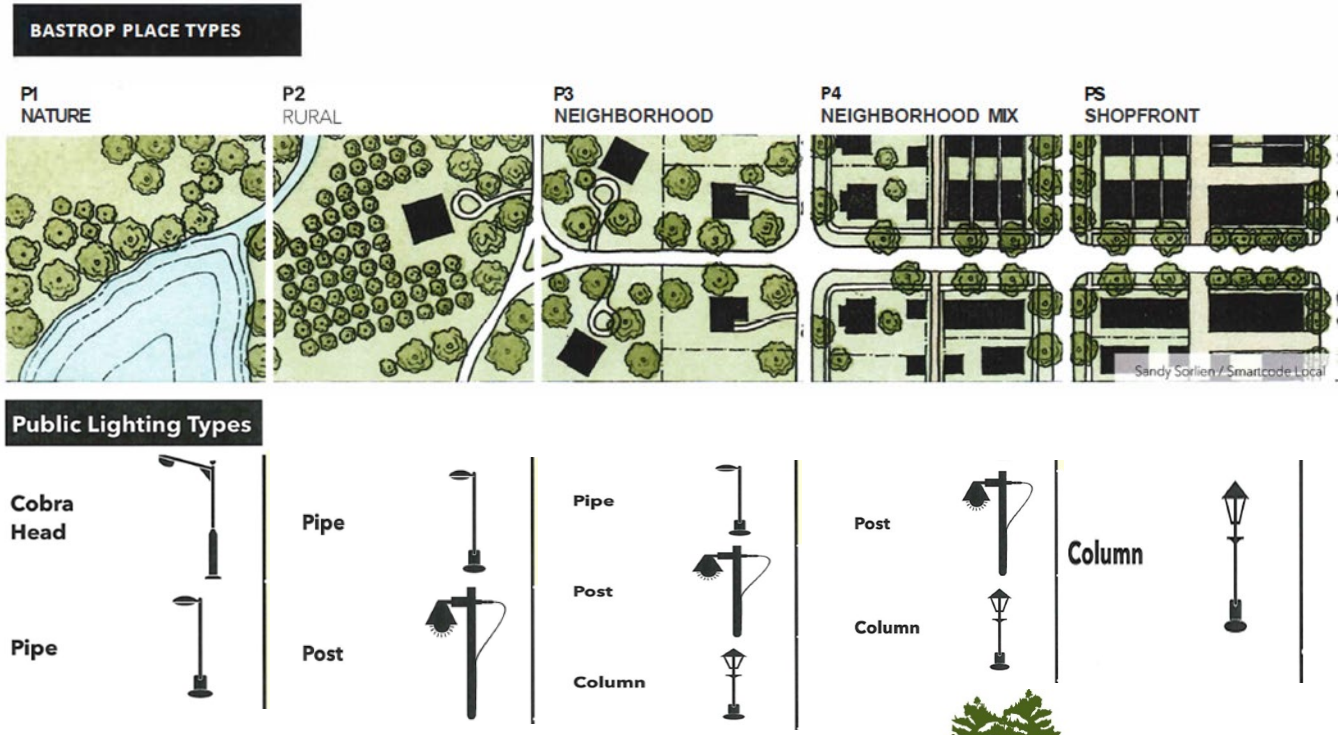
Should the transportation plan include lighting and be more than just roads? Should it include sidewalks/trail and lighting ?

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Next Steps

- Take Council feedback and develop a revised policy with suggested placement of lights based on proposed light fixture and lumens by place type.





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Questions?

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STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8D

TITLE:
Hold discussion regarding Parking Standards for Building Bastrop Codes.

STAFF REPRESENTATIVE:
Matt Jones, Director of Planning and Development

BACKGROUND/HISTORY:
Building Bastrop launched on August 15, 2018 to create a new set of tools that will support the community in a responsible manner for generations to come. Building Bastrop is all about connecting people to policy. It is about humanizing an otherwise complicated and mundane process of rewriting the City's land-use regulations. The City of Bastrop is taking a journey, weaving together its history and the philosophies that define authentic Bastrop. It is about love, community pride, and defining the City's way of life. It's about Building Bastrop together, honoring our authentic past, and planning for our sustainable future.

City Council adopted a purpose statement and policy statement for Building Bastrop Codes at their February 26, 2019 regularly scheduled meeting. The purpose statement is as follows:

> ***"Create a fiscally sustainable, timeless community through land-use regulations that are locally made (authentic Bastrop), geographically sensitive, and fiscally sustainable."***

Building upon the purpose statement, the Council approved a policy statement to offer an explanation on key concepts that must be utilized for all development related codes to ensure clarity and consistency. The Building Bastrop Policy Statement provides clarity and consistency to all code revisions and rulemaking procedures that impact development in the City of Bastrop. The policy statement covers the following:

- What is Building Bastrop.
- Why Building Bastrop is important.
- Building Bastrop Purpose Statement.
- What the Purpose Statement really means.
- What the elements of Fiscally Sustainable are.

Parking requirements are one element that demand a holistic conversation regarding their impact on fiscal sustainability and geographical sensitivity. City Council will need to provide staff with policy direction in order to create new parking requirements that are fiscally sustainable, geographically sensitive, and authentic Bastrop.

Staff gave an introductory presentation to parking requirements at the March 26, 2019 City Council meeting. A history of parking requirements, how parking requirements are created, unintended consequences of parking, and different options for required parking were introduced.

POLICY EXPLANATION:
The City Council recognizes there will be certain components of the Building Bastrop Codes that are nonnegotiable in order to follow the policy and achieve the purpose of the codes as adopted by Council at their February 26, 2019 regularly scheduled meeting. There are also elements within the code, which include parking, that require additional attention and will require specific policy guidance from City Council in order to develop standards within the Bastrop Building Codes.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Hold discussion regarding Parking Standards for Building Bastrop Codes.

ATTACHMENTS:
- PowerPoint Presentation





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PLANNING FOR OUR SUSTAINABLE FUTURE.

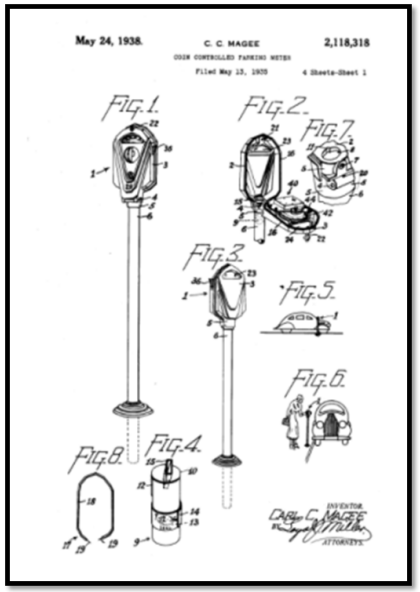
Parking...

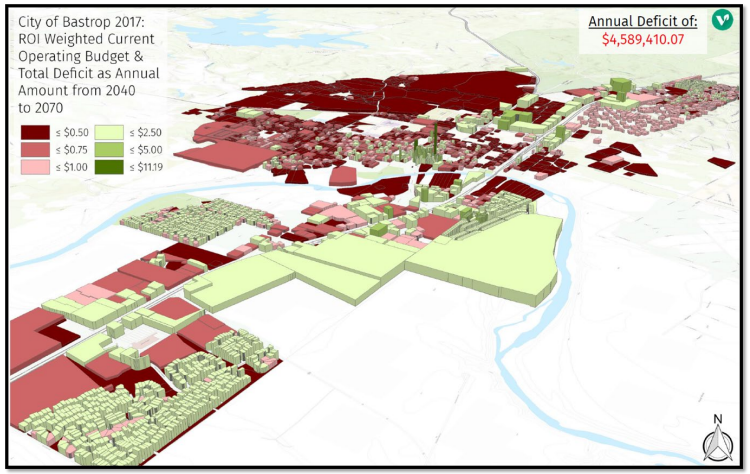
What is the solution?

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Recap…

- We have a perceived parking problem…
- History of required parking
- History of paid parking
- Looked at the facts – Burleson Crossing
- Introduced some options







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Moving forward…

- Policy Direction – continued discussion
- Stakeholder Input – public hearings

"Planning of the automobile city focuses on saving time. Planning for the accessible city, on the other hand, focuses on time well spent." ~Robert Cervero~

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Moving forward…



- We are not having a conversation about parking requirements, we are having a conversation about being fiscally sustainable and geographically sensitive.

"Create a fiscally sustainable community through land-use regulations that are geographically sensitive and authentic Bastrop."

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Let's look at the facts...

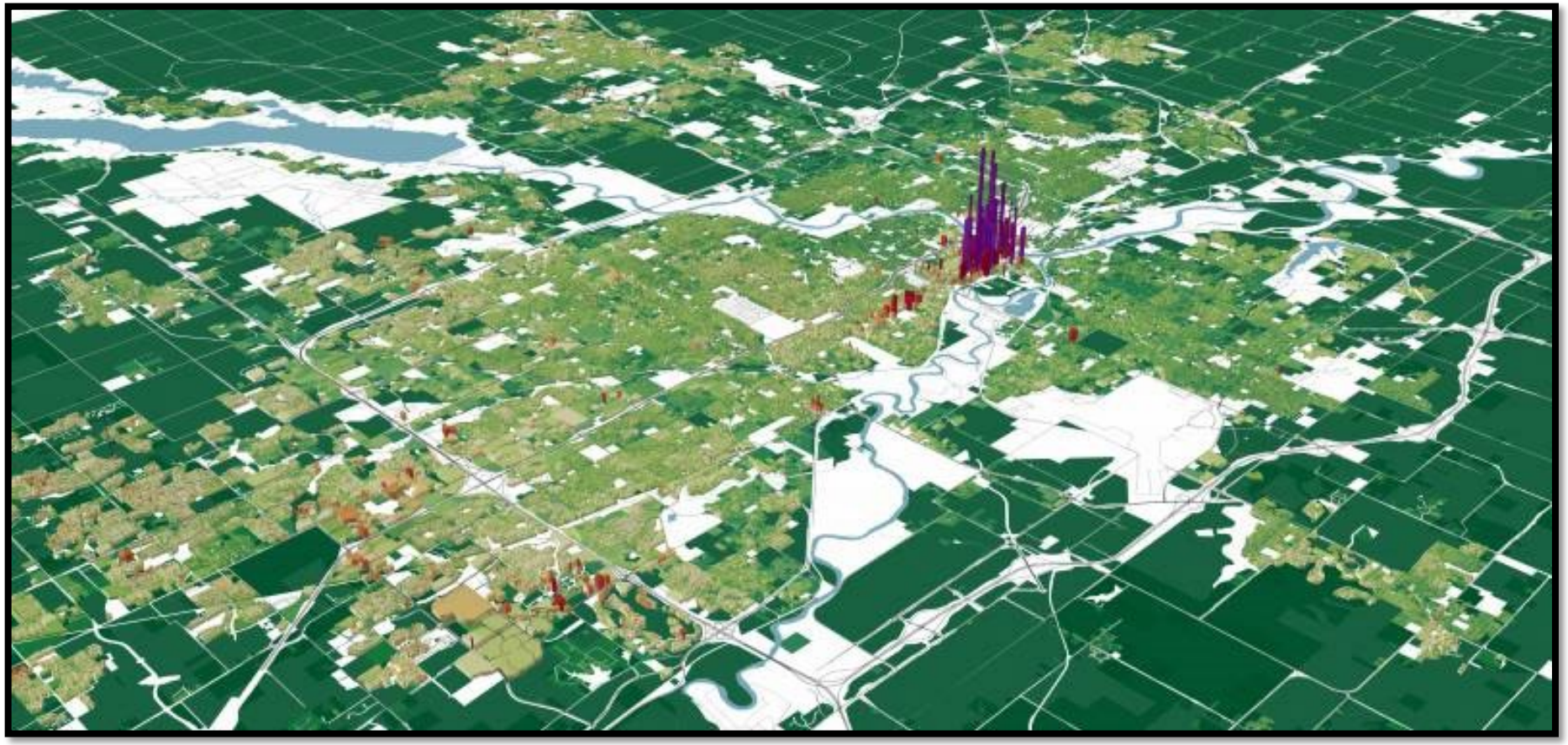


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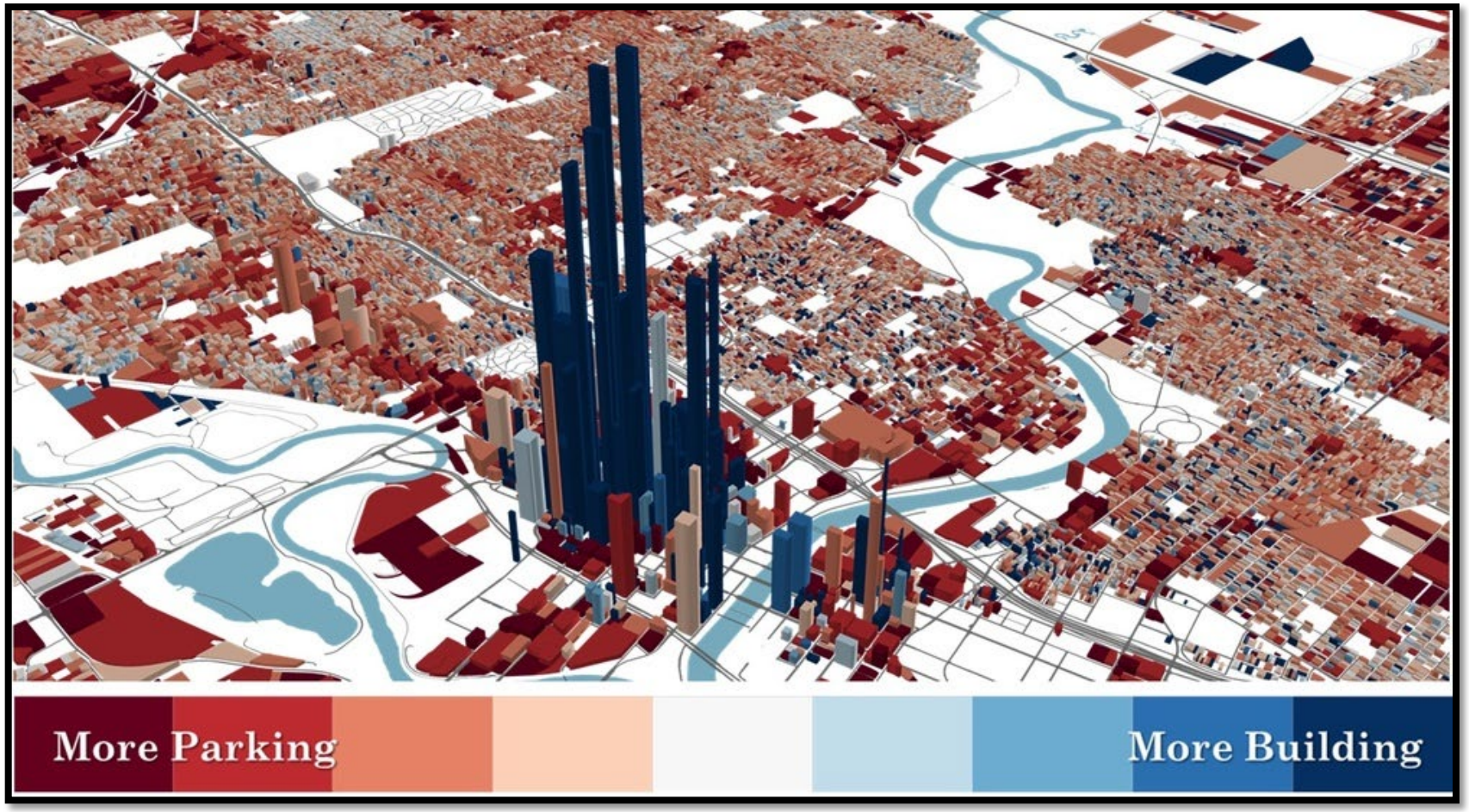
Property Tax Per Acre – Des Moines, IA *Credit: Urban Three*

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Let's look at the facts...



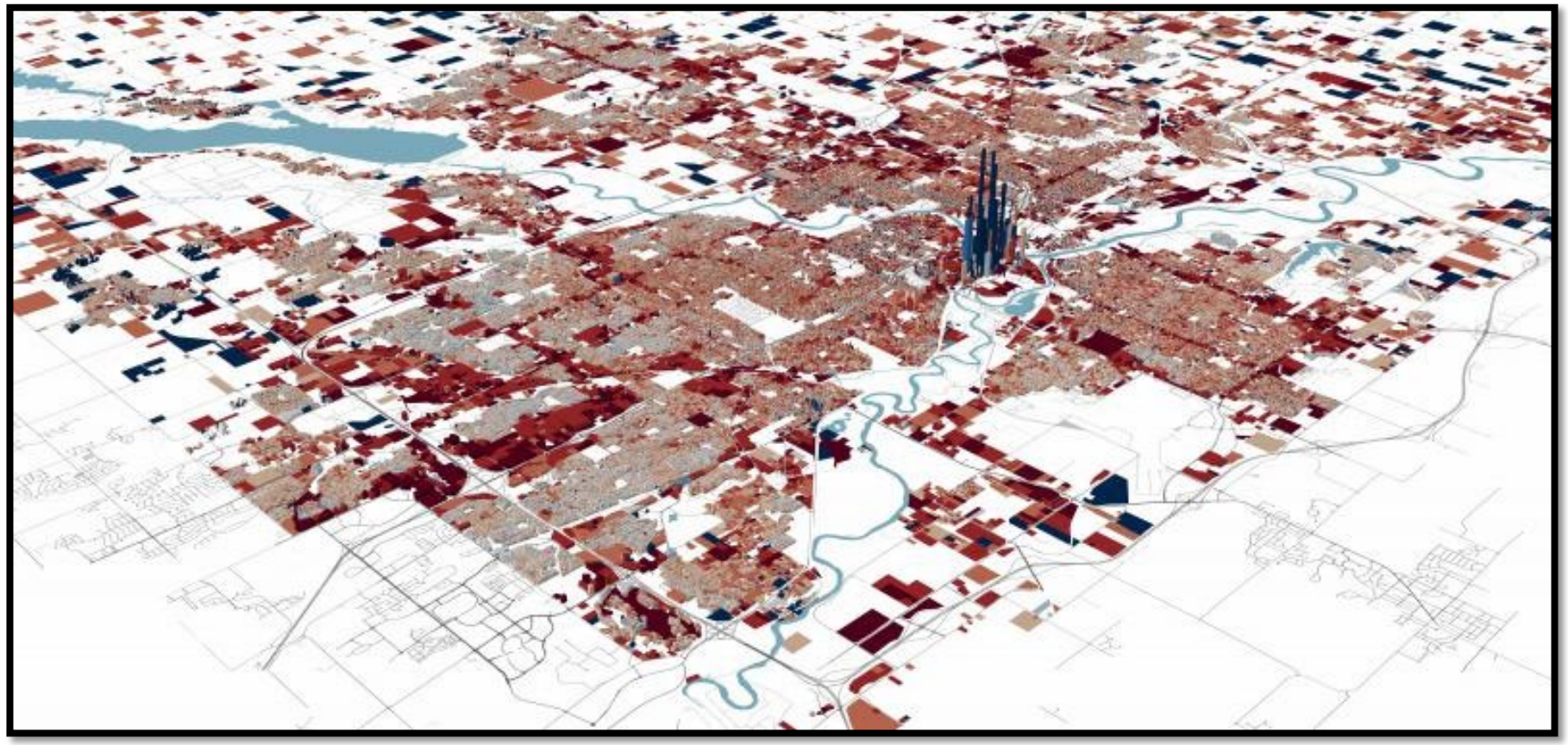
Property Tax Per Acre – Des Moines, IA *Credit: Urban Three*

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Let's look at the facts...



Property Tax Per Acre – Des Moines, IA *Credit: Urban Three*

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What are the options?

- Minimums vs Maximums
- Paid Parking
- Shared Parking
- Market driven
- Public Utility
- Parking Districts
- Maximum impervious area
- Do nothing



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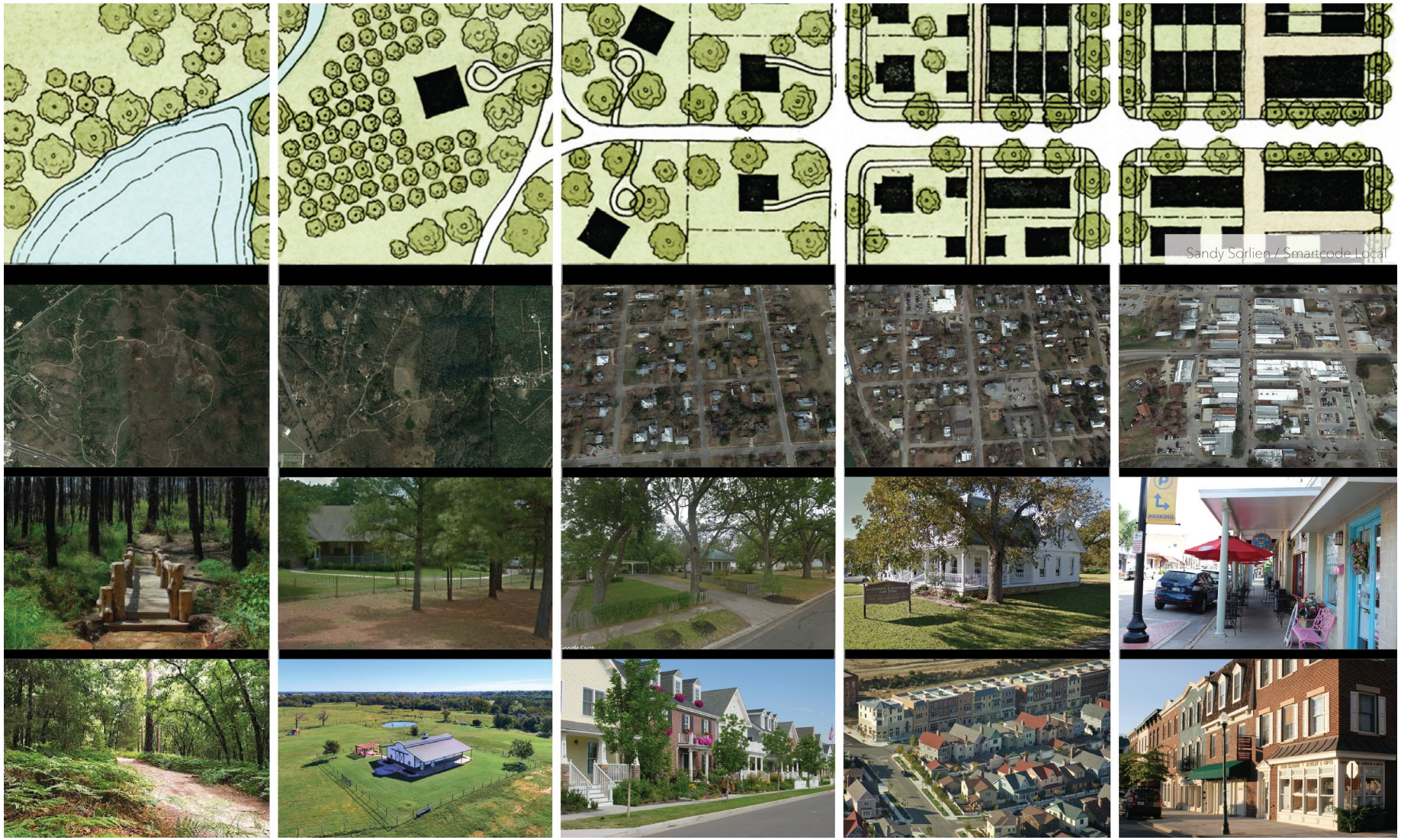
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Introducing standards

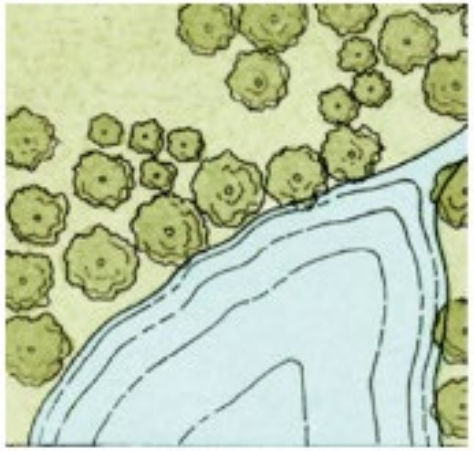
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P1 NATURE	P2 RURAL	P3 NEIGHBORHOOD	P4 NEIGHBORHOOD MIX	P5 SHOPFRONT



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P1

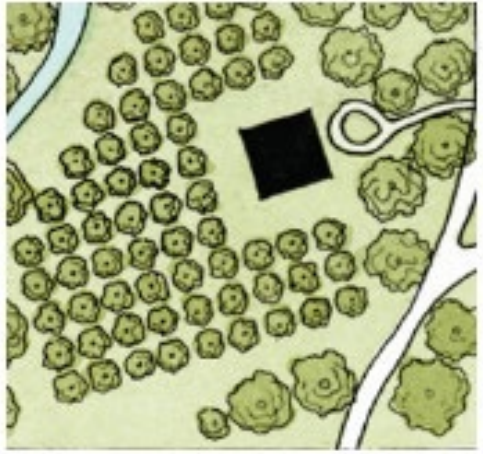
NATURE

- Impervious Cover

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P2

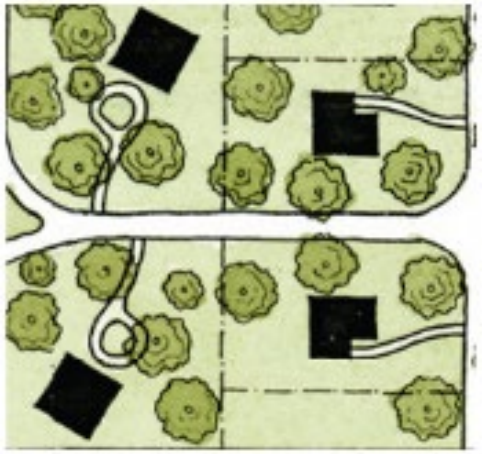
RURAL

- Impervious Cover
- Shared/Clustered Parking

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P3

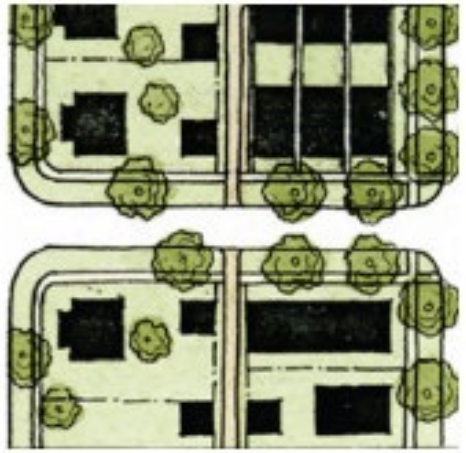
NEIGHBORHOOD

- Impervious Cover
- Market Driven
- Maximums

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P4

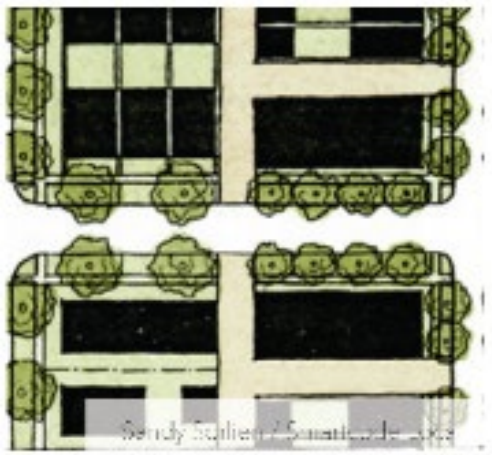
NEIGHBORHOOD MIX

- Shared Parking
- Parking District

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P5

SHOPFRONT

- Paid Parking
- Public Utility
- Parking District

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Putting it together…



- Cannot be a “one size fits all” approach
- Combination approach
- Compliment Character District/Place Type
- People and Places, not Parking and Cars

“Great things are not done by impulse, but by a series of small things brought together.” ~Vincent Van Gogh~

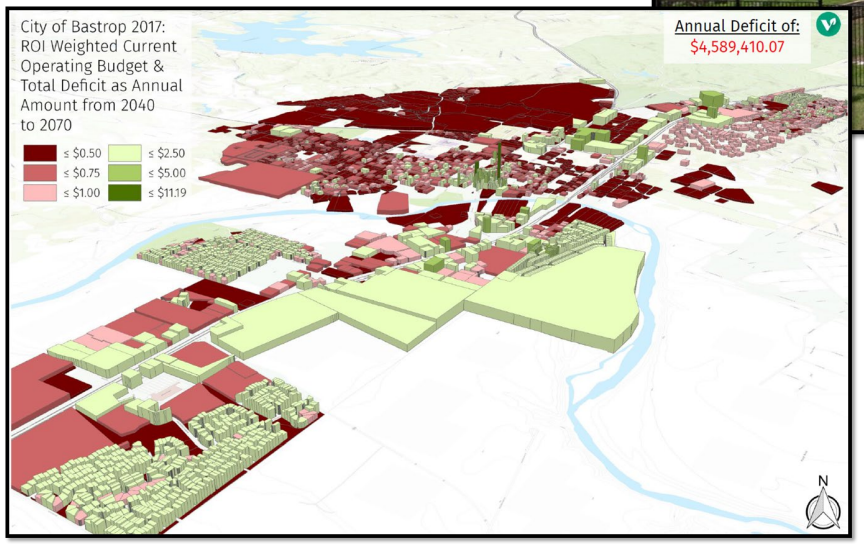
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Start with the end in mind...







Fiscally Sustainable

Geographically Sensitive

Authentic Bastrop

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STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8E

TITLE:
Provide an update on the Chicken Relocation Project in Downtown Bastrop, Texas.

STAFF REPRESENTATIVE:
James K. Altgelt, Director of Public Safety/Chief of Police

WHOLESALE WASTEWATER AGREEMENT

BETWEEN CITY OF BASTROP, _____ DISTRICT AND _____.

This WHOLESALE WATER and WASTEWATER AGREEMENT ("**Agreement**") is made and entered into by and between the CITY OF BASTROP, a home rule city located in Bastrop County ("**Bastrop**" or "**City**") and the _____, a _____ operating under _____ ("_____"), and _____., a _____ ("**Developer**") (collectively referred to herein as the **"Parties"**). The Parties hereby mutually agree as follows:

RECITALS

WHEREAS, the City and the Developer entered into a Planned Development Agreement, to be known in this Agreement as "the PDA" on _____, requiring a wholesale utility agreement; and

WHEREAS, by Resolution R-_____, on _____, 20____, the City granted consent for creation of _____ District; and

WHEREAS, by Order signed on _____, 20____, the Texas Commission on Environmental Quality granted the Petition for Creation of _____ District; and

WHEREAS, by Resolution R-_____ the City confirmed its consent for creation of the _____District, on _____, 20_____; and

WHEREAS, the District encompasses approximately _____ acres of land within the extraterritorial jurisdiction ("ETJ") of the City (the "Tract"). The Tract is more particularly described in Exhibit "A"; and

WHEREAS, Developer intends to develop the Tract as a _____ community, initially to be referred to as "_____" projected to consist primarily of _____ uses, expected at the time of execution of this Agreement to include approximately _____ homes, and also will include other limited nonresidential uses (the "Development"); and

WHEREAS, Bastrop, District and Developer wish to enter into this Agreement, to provide the terms of wholesale wastewater service for the benefit of the present and future residents of City and the District; and

WHEREAS, the Tract is within Bastrop's sewer CCN (20466), from which the City will provide wastewater services to the District; and

WHEREAS, Bastrop has the capacity to treat _____ gallons per day of wastewater from the District through City's Existing Wastewater Treatment Plant (Permit No. WQ0011076001). Upon completion of Bastrop's WWTP#3 (Permit No. WQ0011076002),

the City will have the capacity to treat _____ gallons per day of wastewater from the District.

NOW, THEREFORE, for and in consideration of the agreements set forth below, the City, District and Developer agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 Definitions of Terms.

In addition to the terms otherwise defined in the above recitals; in the City's ordinances; or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

Active Connection: means a connection for which there is an open utility account with the District during any portion of a monthly billing period. Each connection is the equivalent of one SUE, provided that the property served by the connection is a single-family residence.

Agreement: means this Wholesale Wastewater Agreement by and among the City of Bastrop, Texas, District, and Developer.

AWWA: means the American Water Works Association.

Bastrop Service Area: means the certificated service area for the City of Bastrop as maintained by the Public Utility Commission.

***Bastrop Wastewater System or City Wastewater System*:** means all of the Wastewater equipment, lines, components and facilities of Bastrop that are used for the collection, transportation, treatment, monitoring, regulation and disposal of Wastewater received from the District, including the Existing Wastewater Treatment Plant, WWTP#3, and _____.

CCN: means a certificate of convenience and necessity or similar permit authorizing a specified entity to be the retail water or sewer service provider in a specified area.

City: The City of Bastrop, Texas, a home rule municipality, organized and operating pursuant to the applicable laws of the State of Texas

City Manager: means the City of Bastrop's City Manager

Commercial Customers: means all non-residential retail wastewater customers of District in the Wholesale Wastewater Service Area.

Commission or TCEQ: means the Texas Commission on Environmental Quality or its successor agency.

Connecting Facilities: means facilities connecting any Internal Facilities to a Point of Entry (excluding any Interceptors).

Contract Amount*; means the agreed upon amount in the Infrastructure and Capacity Contract.*

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Costs of the System: means all of Bastrop's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining,

and operating the Bastrop System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the System in accordance with policies of Bastrop's City Council.

County: means Bastrop County, Texas.

Daily BOD loading*:* means the daily biochemical oxygen demand loading as measured based on the arithmetic average of all samples, grab or composite, within a calendar month, consisting of at least four separate representative samples taken in accordance with the Permit.

Developer: means _____., a _____, its successors or assigns.

Development: means the mixed-use development of the Tract, including residential and non-residential land uses, together with parkland, open space, recreational amenities and related facilities, intended to produce developed lots.

District: means the municipal utility district organized and operating in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, encompassing the Tract, known as _____ District.

District's Wastewater System: means the Wastewater facilities of the District for collection and transportation of Wastewater from its retail customers to the Points of Entry into the Bastrop System.

District Service Area: means the retail wastewater service territory of _____ District, as amended from time to time.

Effective Date: means the last date of execution by all of the Parties.

ETJ: means extraterritorial jurisdiction.

Emergency: means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Bastrop. The term includes Force Majeure and acts of third parties that cause the Bastrop System to be unable to provide the Wholesale Water Services agreed to be provided herein.

EPA: means United States Environmental Protection Agency

Excess Wastewater Treatment Capacity Reservation Fees: means the product of the Wastewater Treatment Capacity Reservation Fee and: (i) the difference between the number of SUE's shown on a phase of a preliminary plat and the final plat for that phase, if the subdivision is developed in phases; or (ii) the number of SUE's shown on a preliminary plat and the final plat, if the property is not developed in phases.

Existing Wastewater Treatment Plant: means the City-owned 1.4 MGD wastewater treatment plant operating pursuant to TPDES Permit No. WQ001107600, a copy of which is attached as Exhibit "B".

Force Majeure: means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Bastrop or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

~~***Impact Fee:*** means a charge imposed on each service unit on new development pursuant to Chapter 395 of the Local Government Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions.~~

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Infiltration: means water that enters Bastrop's System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

Inflow: means water that enters the Bastrop System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

Infrastructure and Capacity Contract: *means the Contract by and between the City and District that includes the amount to be collected from the District for all infrastructure, facilities and capacity needed to serve the development.*

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Initial Wholesale Wastewater Service: means the reception, transportation, treatment, and disposal of no less than _____ GPD Wastewater to be provided by Bastrop to District, during the period before WWTP#3 is capable of providing service to the District.

Interceptors: any wastewater mains, including, _____, or other wastewater facilities constructed by on behalf of Bastrop after the Effective Date of this Agreement that connect the City's Existing Wastewater Treatment Plant or WWTP#3 to a Point of Entry.

Internal Facilities: means the internal Wastewater collection and lift station facilities and related equipment, facilities, and appurtenances to be constructed by or on behalf of District for the District System.

Lift Stations: The lift stations and force main located in the District, which are more particularly described in Exhibit "C".

Maximum Wastewater SUE Capacity: Use of wastewater treatment capacity up to _____ GPD.

Metering Facility: means the Wastewater flow meter, meter vault, and all metering and telemetering equipment located at a Point of Entry to measure Wholesale Wastewater Service to District. The Bastrop System shall include each Metering Facility.

Parties: means the City, the District, and the Developer.

Peak Hour Flow Rate: means the highest metered and calculated flow rate delivered from District to Bastrop's System at a Point of Entry under any operational condition, including inflow and infiltration.

Planned Development Agreement or PDA: means the agreement was entered into by the City and the Developer on _____, 20_____.

Points of Entry: means the locations, to be approved by Bastrop, District and Developer, in Bastrop's System at which all Wastewater will pass from District's Connecting Facilities to Bastrop's System generally shown on Exhibit "D". The initial Point of Entry shall be located at _____("Initial Point of Entry"). Future Points of Entry shall be agreed upon by Bastrop and District in connection with the acquisition or construction and commencement of operation of new Connecting Facilities after the Effective Date that connect to Bastrop's System.

Prohibited Waste: means those substances and wastes prohibited from being discharged into Bastrop's System as identified in Bastrop's Code of Ordinances.

Residential Customers: means retail residential Wastewater customers of District in the Wholesale Wastewater Service Area.

Single Family Residence: means the use of a site for only one dwelling unit, where a dwelling unit is a building, or portion thereof, designed or used exclusively for residential occupancy (not including hotels and motels).

SUE: means Service unit equivalent which is the basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4 " diameter simple water meter, using American Water Works Association C700-C703 standards. For purposes of this Agreement and as reflected in Bastrop Code of Ordinances Section 10.02.004, 3/4 " water meters are considered to equal one SUE; except that for multifamily development, each living unit is equivalent to 0.5 SUE.

~~***SU multiplier:*** means the number of SUEs to be multiplied by the Impact Fee for each active connection served that is not a single family residence in accordance with the SU Equivalency Chart in Bastrop Code of Ordinances Section 10.02.004.~~

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Tract: means the approximately 347.9 acres of land within the District's boundaries to be served under the terms of this Agreement.

_____***:*** means the wastewater interceptor that will connect the District to the City's Existing Wastewater Treatment Plant and WWTP#3.

Waste or Wastewater: means liquid or water borne waster, including without limitation, sewage

WWTP #3: The planned wastewater treatment plant to be built by the City in which the District's ultimate capacity needs will be reserved. Its planned location is shown on Exhibit "D".

Section 1.02 Captions.

The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II. PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service Commitment.

a. Subject to the terms and conditions of this Agreement and the requirements of applicable law, Bastrop agrees to provide Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area in a quantity not to exceed the Wholesale Service Commitment.

b. District or Developer may request that Bastrop increase the Wholesale Wastewater Service Area and/or the Wastewater Service Commitment. In such event, Bastrop District and Developer will enter into good faith negotiations to amend this Agreement to increase the Wholesale Service Commitment and/or the Wholesale Wastewater Service Area, as appropriate.

Section 2.02 Phasing of Wholesale Wastewater Service.

Subject to the provisions of the foregoing paragraph 2.01, Bastrop shall make Wholesale Wastewater Service available within the Wholesale Wastewater Service Area on a phased basis as follows:

a. Phase 1: _____ GPD of Wholesale Wastewater Service shall be made available from the City's Existing Wastewater Treatment Plant to the Wholesale Wastewater Service Area upon acceptance of Connecting Facilities to a Point of Entry.

b. City will provide District new data on available capacity in Existing Wastewater Treatment Plant within thirty (30) days of the date the District is consuming _____ GPD.

c. City Commits to have WWTP#3 online before District utilizes _____ GPD.

d. Subsequent Phases: District shall give Bastrop written notice at such time that District determines that additional Wholesale Wastewater Service is needed in the Wholesale Wastewater Service Area. Such notice will include the number of SUE's that will require Wholesale Wastewater Service. Such notice shall be given at the time of preliminary plat approval in accordance with Section 5.07, provided that District may give written notice that additional Wholesale Wastewater Service is needed at other times as determined appropriate in District's discretion.

e. Bastrop shall make Wholesale Wastewater Service available for the number of SUE's requested within eighteen (18) months of the date of the request, up to the Wholesale Wastewater Commitment, and payment of the Wastewater Treatment Capacity Reservation Fee for the number of SUE's stated in the notice. Payment of the Wastewater Treatment Capacity Reservation Fee shall guarantee capacity within the WWTP#3 and other parts of the Bastrop System, as applicable, for the number of SUEs for which the Wastewater Treatment Capacity Reservation Fee is paid.

Section 2.03 Peak Hour Flow Rate Limitations.

a. The Peak Hour Flow Rate at a Point of Entry shall not exceed an average of 0.65 gallons per minute (gpm) for each SUE allocated to all Phases served by such Point of Entry.

b. The Peak Hour Flow Rate for Phase 1 shall not exceed 117 gpm.

c. The Peak Hour Flow Rate for all subsequent phases shall be calculated in accordance with this subsection.

Peak Hour Flow Rate (gpm) = (0.65 gpm) x (number of SUEs requested per phase)

d. The Parties agree that any increase in the agreed Peak Hour Flow Rate or the daily BOD of Wholesale Wastewater Service that Bastrop provides to District under this Agreement will require a written amendment of this Agreement duly authorized by the governing bodies of the Parties.

Section 2.04 Wastewater Strength Limitations.

The Wholesale Service Commitment shall be subject to the following additional limitations:

The daily BOD Loading, as measured based on the arithmetic average of all samples, grab or composite, within a calendar month, consisting of at least four (4) separate representative samples taken in accordance with the Permit -- shall not exceed an average of 0.425 pounds (BOD-5) per SUE allocated to a Phase. The daily BOD Loading for Phase l shall not exceed 76.5 pounds (BOD-5). The daily BOD loading for all subsequent phases shall be calculated in accordance with this subsection.

Daily BOD Loading (BOD-5) = (0.425 pounds) x (number of SUEs requested per phase).

Section 2.05 Sole Provider; Waste Disposal Permit Application.

a. For so long as Bastrop meets its obligations under this Agreement, Bastrop will be the sole source of Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area unless: i) Bastrop consents in writing to District's conversion to another wholesale provider; or, ii) Bastrop refuses or fails to provide Wholesale Wastewater Service in accordance with the terms of this Agreement, in which event District shall be free to find an alternative Wholesale Wastewater Service provider.

b. Under the terms and conditions set forth herein, Bastrop shall be entitled to provide Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area from any source of treatment capacity available to Bastrop.

Section 2.06 Wholesale Service Commitment Not Transferable.

a. Bastrop's commitment to provide Wholesale Wastewater Service under this Agreement is solely to District and solely for the Wholesale Wastewater Service Area. District may not assign or transfer in whole or in part Bastrop's service commitment to any person or entity without Bastrop's approval, and any assignment will be subject to the terms and conditions of this Agreement.

b. Bastrop may not assign or transfer in whole or in part its obligations under this Agreement to any other person or entity, with District's prior written consent, which consent shall not be unreasonably withheld.

Section 2.07 District Responsible for Retail Connections.

District will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement and for the proper and lawful application of District's policies and regulations governing connection to the District System.

Section 2.08 Retail Billing and Collection.

District agrees that it will be solely responsible for retail billings to and collections from its customers within the Wholesale Wastewater Service Area.

Section 2.09 Curtailment of Service.

The Parties agree that, if Wastewater Service is curtailed by Bastrop to other customers of the Bastrop System due to the need to conduct maintenance operations or due to an emergency, Bastrop may impose a like curtailment, with notice to District, on Wholesale Wastewater Service delivered to District under this Agreement. Bastrop will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Bastrop from curtailing service completely in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance.

Section 2.10 Cooperation during Maintenance or Emergency.

District will reasonably cooperate with Bastrop during periods of emergency or required maintenance. If necessary, upon prior notice, District will operate and maintain its system at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.11 Retail Service and CCN.

The Parties acknowledge and agree that District shall be the retail provider of sewer service to lands within the Wholesale Wastewater Service Area. Bastrop agrees that it will not oppose or protest an application by District to obtain a sewer CCN for the Wholesale Wastewater Service Area within the District boundaries. Bastrop will not provide retail sewer service within the Wholesale Wastewater Service Area and shall amend any agreements providing for Bastrop to provide retail wastewater service within the Wholesale Wastewater Service Area to be consistent with the retail sewer service area boundaries and the agreements regarding inspection of Internal Facilities set forth in this Agreement.

ARTICLE III. DESIGN AND CONSTRUCTION OF FACILITIES

Section 3.01 Design and Construction of the Internal Facilities.

a. District will be responsible for design and construction of, or for causing one or more third parties to design and construct, the Internal Facilities within the District System.

b. District agrees to be responsible for and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Internal Facilities; provided that District may require Developer to be responsible and pay for all or a portion of the costs of right-of- way, easements, design, engineering, contracting, construction, and inspection of the Internal Facilities.

c. The Internal Facilities will be designed and constructed in accordance with applicable regulations and specifications of Bastrop, the State of Texas and United States, and with the terms and conditions of this Agreement.

Section 3.02 Design and Construction of the Connecting Facilities.

a. District shall be responsible for design and construction of, or for causing one or more third parties to design and construct, any Connecting Facilities, or modification to the existing Connecting Facilities, required for the transmission of Wastewater to the Bastrop System.

b. Subject to the terms and conditions of this Agreement, District agrees to engage or cause to be engaged the services of a professional engineer registered in Texas to produce the engineering design, including detailed plans and specifications for Connecting Facilities in conformance with Bastrop's design criteria and construction standards in effect at the time the plans and specifications are submitted to Bastrop for approval, or in accordance with District's design criteria and construction standards if such are more stringent; provided that the parties shall reasonably cooperate to determine the design standards that will control. The plans and specifications will address the sizing, routing, material selection, service method, cost estimates, proposed construction schedule, easements, and such other and further information as Bastrop deems necessary or advisable for proper review and assessment of the plans and specifications. The design for the Connecting Facilities shall be procured at District's sole expense; provided that District may cause Developer to be responsible for designing the Connecting Facilities, and the cost thereof. The plans and specifications for the Connecting Facilities will be submitted to Bastrop for review and comment before District approves said plans and specifications. Bastrop shall provide written comments within thirty (30) days of the date of the receipt of the plans unless a longer period is specified by City Staff. District shall cause any comments provided by Bastrop to be addressed. If Bastrop does not provide comments within the greater of thirty (30) days or the time specified by City Staff, District may approve the plan and specifications, subject to compliance with District's regulations.

c. The Parties agree that the Connecting Facilities shall be designed and constructed so that they will not deliver Wastewater to the Bastrop System at a Peak Hour Flow Rate in excess of the Peak Flow Rate limitations set forth in this Agreement. District agrees to design and construct, or cause the design and construction of, the Connecting Facilities so that any wastewater flows to a Metering Facility can be accurately measured, in the event the Wholesale Wastewater Rate is calculated based on volumetric charges.

d. District solely shall be responsible for the construction of the Connecting Facilities, or for causing Developer to be responsible for the construction of the Connecting Facilities. District solely shall be responsible for funding construction, and all costs related thereto, of the Connecting Facilities, or for causing one or more third party developers or owners of land within the Wholesale Wastewater Service Area to be responsible for funding construction, and all costs related thereto, of the Connecting Facilities.

e. District agrees to be responsible for, and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System, or for causing Developer to be responsible for and to pay all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System.

f. The parties will cooperate in good faith to determine the location of Connecting Facilities that are located in Bastrop's city limits or ETJ. Bastrop agrees to make good faith efforts to cause the dedication of easements or right-of-way that may be necessary for the location and installation of

Connecting Facilities within the city limits and ETJ of Bastrop. Pursuant to separate written instruments, Bastrop will further allow District to access and use rights-of-way and easements owned or controlled by City for the purpose of installing, constructing, repairing, replacing, maintaining, and operating or causing to be installed, constructed, repaired, replaced, maintained and operated, Connecting Facilities.

Section 3.03 Notification of Commencement of Construction on Connecting Facilities.

After all required approvals for construction of the Connecting Facilities are obtained but prior to commencement of construction, District will provide, or cause to be provided, written notice to Bastrop of the date on which construction of the Connecting Facilities is scheduled to commence. Bastrop must receive this written notice at least five (5) days before the scheduled construction date.

Section 3.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.

The Parties agree that Bastrop has the right to make periodic inspections during the construction phase of the Connecting Facilities. Acceptance of the Connecting Facilities by District is subject to final inspection by Bastrop.

Section 3.05 Agreement to Submit As-Built or Record Drawings and Final Plats.

District agrees to provide, or cause to be provided, to Bastrop: a) as-built or record drawings of all Internal Facilities and Connecting Facilities that contribute directly to the Bastrop System; and b) final plats for property located within the Wholesale Wastewater Service Area; within thirty (30) days of District receiving them, not to exceed sixty (60) days following completion and acceptance of the construction of such facilities or recording of the final plat, as appropriate.

Section 3.06 Ownership and Operation of Connecting Facilities.

Except as set forth below or otherwise agreed, District shall own and operate all Connecting Facilities located on its side of a Point of Entry after completion of construction by District or the Developer, and acceptance of the Connecting Facilities by Bastrop.

Section 3.07 Design and Construction of Interceptors.

a. The District will pay the full design and construction costs of _____. The City will own, operate and maintain _____ upon its completion, acceptance and conveyance by the District to the City. The District shall have the right to the percentage of the line's capacity necessary to transport sewage at a flow rate of _____ GPD to serve the District at full buildout.

b. Except as described in Subsection 3.07(a) or as otherwise agreed by the Parties, Bastrop shall be responsible for design and construction of the Interceptors, including the acquisition of all easements required for the construction, ownership and operation of the Interceptors.

c. Bastrop agrees that the Interceptors shall be designed and constructed with sufficient capacity to make wholesale service available to District in an amount not less than required for Bastrop to fulfill its obligations under this Agreement.

d. Under no circumstances shall District construct any Interceptors that would connect to, or contribute Wastewater into the Bastrop System without Bastrop's prior written approval.

Section 3.08 Design and Construction of Improvements to the Bastrop System and WWTP#3

a. Bastrop shall be responsible for the design and construction of WWTP#3 (Permit No. WQ0011076002) and the portions of the Bastrop System that serve the Wholesale Wastewater Service Area.

b. For the term of this Agreement, Bastrop agrees that it will provide Wholesale Wastewater Service to District up to the Wholesale Wastewater Commitment under the terms and conditions of this Agreement and payment of the Wastewater Treatment Capacity Reservation Fee shall guarantee capacity in the WWTP#3 and the Bastrop System for the number of SUE's for which the Wastewater Treatment Capacity Reservation Fee is paid.

ARTICLE IV. DESIGN AND CONSTRUCTION OF WASTEWATER FACILITIES

Section 4.01 Wastewater Flow Meters.

All Wastewater Flows from the Wholesale Wastewater Service Area must be metered through Metering Facilities that are designed and constructed by District and are subject to Bastrop's review and approval. Upon completion of installation, the Metering Facilities shall be dedicated to Bastrop. The parties acknowledge and agree that the initial Wholesale Wastewater Rate is a flat rate charge as set forth in Article V. This Article shall also govern metering of Wastewater flows for the purpose of calculating the Volumetric Rate in the event that the Wholesale Wastewater Rate is a volume-based rate. The Metering Facilities shall be tested and calibrated to ensure said facilities are operative and measuring accurately prior to instituting and charging District a volume-based Wholesale Wastewater Rate.

Section 4.02 Wastewater Flow Meter Calibration and Testing.

a. Bastrop agrees to calibrate and routinely service the Wastewater flow meter no less than once during each twelve (12) month period as a Cost of the System. Calibration will be accomplished according to Bastrop's standard methods.

b. Bastrop will notify District in writing of proposed calibrations in advance of such occurrences so that District may observe if desired.

c. It will be the duty of the Parties to this Agreement to notify the other Party in the event any Party becomes aware that a Wastewater flow meter is registering inaccurately or malfunctioning. Any Party will have the right to test a flow meter at any time. Notification of a proposed test will be provided at least forty (48) hours before conducting the test except in the case of emergencies. Any Party will have the right to witness Wastewater flow meter tests. Payment for meter calibration and testing under this Section will be the responsibility of the Party requesting the meter calibration and testing.

Section 4.03 Ownership, Operating and Maintenance of the Wastewater Flow Meters.

Following completion and final acceptance of the Metering Facilities by District, Bastrop will own, operate and maintain the Metering Facilities.

Section 4.04 Billing Adjustments.

If, for any reason, a Wastewater flow meter is out of service or inoperative, or if, upon any test, any meter is found to be inaccurate (variance of five percent (5%) or more), Bastrop will calibrate the meter to measure within five percent (5%) accuracy. In addition, Bastrop will adjust billings by an amount that corresponds to the percentage that the meter varies from accurate measurement for one-half of the months since the most recent calibration of the same meter but not to exceed six (6) months. If adjustment results in credit to District, Bastrop may provide such credit against future billings to District. If adjustment results in additional amounts due to Bastrop, District will pay such amounts to Bastrop in accordance with the billing terms provided in this Agreement.

Section 4.05 Wastewater Flow Monitoring.

If Bastrop discovers a wastewater flow problem, as determined in its reasonable discretion, associated with a Point of Entry, Bastrop may, at any time, with notice to District, conduct smoke testing, television of lines, or other methods to determine the cause of the problem. The Parties agree to fully cooperate in this investigation. If the cause of the problem is determined to be solely in Bastrop's System, then Bastrop will solely pay for all investigation costs. If the cause of the problem is determined to be solely in District's System, then District will solely pay for all investigation costs. If the cause of the problem is determined to be in both District and Bastrop Systems, then investigation costs will be proportionally distributed based upon the number of connections investigated for each Party. District agrees to reimburse Bastrop for District's portion of this investigation costs within thirty (30) days of receipt of invoice, which invoice shall include supporting data in reasonable detail. District agrees to correct any problems identified in the investigation with reasonable promptness, depending on the nature of the problem.

ARTICLE V. WASTEWATER RATES AND CHARGES

Section 5.01 Wholesale Wastewater Rate Fees and Charges.

a. In accordance with the terms and conditions of this Agreement, District, through its Board of Directors, will establish and District (as set forth below) will pay Bastrop rates, charges and fees for the Wholesale Wastewater Service provided under this Agreement. The rates, charges and fees for Wholesale Wastewater Service shall consist of:

(1) the Wholesale Wastewater Rate, which shall consist of either: (i) a Flat Rate as set forth in Section 5.02; or (ii) a Volume Charge and Monthly Minimum Charges as set forth in Section 5.04; and

(2) ~~Impact Fees.~~The agreed upon Contract Amount for infrastructure, facilities and capacity, or portions thereof constructed to serve the District.

b. Bastrop may charge either a metered Volume Charge and Monthly Minimum Charges or a Flat Rate Charge for Wholesale Wastewater Service at the discretion of its governing body and after thirty (30) days prior notice to District. Bastrop specifically agrees that the Volume Charge and Minimum Monthly Charges or Flat Rate Charges will be calculated so that all Costs of the System on which the charges are based are properly allocated between District, any other wholesale customers of the System, and Bastrop's retail customers in a just, reasonable and nondiscriminatory manner and in accordance with this Agreement.

c. Any subsequent changes in rates shall be shall be set in accordance with the following principles:

d. Bastrop agrees that it will review the Costs of the System that form the basis for the Wholesale Wastewater Rate not less than once every three (3) years; provided, however, that Bastrop shall not be required to employ persons other than Bastrop employees for purposes of doing so unless Bastrop wishes to increase the Wholesale Wastewater Rate, or unless the Bastrop employee is qualified to conduct a wastewater rate study.

Section 5.02 Flat Rate.

Bastrop agrees that the initial Wholesale Wastewater Rate will be a Flat Rate in the amount of $_____ per month, per Active Connection multiplied by the SUE Multiplier, if applicable, billed monthly. The Flat Rate is calculated by subtracting an amount that represents the portion of Bastrop's cost of retail customer service, billing, and line maintenance (the "Retail-Only Service Costs") from Bastrop's retail flat rate. The current flat rate is based on the following calculation: _____ (Bastrop's retail flat rate) - _____ (the "Retail-Only Service Costs").

Section 5.03 Notice to and Review by District.

a. Bastrop will provide District with at least thirty (30) days prior written notice of any changes to the Wholesale Wastewater Rate ~~or Impact Fees.~~ Written notice shall include the proposed new rates and/or fees, and an updated cost of service study with reasonable detail that allows District to identify the methodology used to revise the rates (including enough detail to allow District to evaluate the exclusion of retail-only service costs from the Wholesale Wastewater Rate), the Costs of the System that necessitate the change, along with the allocation of Costs of the System between District, and all other customers of the Bastrop System (wholesale and retail). ~~Bastrop will not be required to provide notice related to setting of Impact Fees beyond those notices required by the Texas Impact Fee Law (Texas Local Government Code, Chapter 395, as amended), other than the notice described in this Section 5.03(a).~~

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b. District will have the right to inspect and copy, at its expense, Bastrop's books and records to verify any statement, billing, charge, computation or demand made to District by Bastrop. Bastrop agrees to make all such information available to District for inspection and copying with reasonable promptness during normal business hours.

Section 5.04 Volume Charges and Monthly Minimum Charges.

a. This Section shall govern and be in effect in the event that Bastrop establishes a Wholesale Wastewater Rate based on volume charges.

b. Bastrop will measure Wastewater flows at the Meter(s) monthly and will bill District as provided in Article VI this Agreement for the Volume Charges based on the Wastewater flows measured.

c. In addition to the Volume Charges, Bastrop's City Council may establish Minimum Monthly Charges to recover that portion of the capital-related Costs of the System incurred by Bastrop related to that portion of the Bastrop System that is used or useful for the provision of Wholesale Wastewater Service hereunder and that are not otherwise financed through the collection of Impact Fees or Wastewater Treatment Capacity Reservation Fee or the Contract Amount. Bastrop specifically agrees that the Minimum Monthly Charge will be calculated so that all capital-related Costs of the System not collected as part of the Contract Amount are allocated between District, any other wholesale customers of the System, and Bastrop's retail customers in a fair, equitable, nondiscriminatory and impartial manner and in accordance with this Agreement. Without limitation

to the generality of the foregoing, the Monthly Minimum Charge will be calculated such that the Minimum Monthly Charges shall not pay any capital-related costs associated with capacity in the System that is being constructed to provide Wastewater treatment and disposal service in excess of the Wholesale Service Commitment.

d. Prior to revision of the Monthly Minimum Charge, Bastrop shall provide written notice thereof to District, and provide a reasonable period for review and comment. A period of thirty (30) days shall be deemed a reasonable period for review and comment. The notice shall specify the lands within the Wholesale Wastewater Service Area for which Bastrop has received or credited payment of Impact Fees.

e. Each updated cost of service study shall identify the capital related costs previously paid by payment of the Monthly Minimum Charge and Impact Fees to Bastrop.

f. Bastrop agrees that any subsequent agreements that it enters into with any other person or entity for Wholesale Wastewater Treatment and Disposal Services from the System will also require such person or entity to pay a minimum monthly fee to be calculated in a just, reasonable, and nondiscriminatory manner based on the wholesale service commitments made to such other customers and the most recent rate study conducted by Bastrop.

g. District agrees to provide payment to Bastrop for the Minimum Monthly Charges associated with the provision of Wholesale Wastewater Service.

~~**Section 5.05 Bastrop Wastewater Impact Fees.**~~

a. ~~The provision of Wholesale Wastewater Service to District under this Agreement is subject to payment to Bastrop of Impact Fees as adopted by Bastrop's City Council for customers in the same service area under Chapter 395, Texas Local Government Code. The Impact Fee as of the Effective Date of this Agreement for the Wholesale Wastewater Service Area is $_____ per SUE. For those properties served that are not a single family residence, the SUE Multiplier that corresponds to the type of property as described in Exhibit "E". The Parties acknowledge that the Impact Fees may be subject to the procedures and requirements of the Texas Impact Fee Law.~~

b. ~~The Impact Fee less the Wastewater Treatment Capacity Reservation Fee (if a Wastewater Treatment Capacity Reservation Fee was paid and remitted to Bastrop as provided in Section 5.07) (the "Impact Fee Balance") or the Impact Fee (if a Wastewater Treatment Capacity Reservation Fee was not paid and remitted to Bastrop as provided in Section 5.07) shall be collected by District at the time of application for a building permit or, if no building permit is required, at the time of a request to connect to District's System for each lot within the Wholesale Wastewater Service Area. District shall pay the Impact Fee Balance or Impact Fee, as appropriate, to Bastrop within thirty (30) days of receipt. District agrees that it will not approve a request for connection to District's System, as appropriate, for a lot until the Impact Fee or Impact Fee Balance, as appropriate, is paid. In the event Bastrop amends the Impact Fee, the amended Impact Fee will apply for purposes of this Agreement only to lands within the Wholesale Wastewater Service Area that receive final plat approval after the amendment of the Impact Fees, or for properties that develop without platting, at the time of an application for building permit or plumbing permit as applicable, or for properties which have not otherwise been given Impact Fee credits; provided that in the case of such properties for which a Wastewater Treatment Capacity Reservation Fee was paid prior to amendment of the Impact Fee, the Impact Fee will be fixed at the Impact Fee in effect at the time the Wastewater~~

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~~Treatment Capacity Reservation Fee was paid and will not be subject to adjustment if the Impact Fee is increased, but will be subject to adjustment if the Impact Fee is decreased. The Impact Fees or Impact Fee Balance, as appropriate, shall be calculated for each subdivision plat based on the number of lots and the uses within that plat, as required by Bastrop's ordinance establishing Impact Fees. Bastrop shall maintain a current copy of Bastrop's Impact Fee Ordinance, with Bastrop. If Impact Fees are paid prior to the time of connection, Bastrop will provide District with certificates for the number of wastewater connections, i.e., SUEs, for which District paid Impact Fees. Said certificates shall be based on credits available and credited at time of platting, limited to specific platted lots within the Wholesale Wastewater Service Area. Certificates shall be issued for one SUE per lot, unless Bastrop receives payment for a larger number of SUEs per lot. Assuming that Bastrop has received Impact Fees for one SUE per lot within a platted subdivision, in the event service to a platted lot requires service at a level in excess of one SUE, District shall, within forty five (45) days of provision of retail wastewater service to the platted lot, pay or cause to be paid to Bastrop Impact Fees for the remaining SUEs of service.~~

c. ~~The Bastrop City Council may amend the Impact Fee applicable to the Wholesale Wastewater Service Area from time to time in accordance with the process set forth in Chapter 395, Texas Local Government Code, provided that Bastrop shall give District at least thirty (30) days prior written notice before amending the Impact Fee.~~

Section 5.06 Wholesale Wastewater Rates.

The City shall invoice the District for wholesale wastewater delivery and treatment service at the same rate that the City charges its other wholesale customers per GPD of use. The District shall pay the City monthly, one month in arrears, as more fully described in Section 6 of this Agreement.

Section 5.07 Wastewater Treatment Capacity Reservation Fees.

a. *Initial Wastewater Treatment Capacity Reservation Fee.* The District, or the Developer if the District does not have sufficient funds, will pay to the City the Initial Wastewater Treatment Capacity Reservation Fee. The payment to be made to the City within ninety (90) days of the Effective Date to reserve wastewater treatment capacity equivalent to Wastewater SUEs for the District, in the amount of ~~_____ 10% of the City Wastewater Impact Fees at the City's then current rates per Wastewater SUE.~~

b. *Incremental Wastewater Treatment Capacity Reservation Fee.* The District, or the Developer if the District does not have sufficient funds, will pay to the City Incremental Wastewater Treatment Capacity Reservation Fees in increments of not less than 100 Wastewater SUEs as needed by the Development. The payment to be made to the City at the point in time that is three (3) years in advance of absorption or need to reserve successive tranches of wastewater treatment capacity for the District, in the amount of ~~_____ 25% of the City Wastewater Impact Fees at the City's then current rates per Wastewater SUE, multiplied by no fewer than 100 Wastewater SUEs.~~ The District and Developer intend to continue making incremental Wastewater Treatment Capacity Reservation Fee payments until the District is built out, in incremental payments for capacity of no fewer than 100 Wastewater SUEs of capacity per increment, unless otherwise agreed by City staff, the District and the Developer.

c. District shall pay, or cause to be paid, a portion of the Contract Amount ~~Impact Fee~~ to Bastrop to guarantee capacity in the Bastrop System, which portion shall be $_____ per SUE (the " Wastewater Treatment Capacity Reservation Fee") for land that is platted in the Wholesale

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Commented [A1]: If we are not charging an impact fee, we will need to have a set amount for the reservation fee or set this as a portion of the Contract Amount. – Assuming we will allow them to reserve additional service beyond what we agree to in the contract.

Could go the route that the Contract amount covers the cost of the infrastructure needed to serve the development and reserves service for the number of SUEs agreed to in the Contract. Any additional service requested by the Developer would need to be done as an amendment or addendum to the Contract Amount.

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Commented [A2]: Do you want the entire amount up front?

Commented [A3]: Do you want to have this be a portion of the Contracted Amount or a set amount?

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Commented [A4]: Or amount

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Wastewater Service Area. Owners of property that develop without platting shall not be charged a Wastewater Treatment Capacity Reservation Fee; provided that such Owners will be required to pay an Impact Fee as provided in Section 5.05. Owners of property in the Wholesale Wastewater Service Area that do not pay a Wastewater Treatment Capacity Reservation Fee shall not have capacity reserved in the Bastrop System, until such time that the Impact Fee is paid. Payment of the Wastewater Treatment Capacity Reservation Fee will secure the right to capacity in the Bastrop System for the number of SUEs for which fees are paid. Upon payment of the Wastewater Treatment Capacity Reservation Fee, a credit shall be applied to the Impact Fee for each SUE for which the Wastewater Treatment Capacity Reservation Fee was paid. District will pay, or cause to be paid, to Bastrop a Wastewater Treatment Capacity Reservation Fee for each SUE shown in a preliminary plat approved by City within thirty (30) days after approval of the preliminary plat. The payment of the Wastewater Treatment Capacity Reservation Fee shall be accompanied by a copy of the preliminary plat, and, if not clearly apparent on the preliminary plat, written notice of the number of SUE's on the property subject to the preliminary plat. If District has paid the Wastewater Treatment Capacity Reservation Fee at a time other than in connection with a preliminary plat, then District may apply all or a portion of said fees towards the Wastewater Treatment Capacity Reservation Fee owed for a preliminary plat and shall notify Bastrop of such application at the time that a Wastewater Treatment Capacity Reservation Fee is owed.

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d. The District and Developer shall to continue making incremental reservation fee payments until the District is built out, in incremental payments for capacity of no Wastewater Treatment Capacity Reservation Fee fewer than 100 Wastewater SUEs of capacity per increment, unless otherwise agreed by City, the District, and the Developer.

e. Upon the Effective Date of this Agreement, an initial Wastewater Treatment Capacity Reservation Fee of $_____ is owed from District to Bastrop for the reservation of Phase I SUEs of the Wholesale Wastewater Service Commitment (the "Initial Wastewater Treatment Capacity Reservation Fee "). The Initial Wastewater Treatment Capacity Reservation Fee shall be a payment in the amount of $_____, which District shall pay to Bastrop on or before the ninetieth (90th) day from the Effective Date. District may require Developer to pay for or to reimburse District for the Initial Wastewater Treatment Capacity Reservation Fee and the Wastewater Treatment Capacity Reservation Fee.

f. If a preliminary plat is amended to reduce the number of SUE's, or if a final plat is approved that contains fewer SUE's than shown in a preliminary plan or a phase thereof, Bastrop shall refund to District the Excess Wastewater Treatment Capacity Reservation Fees within thirty (30) days of request by District, unless District requests in writing that Bastrop apply the Excess Wastewater Treatment Capacity Reservation Fee to another preliminary plat, another phase of the preliminary plat, or another property. Such request shall identify the preliminary plat, preliminary plat phase, or property to which the Excess Wastewater Treatment Capacity Reservation Fees will be applied. A refund for an Excess Wastewater Treatment Capacity Reservation Fee is not applicable for the payment of the Initial Wastewater Treatment Capacity Reservation Fee as required in Section 5.07(a).

g. In the event that a preliminary plat expires, District may apply the Wastewater Treatment Capacity Reservation Fees paid in related to said preliminary plat to another preliminary plat or property. District shall notify Bastrop in writing if a preliminary plat has expired and the preliminary plat, preliminary plat phase, or property to which the Wastewater Treatment Capacity Reservation Fees will be applied.

h. In the event that a building permit is not issued or an application for connection to District's System is not approved within three (3) years of payment of a Wastewater Treatment Capacity Reservation Fee for an SUE, District shall pay, or cause to be paid, an additional $ _____ for said SUE. The additional payment shall be credited against the Impact Fee for said SUE.

i. Bastrop and District shall each keep accurate records of the Wastewater Treatment Capacity Reservation Fees paid. For each payment of Wastewater Treatment Capacity Reservation Fees made by District, Bastrop shall give District a certificate stating the total Wastewater Treatment Capacity Reservation Fees paid and the number of SUE's guaranteed by such payment. The parties may inspect each other's' records during normal business hours.

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Section 5.08 Reasonableness of Rates and Right of Appeal.

District agrees that the Rates initially charged by City and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by City are subject to modification as provided herein. District agrees that it is reasonable for City to adjust the Rates periodically as provided herein and understands that any adjustments made in accordance with this Agreement are part of the consideration for this Agreement. Notwithstanding any provision to the contrary, District does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by City that is not in conformance with the terms of this Agreement.

Section 5.09 Other Service Fees.

District acknowledges and agrees that Bastrop, through its City Council, may adopt charges and fees for Wholesale Wastewater Service in addition to the ~~Impact Fees,~~ Monthly Minimum Charge, and Volume Charge. These additional charges and fees are limited to review fees and inspection fees related to review and inspection of plans for the Connecting Facilities, and these charges or fees shall be just and reasonable, and nondiscriminatory and are not to exceed the lower of the actual costs of review and inspection fees or $_____ per Connecting Facility. Plan review, inspection, and similar fees or charges relating to the design and/or construction of the Connecting Facilities shall be charged to and paid by the constructing party.

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Section 5.10 District Wastewater Rates and Charges.

District will determine and charge its retail Wastewater customers such rates as are determined by its governing body. During the term of this Agreement, District will fix and collect rates and charges for retail Wastewater service that are, in the opinion of its governing body, sufficient, together with any other revenues available to District, to produce the amount necessary to operate, repair, and maintain the District System, and to pay the cost of Wholesale Wastewater Service from Bastrop. District will establish retail rates consistent with industry standards. District will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable Jaw.

Section 5.11 District Wastewater Fees.

The Parties acknowledge that District has the right to the extent allowed under applicable law to assess, charge, and collect such impact fees, capital recovery fees, connection fees, meter fees, or other service fees, rates, truces, or other charges as its governing body will deem appropriate ~~in excess of the Bastrop Impact Fee~~. This Agreement will not be construed to require, limit, or restrict the governmental power of District to implement the same. District will be solely responsible for the proper exercise of its

governmental power to assess and collect such fees and charges and for ensuring that all fees, rates, and charges District elects to charge are in compliance with applicable law.

Section 5.12 Verification of District Wastewater Connections.

For verification of the Wholesale Wastewater Rate and ~~Impact~~ Fees paid to Bastrop and for any other purpose, District will make available for inspection and copying during regular business hours, all records for retail connections to the District System. In addition, Bastrop will have the right to inspect the District System at any reasonable time, at Bastrop's sole expense, after giving District written notice of its intention to inspect and allowing the opportunity for District to be present, to verify the type and amount of retail connections made or the condition of the District System (related to contractual compliance issues) and District will provide lawful access to Bastrop for this purpose.

ARTICLE VI. WASTEWATER WHOLESALE BILLING METHODOLOGY

Section 6.01 Monthly Statement.

a. For each monthly billing period, Bastrop will forward to District a bill providing a statement of the total Wholesale Wastewater Rate owed by District for Wholesale Wastewater Service provided to District during the previous monthly billing period. The invoice shall contain sufficient detail to allow District to verify the charges. District shall not be charged for Wholesale Wastewater Services until such services commence. District will pay Bastrop for each bill submitted by Bastrop to District by check or bank-wire on or before thirty (30) days from the date of the invoice.

b. Payments by District shall be mailed to the address indicated on the invoice or can be hand-delivered to Bastrop's City Hall in Bastrop, Bastrop County, Texas, upon prior arrangement. If payments will be made by bank-wire, District shall verify wiring instructions with Bastrop's Finance Department. Payment must be received at Bastrop's bank by the due date in order not to be considered past due or late, unless District timely contests a bill, or a portion thereof, in accordance with Section 6.05. In the event District fails to make payment of an uncontested bill within said thirty (30) day period, District shall pay a one-time late payment charge of five percent (5%) of the unpaid balance of the invoice. In addition, District shall pay interest on the unpaid uncontested balance at a rate equal to one and one-half percent (l.5%) per month.

Section 6.02 Monthly Billing Calculations.

a. This subsection 6.02(a) shall govern and be in effect in the event that Bastrop establishes a Wholesale Wastewater Rate based on volume charges. Bastrop will compute the Volume Charge included in the monthly billing for Wholesale Wastewater Service on the basis of monthly readings of metered Wastewater flows of the Metering Facilities. The total of these amounts multiplied by the Wholesale Wastewater rate, set from time to time by the Bastrop City Council, will be used to compute the monthly bill for the Volume Charge.

b. This subsection 6.02(b) shall govern and be in effect when the Wholesale Wastewater Rate is a Flat Rate. Bastrop will calculate the Wholesale Wastewater Rate by multiplying the Flat Rate set forth in this Agreement, as amended by the Bastrop City Council, by the number of SUEs per Active Connection set forth in the monthly report provided by District under Section 6.02(c).

c. Each calendar month, District shall deliver to Bastrop the number of Active Connections within the Wholesale Wastewater Service Area, and the number of SUEs associated with each Active Connection. Bastrop shall use the number of Active Connections and the associated SUEs stated in the report to calculate the Wholesale Wastewater Rate for the billing period in which the report was filed.

Section 6.03 Infiltration and Inflow.

District acknowledges that water entering the Bastrop System from the District System emanating from any source whatsoever must be given treatment and handling whether or not its source is revenue producing for District. Therefore, District agrees to pay, as part of the Volume Charge, if the Wastewater Rate includes a Volume Charge, for infiltration and inflow originating within the District system without abatement in the same manner and cost as other Wastewater entering Bastrop's System from the District System.

Section 6.04 Effect of Nonpayment.

With respect to monthly billings, including billings for the Wholesale Wastewater Rate and any other fees or charges applicable under this Agreement, if Bastrop has not received payment from District by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Bastrop will notify District in accordance with this Agreement, of such delinquency in writing. If District fails to make payment of the delinquent billing within thirty (30) calendar days from the date of transmittal of such written notice of delinquency from Bastrop, then Bastrop may, at its discretion, suspend or reduce the level of Wastewater service to District until payment is made. District may exercise its right to dispute its obligation to pay all or a portion of a bill during the cure period following the procedure set forth in Section 6.05.

Section 6.05 Billing Disputes.

Should District dispute its obligation to pay all or any part of the amount stated in any statement or notice, District may pay such amount along with a written notice of protest, in which event such amount shall be deposited by Bastrop in a separate interest-bearing account mutually acceptable to both Bastrop and District pending final resolution of such dispute in accordance with this Agreement. Bastrop may not terminate this contract or deny Wastewater service that is otherwise in accordance with this Agreement for failure to pay the amount stated in any statement or notice if District pays such amount under protest.

ARTICLE VII. WASTEWATER QUALITY

Section 7.01 Condition of Wastewater Delivered.

a. District shall have the right to discharge Wastewater into the Bastrop System meeting the requirements of quality as set forth in this Section and not containing wastes identified in Bastrop's Code of Ordinances.

b. Discharges into the Bastrop System shall consist only of domestic Wastewater and Wastewater that the Bastrop System is capable of handling:

(1) So that the effluent and sludge from the Bastrop System meets the current legal standards of the EPA, the TCEQ, or any governmental body having legal authority to set standards for such effluent;

(2) Without causing damage or corrosion to the Bastrop System that would result in increased maintenance costs;

(3) Without causing excessive treatment costs; and

(4) That meets any applicable requirements of the EPA Pretreatment Regulations, 40 CFR Part 403.

c. EPA and TCEQ periodically modify standards on prohibited discharges. It is the intention of the Parties, therefore, that the Prohibited Wastes be reviewed periodically by Bastrop and that they revised by Bastrop in accordance with the latest standards of EPA, TCEQ or any federal or state agency having regulatory authority over discharges made to the Bastrop System. Any required revisions shall be made by Bastrop and upon the effective date, District shall be responsible for integrating such changes into its regulations and notifying all affected users of the change.

Section 7.02 Remedies for Delivery of Prohibited Wastes.

a. In the event Wastewater delivered from the District System to the Bastrop System fails to meet the standards specified in this Agreement, and Bastrop reasonably determines that the addition of oxidizing chemicals or another acceptable method of pretreatment of Wastewater or operation of the District System is necessary in order for Wastewater delivered to the Bastrop System to be non-corrosive and non-injurious to the Bastrop System, District agrees to install such facilities within twenty-four (24) hours of receiving notice from Bastrop or immediately implement such methods of operation and maintenance, at its sole expense, as are reasonably deemed by Bastrop to be necessary for the Wastewater delivered by District to meet the requirements of this Article .

b. In the event Wastewater delivered from the District System to the Bastrop System fails to meet the standards specified in this Agreement, District shall pay to Bastrop, in the same manner provided in this Agreement for the payment of the Volume Charges, a surcharge calculated in accordance with and subject to the requirements of this section (the "Treatment Surcharge").

(1) The Treatment Surcharge shall be based on the following formula:
S = V x 8.34 (A [BOD -200] + B [TSS -200]), where

A. "S" means the surcharge that will appear on District's monthly bill;

B. "V" means Wastewater actually billed in millions of gallons during the billing period; "8.34" means pounds per gallon of water;

C. "A" means the unit charge in dollars per pound of BOD which unit charge shall be based on the unit charge adopted by the Bastrop City Council for wastewater service from the Bastrop System. as amended from time to time, which unit charge is $0.49 per pound as of the Effective Date; provided that increases in such charge shall not be effective as to District until notice of the increase has been given to Leander;

D. "BOD" means biological oxygen demand measured in milligrams per liter by weight; "200" means 200 mg/l;

E. "B" means the unit charge in dollars per pound of total suspended solids. which unit charge shall be based on the unit charge adopted by the Bastrop City Council for wastewater service from the District System, as amended from time to time, which unit charge is $0.____per pound as of the Effective Date; provided that increases in such charge shall not be effective as to District until notice of the increase has been given to District; and,

F. "TSS" means total suspended solids measured in milligrams per liter by weight.

(2) The Treatment Surcharge shall be charged for each month following sampling completed in accordance with this Agreement that measures BOD in excess of 200 mg/I or TSS in excess of 200 mg/I until subsequent sampling measures both BOD and TSS below those levels. In the event any Treatment Surcharge is based on sampling performed by Bastrop, Bastrop will provide written notice of the sampling results prior to charging the Treatment Surcharge to District and shall give District an opportunity to be present during the testing.

c. In the event District delivers to Bastrop Wastewater that fails to meet the standards specified in this Agreement, District agrees to pay Bastrop for all damages and costs of repair to the Bastrop System and/or regulatory fines reasonably incurred by Bastrop that were caused by District's delivery of Wastewater that fails to meet the standards specified in this Agreement. Bastrop may require payment of the cost of repair of damaged facilities and/or regulatory fines as a condition to the further provision of Wholesale Wastewater Service, restrict District's flows to the extent necessary to protect Bastrop's System, file suit to recover for any and all damages to the Bastrop System caused by such failure on the part of District, or seek such other and further relief, at law or in equity, as Bastrop will deem advisable.

Section 7.03 Sampling and Testing.

a. District will perform sampling of Wastewater at the Point(s) of Entry and provide an analysis to Bastrop due every _____ 1, (year) and _____ 1, (year) after the Connecting Facilities are completed.

(1) AU samples will be Composite Samples, that is, a series of at least twelve (12) samples taken from a waste stream without regard to the flow in the waste stream and over a period of time not Jess than twenty- four (24) hours at intervals of not less than one (1) hour, which samples shall be averaged in accordance with standard industry practice.

(2) The analysis of the sample shall be performed by a National Environmental Laboratory Accreditation Conference (NELAC) approved laboratory. District will require a copy of the report to include at a minimum, levels of pH, BOD-5, COD TSS and oil and grease. The report also must contain the chain of custody for the sample and the Quality Assurance/Quality Control (QA-QC) report.

(3) District will be responsible for the cost of sampling and analysis.

(4) District will provide written notice to Bastrop or Bastrop's current plant operator at least five (5) business days prior to conducting Wastewater sampling and shall allow Bastrop or Bastrop's current plant operator representatives to observe the sampling.

(5) In the event District fails to perform sampling by the deadlines provided in this section, after notice and an opportunity to cure within thirty (30) days, District shall pay to Bastrop a sampling surcharge in the amount of _____ ($_____) per event. In addition, District will pay Bastrop for Bastrop's actual costs to perform the sampling if Bastrop does so during the next thirty (30) days after the expiration of the cure period if District does not perform the sampling within the cure period.

b. District agrees that Bastrop or Bastrop's current operator will have the right, at its option and expense, to sample Wastewater discharges within the District System at:

(1) the site of discharge;

(2) Points of Entry to the Bastrop System; and

(3) other locations as required for the purpose of determining the source, type, and strength of discharge.

c. District will use reasonable efforts to make necessary arrangements for and provide assistance to Bastrop in obtaining lawful access to sampling points within areas served by District. Bastrop will provide written notice to District at least five (5) business days prior to conducting Wastewater sampling and shall allow one or more District representatives to observe the sampling.

d. District agrees that to the extent authorized by applicable laws, any of its individual customers found in violation of allowable discharges or any of its individual customers who refuse access for the purpose of sampling may be disconnected from District and Bastrop's Wastewater System in accordance with applicable regulations of District or Bastrop and federal law.

e. Notwithstanding any other provision in this Agreement to the contrary, the Parties agree as follows:

(1) no Party shall be obligated to perform any sampling of Wastewater except at Points of Entry constructed with sampling ports; and

(2) all future sampling ports at Points of Entry shall be identified on plans and specifications for Connecting Facilities to be approved by Bastrop.

ARTICLE VIII. STANDARDS FOR WASTEWATER CONNECTIONS TO DISTRICT SYSTEM

Section 8.01 District Prevention of Infiltration and Inflow.

It will be District's responsibility to undertake such measures as are reasonably necessary or prudent to minimize infiltration and inflow to District's System. District will prohibit the discharge of drainage water and storm water run-off into the District System.

Section 8.02 Construction and Testing Criteria for District Sewer Connections.

a. All tests required by the design criteria and specifications of the State of Texas for connections to the District System within the Wholesale Wastewater Area will be at District's or its customer's expense.

b. District agrees that the physical connection of each service line to the local Wastewater facility within the Wholesale Wastewater Area will be the responsibility of District and will not be left to the discretion of the plumber or contractor unless said plumber or contractor is under the direct supervision of or whose work is inspected by District's authorized representative.

c. Connections made to the District System after the date of execution of this Agreement will be made using only materials permitted by applicable codes and development criteria manuals of the State of Texas. District will inspect all connections to its System in accordance with its own rules and regulations in order to insure compliance with it.

d. A failure on the part of District to provide and enforce such regulations governing connections to the District System will, at the option of Bastrop after: (i) notice to District in writing of the specific violation, and (ii) failure within thirty (30) days to correct said violation or, if the violation is of a nature that it cannot be corrected within thirty (30) days, to begin to correct such violation and to diligently pursue such curative action, constitutes sufficient grounds for Bastrop to restrict or limit Wastewater flows, or immediately terminate this Agreement, to such extent Bastrop deems reasonably necessary in order to protect the Bastrop System from damage or excessive flows.

ARTICLE IX. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER

Section 9.01 Liability of District.

As between the Parties and except as otherwise provided herein, District shall bear responsibility for damages, if any, claimed by third persons arising from the reception, transportation, delivery, and disposal of all Wastewater discharged while it remains within the District System, and District, to the extent authorized by law, holds Bastrop harmless therefrom. Notwithstanding the foregoing, Bastrop shall bear responsibility for damages, if any, claimed by third persons because Bastrop does not accept Wastewater at a Point of Entry in a quantity that it is contractually obligated to accept under this Agreement, and Bastrop, to the extent authorized by law, agrees to hold District harmless therefrom.

Section 9.02 Liability of Bastrop.

Bastrop will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of Wastewater received by it at Points of Entry in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause Bastrop to bear responsibility for damages to the Bastrop System or to third persons arising from: i) the delivery by District of Prohibited Wastes or Wastewater that is in violation of this Agreement and corrosive or otherwise damaging to the Bastrop System or to persons or property; or, ii) the delivery of Wastewater at a Point of Entry in excess of the Peak Hour Flow Rate.

ARTICLE X. REGULATORY COMPLIANCE

Section 10.01 Agreement Subject to Applicable Law.

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 10.02 Cooperation to Assure Regulatory Compliance.

Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE XI. TERM, TERMINATION, DEFAULT, REMEDIES

Section 11.01 Term and Termination.

a. This Agreement shall become effective upon the Effective Date and shall extend until _____, 20___ unless terminated earlier as provided herein.

b. District may terminate this Agreement by providing not less than sixty (60) days written notice of termination to Bastrop.

c. In the event that any agreement provided for in the definition of Bastrop System Agreements are terminated or expires, this Agreement shall be terminated and be of no further force or effect. Either party shall give thirty (30) days prior written notice of an anticipated termination or expiration of any agreement provided for in the definition of Bastrop System Agreements.

Section 11.02 Default.

a. In the event District shall default in the payment of any amounts due to Bastrop under this Agreement, or in the performance of any material obligation to be performed by District under this Agreement, then Bastrop shall give District at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, Bastrop shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

b. In the event Bastrop shall default in the performance of any material obligation to be performed by Bastrop under this Agreement, then District shall give Bastrop at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Bastrop.

Section 11.03 Additional Remedies upon Default.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Bastrop's undertaking to provide Wholesale Wastewater Service to the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Bastrop agrees, in the event of any default on its part, that District shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of District's obligations could not be adequately compensated in money damages alone, District agrees in the event of any default on its part that Bastrop shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Bastrop including the right to obtain a writ of mandamus or an injunction against District requiring the District to collect rates and

charges sufficient to pay the amounts owed to Bastrop by District under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

ARTICLE XII. GENERAL PROVISIONS

Section 12.01 Assignability.

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 12.02 Amendment.

This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of District and Bastrop and executed by duly authorized representatives of each.

Section 12.03 Necessary Documents and Actions.

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 12.04 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Service by Bastrop to District for the District Service Area.

Section 12.05 Applicable Law.

This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 12.06 Venue.

All obligations of the Parties created in the Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 12.07 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 12.08 Duplicate Originals.

This Agreement may be executed in duplicate originals each of equal dignity.

Section 12.09 Notices.

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other party shown below:

DISTRICT:

Attn:

DEVELOPER:

Attn:

CITY OF BASTROP: City of Bastrop
113 E. 8th Street
Bastrop, Texas 78626
Attn: City Manager

WITH REQUIRED COPY TO: Alan Bojorquez
Bojorquez Law Firm, PC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

Notices shall be deemed received on the date of hand delivery or within three (3) days of deposit in first-class mail.

Section 12.10 Consents and Approvals.

Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 12.11 Severability.

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 12.12 Records.

Bastrop and District each agree to preserve, for a period of at least two (2) years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Bastrop and District shall each, respectively, have the right during reasonable business hours to inspect such records to

the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 12.13 State Approval; Compliance with TCEQ Rules.

Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

Section 12.14 Force Majeure.

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 12.15 Good Faith.

Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 12.16 Authority of Parties Executing Agreement, Validity.

By their execution, each of the individuals executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 12.17 Exhibits.

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A: Metes and Bounds Description of the Land
Exhibit B: Bastrop TPDES Permit No. WQ001107600
Exhibit C: Map Showing Locations of Lift Stations and Force Main
Exhibit D: Map Showing Locations of Wastewater Delivery Points, WWTP#3
Exhibit E: Infrastructure and Capacity ~~Bastrop Impact Fee Calculation Sheet~~Contract

Section 12.18 Effective Date.

This Agreement will be effective from and after the last date of due execution by all Parties.

(Reminder of page left blank intentionally)

CITY OF BASTROP, TEXAS

By: _____

Name: Lynda Humble

Title: City Manager

Date: _____

ATTEST: _____
City Secretary

_____ ***DISTRICT***

By: _____

Name: _____

Title: _____

Date: _____

Attest:

_____

STATE OF TEXAS §

§

COUNTY OF BASTROP §

This instrument was acknowledged before me the ____ day of _____, 20___, by _____, _____City of Bastrop, Texas, on behalf of City.

_____

Notary Public Signature

_____ ***DEVELOPER***

A Texas _____

By:

A _____ company, _____

By: _____

Title:

Date: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, _____ of _____, a Texas _____company, _____ of _____., a Texas _____, on behalf of said _____ as _____ of the _____.

_____

Notary Public, State of _____

Exhibit "A"

Metes and Bounds Description of the Land

Exhibit "B"

Bastrop TPDES Permit No. WQ001107600

Exhibit "C"

Map Showing Locations of Lift Stations and Force Main

Exhibit "D"

Map Showing Locations of Wastewater Delivery Points, WWTP#3

Exhibit "E"

Bastrop Impact Fee Calculation Sheet

WHOLESALE WATER AGREEMENT
BETWEEN CITY OF BASTROP, _____ DISTRICT AND
_____

This **WHOLESALE WATER AGREEMENT** (this "**Agreement**") is made and entered into by and between the **CITY OF BASTROP**, a home rule city located in Bastrop County ("**Bastrop**" or "**City**") and the _____ District, a political subdivision of the state operating under Chapters 49 and 54, Texas Water Code (the "**District**"), and _____., a Texas _____("**Developer**") (collectively referred to herein as the **"Parties"**). The Parties hereby mutually agree as follows:

RECITALS

WHEREAS, the City and the Developer entered into a Planned Development Agreement, to be known in this Agreement as "the PDA" on _____, 20__, requiring a wholesale water agreement; and

WHEREAS, by Resolution R-_____, on _____, 20___, the City granted consent for creation of _____District; and

WHEREAS, by Order signed on _____, 20__, the Texas Commission on Environmental Quality granted the Petition for Creation of _____District; and

WHEREAS, by Resolution R-_____ the City confirmed its consent for creation of the _____ District, on _____, 20__; and

WHEREAS, the District encompasses approximately _____ acres of land within the extraterritorial jurisdiction ("ETJ") of the City (the "Tract"). The Tract is more particularly described in Exhibit "A"; and

WHEREAS, Developer intends to develop the Tract as a _____ community, initially to be referred to as "_____" projected to consist primarily of residential uses, expected at the time of execution of this Agreement to include approximately _____ homes, and also will include other limited nonresidential uses (the "Development"); and

WHEREAS, City, District and Developer wish to enter into this Agreement, to provide the terms of wholesale water service for the benefit of the present and future residents of City and the District; and

WHEREAS, the Tract is within the water CCN of Aqua Water Supply Corporation (10294), from which the City intends to purchase potable water at wholesale rates (the "Bastrop Aqua Agreement"), and intends to sell potable water at wholesale rates to the District; and

WHEREAS, Bastrop has adequate water supply and distribution infrastructure to provide up to _____ gallons per day to District; and

NOW, THEREFORE, for and in consideration of the agreements set forth below, the City, District and Developer agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 Definitions of Terms.

In addition to the terms otherwise defined in the above recitals; in the City's ordinances; or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

Active Connection: means a connection for which there is an open utility account with the District during any portion of a monthly billing period. Each connection is the equivalent of one SUE, provided that the property served by the connection is a single-family residence.

Agreement: means this Wholesale Water Agreement by and among the City of Bastrop, Texas, _____ District, and _____.

AWWA: means the American Water Works Association.

Bastrop Aqua Agreement: means the Agreement to be entered by the City of Bastrop and Aqua Water Supply Corporation ("Aqua") pursuant to which Aqua will sell potable water at wholesale to the City.

Bastrop Service Area: means the wholesale and retail water service territory for the City of Bastrop.

Bastrop Water System or City Water System*:* means the facilities, including water production wells, pumps, lines, meters, components, and equipment owned and operated by Bastrop, together with all extensions, expansions, improvements, enlargements, betterments and replacements to monitor, convey, supply, deliver and distribute potable water or Wholesale Water Services to Bastrop's customers, including _____. The Bastrop System does not include any improvements on District's side of the Delivery Point or any facilities on any other wholesale customer's side of its delivery point.

Bastrop Water Conservation and Drought Contingency Plan: means, collectively, the Bastrop Water Conservation Plan and the Bastrop Drought Contingency Plan, as may be amended by the Bastrop City Council from time to time. A copy of the Bastrop Water Conservation and Drought Contingency Plan in effect as of the Effective Date is attached hereto as Exhibit "B".

CCN*:* means a certificate of convenience and necessity or similar permit authorizing a specified entity to be the retail water or sewer service provider in a specified area.

City: The City of Bastrop, Texas, a home rule municipality, organized and operating pursuant to the applicable laws of the State of Texas

City Manager: means the City of Bastrop's City Manager

Commercial Customers: means all non-residential retail water customers of District in the Wholesale Water Service Area.

Commission or TCEQ: means the Texas Commission on Environmental Quality or its successor agency.

Connecting Facilities: means facilities connecting any Internal Facilities to a Delivery Point.

Contract Amount*: means the agreed upon amount in the Infrastructure and Capacity Contract.*

Costs of the System: means all of Bastrop's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the Bastrop System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the System in accordance with policies of Bastrop's City Council.

County: means Bastrop County, Texas.

Delivery Point: means the point at which Bastrop will deliver treated water to District under this Agreement, which point shall be at the _____inch Master Meter as depicted on Exhibit "C".

Developer: means _____., a Texas _____, its successors or assigns.

Development: means the mixed-use development of the Tract, including residential and non-residential land uses, together with parkland, open space, recreational amenities and related facilities, intended to produce developed lots.

District: means the municipal utility district organized and operating in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, encompassing the Tract, known as _____ District.

District's water system: means District's water transmission, distribution and delivery systems that provide service to District's retail customers through the Wholesale Water Services provided under this Agreement. The District System shall be owned, operated and maintained by - _____ District and shall not include the Master Meter or any facilities on Bastrop's side of the Delivery Point.

District Service Area: means the retail water service territory of _____ District, as amended from time to time.

Effective Date: means the last date of execution by all of the Parties.

ETJ: means extraterritorial jurisdiction.

Emergency: means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Bastrop. The term includes Force Majeure and acts of third parties that cause the Bastrop System to be unable to provide the Wholesale Water Services agreed to be provided herein.

EPA: means United States Environmental Protection Agency

Force Majeure: means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Bastrop or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

Infrastructure and Capacity Contract: *means the Contract by and between the City and District that includes the amount to be collected from the District for all infrastructure, facilities and capacity needed to serve the development.*

~~***Impact Fee:*** means a charge imposed on each service unit on new development pursuant to Chapter 395 of the Local Government Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions.~~

Initial Wholesale Water Service: means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to _____ GPD.

Internal Facilities: means the internal Water distribution facilities and related equipment, facilities, and appurtenances to be constructed by or on behalf of District for the District System.

Maximum Water SUE Capacity: Use of water treatment capacity up to _____ GPD.

Metering Facility: means the water flow meter, meter vault, and all metering and telemetering equipment located at a Delivery Point to measure Wholesale Water Service to District. The Bastrop System shall include each Metering Facility.

Monthly Water Supply: means the quantity of water for which Bastrop agrees to provide Wholesale Water Services to District under the terms and conditions of this Agreement. The Monthly Water Supply shall be _____ gallons per month.

Parties: means the City, the District, and the Developer.

Planned Development Agreement or PDA: means the agreement that was entered into by the City and the Developer on _____, 20___.

Point(s) of Connection – Water: The point(s) at which the City's Water System connects to the District's Water System, generally shown on Exhibit C.

Residential Customers: means retail residential water customers of District in the Wholesale Water Service Area.

Single Family Residence: means the use of a site for only one dwelling unit, where a dwelling unit is a building, or portion thereof, designed or used exclusively for residential occupancy (not including hotels and motels).

SUE: means service unit equivalent which is the basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4 " diameter simple water meter, using American Water Works Association C700-C703 standards.

~~***SU multiplier:*** means the number of SUEs to be multiplied by the Impact Fee for each active connection served that is not a single family residence in accordance with the SU Equivalency Chart in Bastrop Code of Ordinances Section 10.02.004.~~

Tract: means the approximately _____ acres of land within the District's boundaries to be served under the terms of this Agreement.

Wholesale Water Services: means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to the Monthly Water supply.

Section 1.02 Captions.

The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II. DESIGN AND CONSTRUCTION OF FACILITIES

Section 2.01 Design and Construction of the Internal Facilities.

a. District will be responsible for design and construction of, or for causing one or more third parties to design and construct, the Internal Facilities within the District System.

b. District agrees to be responsible for and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Internal Facilities; provided that District may require Developer to be responsible and pay for all or a portion of the costs of right-of-way, easements, design, engineering, contracting, construction,

and inspection of the Internal Facilities.

c. The Internal Facilities will be designed and constructed in accordance with applicable regulations and specifications of Bastrop, the State of Texas and United States, and with the terms and conditions of this Agreement.

Section 2.02 Design and Construction of the Connecting Facilities.

a. District shall be responsible for design and construction of, or for causing one or more third parties to design and construct, any Connecting Facilities, or modification to the existing Connecting Facilities, required for the transmission of water to the Bastrop System.

b. Subject to the terms and conditions of this Agreement, District agrees to engage or cause to be engaged the services of a professional engineer registered in Texas to produce the engineering design, including detailed plans and specifications for Connecting Facilities in conformance with Bastrop's design criteria and construction standards in effect at the time the plans and specifications are submitted to Bastrop for approval, or in accordance with District's design criteria and construction standards if such are more stringent; provided that the parties shall reasonably cooperate to determine the design standards that will control. The plans and specifications will address the sizing, routing, material selection, service method, cost estimates, proposed construction schedule, easements, and such other and further information as Bastrop deems necessary or advisable for proper review and assessment of the plans and specifications. The design for the Connecting Facilities shall be procured at District's sole expense; provided that District may cause Developer to be responsible for designing the Connecting Facilities, and the cost thereof. The plans and specifications for the Connecting Facilities will be submitted to Bastrop for review and comment before District approves said plans and specifications. Bastrop shall provide written comments within thirty (30) days of the date of the receipt of the plans unless a longer period is specified by City Staff. District shall cause any comments provided by Bastrop to be addressed. If Bastrop does not provide comments within the greater of thirty (30) days or the time specified by City Staff, District may approve the plan and specifications, subject to compliance with District's regulations.

c. District solely shall be responsible for funding construction, and all costs related thereto, of the Connecting Facilities, or for causing one or more third party developers or owners of land within the Wholesale Water Service Area to be responsible for funding construction, and all costs related thereto, of the Connecting Facilities.

d. District agrees to be responsible for, and pay for all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System, or for causing Developer to be responsible for and to pay all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System.

e. The parties will cooperate in good faith to determine the location of Connecting Facilities that are located in Bastrop's city limits or ETJ. Bastrop agrees to make good faith efforts

to cause the dedication of easements or right-of-way that may be necessary for the location and installation of Connecting Facilities within the city limits and ETJ of Bastrop. Pursuant to separate written instruments, Bastrop will further allow District to access and use rights-of-way and easements owned or controlled by City for the purpose of installing, constructing, repairing, replacing, maintaining, and operating or causing to be installed, constructed, repaired, replaced, maintained and operated, Connecting Facilities.

Section 2.03 Notification of Commencement of Construction on Connecting Facilities.

After all required approvals for construction of the Connecting Facilities are obtained, but prior to commencement of construction, District will provide, or cause to be provided, written notice to Bastrop of the date on which construction of the Connecting Facilities is scheduled to commence. Bastrop must receive this written notice at least five (5) days before the scheduled construction date.

Section 2.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.

The Parties agree that Bastrop has the right to make periodic inspections during the construction phase of the Connecting Facilities. Acceptance of the Connecting Facilities by District is subject to final inspection by Bastrop.

Section 2.05 Agreement to Submit As-Built or Record Drawings and Final Plats.

District agrees to provide, or cause to be provided, to Bastrop: a) as-built or record drawings of all Internal Facilities and Connecting Facilities that take from the Bastrop System; and b) final plats for property located within the Wholesale Water Service Area; within thirty (30) days of District receiving them, not to exceed sixty (60) days following completion and acceptance of the construction of such facilities or recording of the final plat, as appropriate.

Section 2.06 Ownership and Operation of Connecting Facilities.

Except as set forth below or otherwise agreed, District shall own and operate all Connecting Facilities located on its side of a Delivery after completion of construction by District or the Developer, and acceptance of the Connecting Facilities by Bastrop.

ARTICLE III. PROVISION OF WHOLESALE WATER SERVICES

Section 3.01 Wholesale Water Services.

Bastrop agrees to provide Wholesale Water Services to District for the Monthly Water Supply in accordance with the flow limitations and other provisions of this Agreement, all as hereafter specified.

Section 3.02 District Responsible for Retail Connections.

District will be solely responsible for providing retail water service within the District Service Area. District will be solely responsible for the proper and lawful application of District's policies and regulations governing connection to the District System.

Section 3.03 Source.

a. Bastrop, by entering into this Agreement with District and Developer, confers upon District, the right to purchase on a wholesale basis the Monthly Water Supply from the water secured by Bastrop from Aqua Water Supply Corporation.

b. In the event that the amount of water supplied by Aqua to Bastrop in the Aqua Agreement is reduced, the Monthly Water Supply to District shall be reduced on a pro rata basis.

Section 3.04 Title to and Responsibility for Water; Delivery Point(s).

a. Title to the water diverted, treated and transported to District by Bastrop under this Agreement shall remain with Bastrop at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the water shall pass to District. Each of Each party shall bear responsibility for the loss of water on their respective side of the point or points of delivery.

b. District shall be solely responsible for conveying water from the Delivery Point to the District's intended places of use. At its cost and expense, District may change the Delivery Point from time to time following prior written notice to and written approval by Bastrop, which approval shall not be unreasonably withheld, denied or delayed.

Section 3.04 Quantity and Pressure.

Subject to the terms of this Agreement, Bastrop agrees to deliver potable water to District all water needed and requested by District for the District Service Area, at prevailing pressure up to, but not in excess of: (i) a minimum of _____ GPD per SUE (ii) a maximum daily delivery of _____ gallons per day; and (iii) a maximum flow rate of 0.6 gallons per minute per connection.

Section 3.05 Quality of Water Delivered to District.

The water delivered by Bastrop at the Delivery Point shall be potable water of a quality conforming to the requirements of any applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies.

Section 3.06 Maintenance and Operation; Future Construction.

a. Bastrop shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging all current and future facilities of the City. The City commits to acquire necessary easements and complete construction on a schedule that serves and protects the property owners and their structures in the District.

b. District shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the District System in good working condition and shall promptly repair any leaks or breaks in the District System.

Section 3.07 Rights and Responsibilities in Event of Leaks or Breaks.

District shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the District System.

Section 3.08 Commencement of Wholesale Water Service.

Bastrop will commence the provision of Wholesale Water Service to District upon final inspection and approval of connecting facilities to the district.

Section 3.09 Wholesale Service Commitment Not Transferable.

Bastrop's commitment to provide Wholesale Water Services is solely to District. District may not assign or transfer in whole or in part it's right to receive Wholesale Water Services without Bastrop's prior written approval.

Section 3.10 Conservation and Drought Planning.

District, within ninety (90) days of the date the District begins operation of the District Water System, the District shall adopt a water conservation plan consistent with and no less stringent than the City's drought contingency plan then in effect and in compliance with TCEQ Rules, 30 Texas Administrative Code, Chapter 288. A copy of the City's current drought contingency plan is attached as Exhibit "B" to this Agreement.

Section 3.11 Curtailment of Service.

The Parties agree that, if water service is curtailed by Bastrop to other similarly-situated customers of the Bastrop System, Bastrop may impose a like curtailment, with notice to District, on Wholesale Water Services delivered to District under this Agreement. Bastrop will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Bastrop from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

Section 3.12 Cooperation during Maintenance or Emergency.

District will reasonably cooperate with Bastrop during periods of Emergency or required maintenance. If necessary, upon prior notice, District will operate and maintain the District System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 3.13 Re-sale of Water Prohibited.

District is prohibited from selling any water sold to District hereunder to any person or entity, except to its retail water customers.

ARTICLE IV. WATER METERING PROVISIONS

Section 4.01 Master Meter Accuracy.

Meter shall meet accuracy standards required by the AWWA with calibration maintained as described in Section 4.02.

Section 4.02 Meter Calibration.

a. The Master Water Meters shall be calibrated each calendar year by District at District's sole cost and expense. Bastrop shall provide prior notice of each such calibration, and a representative of Bastrop may be present to observe each calibration.

b. In the event any question arises at any time as to the accuracy of the Master Meter, but not more than a frequency of once per consecutive twelve (12) month period without mutual consent of both Parties, then the Master Meter shall be tested by Bastrop promptly upon demand of District. The expense of such test shall be borne by Bastrop.

c. If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess of AWWA and manufacturer's standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon, if no such period is known or agreed upon, the shorter of:

1. a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or

2. a period extending back one-half of the time elapsed since the last previous test; and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

ARTICLE V. WATER RATES AND CHARGES

Section 5.01 Wholesale Water Rates, Fees and Charges.

a. In accordance with the terms and conditions of this Agreement, District, through its Board of Directors, will establish and District (as set forth below) will pay Bastrop rates, charges and fees for the Wholesale Wastewater Service provided under this Agreement. The rates, charges and fees for Wholesale Wastewater Service shall consist of:

(1) a base meter charge and the volumetric charge; and

(2) The agreed upon Contract Amount for infrastructure, facilities and capacity, or portions thereof constructed to serve the District. ~~District will pay Bastrop for the Wholesale Water Service provided under this Agreement based on a base meter charge and the volumetric charge. No other rates, fees or charges shall be owed by the District to Bastrop for Wholesale Water Service.~~

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Section 5.02 ~~Bastrop Water Impact Fee.~~ Builder Payment for Infrastructure, Facilities and Capacity.

Builders in the District will be required in a contract by and between the builder and the Developer to pay the Contract Amount for infrastructure, facilities and capacity or portions thereof constructed to serve the District.

~~**The Water Impact Fee is $_____ per SUE.**~~

Section 5.03 Base Meter Charge.

District will pay Bastrop the monthly retail base meter charge applicable to the meter size at the Point of Delivery. Such fee shall be subject to change from time to time when Bastrop retail rates are reviewed. The initial base meter charge for the meter at the Point of Delivery is $_____ per month.

Section 5.04 Volumetric Charge.

a. Bastrop will measure water flows monthly based on monthly readings of the Master Meter. The total of these amounts multiplied by the volumetric rate will be used by Bastrop to compute the volume charge as provided in Section 6.02 below.

b. The initial volumetric rate shall be Bastrop's non-residential volumetric water rate ($_____ per 1,000 gallons of water).

c. Bastrop may amend the volumetric rate from time to time when Bastrop retail rates are reviewed. Bastrop shall provide written notice to District of any rate adjustments not later than thirty (30) days prior to the effective date thereof.

Section 5.05 Changes to Rates and Fees.

The City agrees that a change in the monthly base meter charge or volumetric charge will not become effective against the District until thirty (30) days after effective written notice to the District if a change is provided by the City.

Section 5.06 District Water Rates and Charges.

District will determine and charge its retail water customers such rates as are determined by its governing body. During the term of this Agreement, District will fix and collect rates and charges for retail water service that are, in the opinion of its governing body, sufficient, together with any other revenues available to District, to produce the amount necessary to operate, repair, and maintain the District System, and to pay the cost of Wholesale Water Service from Bastrop. District will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

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Section 5.07 District and Developer to Pay All Costs for Connection to the City.

The District, or Developer if the District does not have sufficient funds, will pay the entire cost of connection to the City's Water System.

Section 5.08 Wholesale Water Rates.

The City shall invoice the District for wholesale water delivery and treatment service at the same rate that the City charges its other wholesale customers per gallon of use. The District shall pay the City monthly, one month in arrears, as more fully described in Article XIII of this Agreement.

Section 5.09 District Payment for Wholesale Service.

Billing for wholesale service will commence after the first date water service is provided to the District. The City will send one bill to the District on or before the first day of each month after the date water service has commenced, at a rate that is the same as the rate the City charges its city customers of each class. The Developer agrees to require the builders in the District to send notice of each such closing to the City within thirty (30) days of the closing of each lot in a separate agreement with each such builder.

~~**Section 5.10 Builder Payment for Impact Fees.**~~

~~**Builders in the District will be required in a contract by and between the builder and the Developer to pay the standard impact fee to the City related to the use of the capacity in the City's Water System.**~~

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ARTICLE VI. WHOLESALE WATER BILLING METHODOLOGIES; REPORTS AND OTHER RELATED MATTERS

Section 6.01 Monthly Statement.

For each monthly billing period, Bastrop will forward to District a bill providing a statement of the Base Meter Fee and the total Volume Charge owed by District for Wholesale Water Service provided to District during the previous monthly billing period. District will pay Bastrop for each bill submitted by Bastrop to District by check or bank-wire on or before thirty (30) days from the date of receipt of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to Bastrop's headquarters in Bastrop County, Texas. If payments will be made by bank-wire, District shall verify wiring instructions. Payment must be received at Bastrop's headquarters or bank by the due date in order not to be considered past due or late. In the event District or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, District shall pay in addition Bastrop's then current late payment charges on the unpaid balance of the invoice.

Section 6.02 Monthly Billing Calculations.

Bastrop will compute the sum of the base meter charge and the volume charge for Wholesale Water Service on the basis of monthly readings of the Master Meter and will bill District such sum on a monthly basis.

Section 6.03 Effect of Nonpayment.

With respect to monthly billings, if Bastrop has not received payment from District by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Bastrop will notify District of such delinquency in writing, and if District fails to make payment of the delinquent billing within thirty (30) calendar days from the date of transmittal of such written notice of delinquency from Bastrop, then Bastrop may, at its discretion, terminate or reduce the level of Wholesale Water Service to District until payment is made.

Section 6.04 Reasonableness of Rates.

District agrees that the Rates initially charged by City and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by City are subject to modification as provided herein. District agrees that it is reasonable for City to adjust the Rates periodically as provided herein and understands that any adjustments made in accordance with this Agreement are part of the consideration for this Agreement. Notwithstanding any provision to the contrary, District does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by City that is not in conformance with the terms of this Agreement.

Section 6.05 Records and Reports

The District shall promptly provide to the City upon written request, and without charge, copies of any District records or documents relating to the construction, operation, maintenance, or repair of the District Water System.

ARTICLE VII. REGULATORY COMPLIANCE

Section 7.01 Agreement Subject to Applicable Law.

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 7.02 Cooperation to Assure Regulatory Compliance.

Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE VIII. TERM, TERMINATION, DEFAULT, REMEDIES

Section 8.01 Term and Termination.

a. This Agreement shall become effective upon the Effective Date and shall extend until - _____, _____ unless terminated earlier as provided herein.

b. District may terminate this Agreement by providing not less than sixty (60) days written notice of termination to Bastrop.

c. In the event that any agreement provided for in the definition of Bastrop's System Agreements are terminated or expires, this Agreement shall be terminated and be of no further force or effect. Either party shall give thirty (30) days prior written notice of an anticipated termination or expiration of any agreement provided for in the definition of Bastrop's System Agreements.

Section 8.02 Default.

a. In the event District shall default in the payment of any amounts due to Bastrop under this Agreement, or in the performance of any material obligation to be performed by District under this Agreement, then Bastrop shall give District at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, Bastrop shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

b. In the event Bastrop shall default in the performance of any material obligation to be performed by Bastrop under this Agreement, then District shall give Bastrop at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Bastrop.

Section 8.03 Additional Remedies upon Default.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Bastrop's undertaking to provide Wholesale Water Service to the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Bastrop agrees, in the event of any default on its part, that District shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of District's obligations could not be adequately compensated in money damages alone, District agrees in the event of any default on its part that Bastrop shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Bastrop including the right to obtain a writ of mandamus or an injunction against District requiring the District to collect rates and charges sufficient to pay the amounts owed to Bastrop by District under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

ARTICLE IX. GENERAL PROVISIONS

Section 9.01 Assignability.

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 9.02 Amendment.

This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of District and Bastrop and executed by duly authorized representatives of each.

Section 9.03 Necessary Documents and Actions.

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 9.04 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Service by Bastrop to District for the District Service Area.

Section 9.05 Applicable Law.

This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 9.06 Venue.

All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 9.07 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 9.08 Duplicate Originals.

This Agreement may be executed in duplicate originals each of equal dignity.

Section 9.09 Notices.

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery the address of the other party shown below:

DISTRICT:

Attn:

DEVELOPER:

Attn:

CITY OF BASTROP: City of Bastrop
113 E. 8th Street
Bastrop, Texas 78626
Attn: City Manager

WITH REQUIRED COPY TO: Alan Bojorquez
Bojorquez Law Firm, PC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

Notices shall be deemed received on the date of hand delivery or within three (3) days of deposit in first-class mail.

Section 9.10 Consents and Approvals.

Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 9.11 Severability.

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 9.12 Records.

Bastrop and District each agree to preserve, for a period of at least two (2) years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Bastrop and District shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 9.13 State Approval; Compliance with TCEQ Rules.

Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

Section 9.14 Force Majeure.

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 9.15 Good Faith.

Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 9.16 Authority of Parties Executing Agreement, Validity.

By their execution, each of the individuals executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 9.17 Exhibits.

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A: Metes and Bounds Description of the Land
Exhibit B: Bastrop Water Conservation and Drought Contingency Plan
Exhibit C: Map Showing Locations of Water Delivery Points, Water Connection Points

Section 9.18 Effective Date.

This Agreement will be effective from and after the last date of due execution by all Parties.

CITY OF BASTROP, TEXAS

By: _____
Name: Lynda Humble
Title: City Manager
Date: _____

ATTEST: _____
City Secretary

_____ ***DISTRICT***

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF BASTROP §

This instrument was acknowledged before me the ____ day of _____, 2018, by _____, _____City of Bastrop, Texas, on behalf of City.

_____
Notary Public Signature

_____(***DEVELOPER***)
A _____
By:
A _____ company, _____

By: _____
Name:
Title: Manager
Date: _____

Attest:

_____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20___, by _____, _____of _____, a Texas _____company, _____ of _____., a Texas _____, on behalf of said _____ company as _____ of the _____.

_____
Notary Public, State of _____

Exhibit "A"

Metes and Bounds Description of the Land

Exhibit "B"

Bastrop Water Conservation and Drought Contingency Plan

Exhibit "C"

Map Showing Locations of Water Delivery Points

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8F

TITLE:
Continue discussion from the February 26, 2019, work session regarding the creation of rates and standardized contracts for future wholesale water and wastewater customers.

STAFF REPRESENTATIVE:
Lynda Humble, City Manager

BACKGROUND/HISTORY:
Attached are copies of the standardized contracts for future wholesale water and wastewater customers. Information that will be tailored for individual customers has been noted in red and highlighted in yellow. Staff will review the contracts and address any questions Council may have.

Next Steps:

- Adopt Wholesale Water & Wastewater Rate Categories by Ordinance.
  - 1st Reading – April 9, 2019
  - 2nd Reading – April 23, 2019
- Adopt Wholesale Standardized Water & Wastewater Standardized Contract by Resolution on April 9, 2019.
- Approve Wholesale Water & Wastewater Contracts with West Bastrop Village in May, 2019.

ATTACHMENTS:
- Standardized Wholesale Wastewater Contract
- Standardized Wholesale Water Contract

WHOLESALE WASTEWATER AGREEMENT

BETWEEN CITY OF BASTROP, _____ DISTRICT AND _____.

This WHOLESALE WATER and WASTEWATER AGREEMENT ("**Agreement**") is made and entered into by and between the CITY OF BASTROP, a home rule city located in Bastrop County ("**Bastrop**" or "**City**") and the _____, a _____ operating under _____ ("_____"), and _____., a _____ ("**Developer**") (collectively referred to herein as the **"Parties"**). The Parties hereby mutually agree as follows:

RECITALS

WHEREAS, the City and the Developer entered into a Planned Development Agreement, to be known in this Agreement as "the PDA" on _____, requiring a wholesale utility agreement; and

WHEREAS, by Resolution R-_____, on _____, 20____, the City granted consent for creation of _____ District; and

WHEREAS, by Order signed on _____, 20____, the Texas Commission on Environmental Quality granted the Petition for Creation of _____ District; and

WHEREAS, by Resolution R-_____ the City confirmed its consent for creation of the _____District, on _____, 20_____; and

WHEREAS, the District encompasses approximately _____ acres of land within the extraterritorial jurisdiction ("ETJ") of the City (the "Tract"). The Tract is more particularly described in Exhibit "A"; and

WHEREAS, Developer intends to develop the Tract as a _____ community, initially to be referred to as "_____" projected to consist primarily of _____ uses, expected at the time of execution of this Agreement to include approximately _____ homes, and also will include other limited nonresidential uses (the "Development"); and

WHEREAS, Bastrop, District and Developer wish to enter into this Agreement, to provide the terms of wholesale wastewater service for the benefit of the present and future residents of City and the District; and

WHEREAS, the Tract is within Bastrop's sewer CCN (20466), from which the City will provide wastewater services to the District; and

WHEREAS, Bastrop has the capacity to treat _____ gallons per day of wastewater from the District through City's Existing Wastewater Treatment Plant (Permit No. WQ0011076001). Upon completion of Bastrop's WWTP#3 (Permit No. WQ0011076002),

the City will have the capacity to treat _____ gallons per day of wastewater from the District.

NOW, THEREFORE, for and in consideration of the agreements set forth below, the City, District and Developer agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 Definitions of Terms.

In addition to the terms otherwise defined in the above recitals; in the City's ordinances; or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

Active Connection: means a connection for which there is an open utility account with the District during any portion of a monthly billing period. Each connection is the equivalent of one SUE, provided that the property served by the connection is a single-family residence.

Agreement: means this Wholesale Wastewater Agreement by and among the City of Bastrop, Texas, District, and Developer.

AWWA: means the American Water Works Association.

Bastrop Service Area: means the certificated service area for the City of Bastrop as maintained by the Public Utility Commission.

***Bastrop Wastewater System or City Wastewater System*:** means all of the Wastewater equipment, lines, components and facilities of Bastrop that are used for the collection, transportation, treatment, monitoring, regulation and disposal of Wastewater received from the District, including the Existing Wastewater Treatment Plant, WWTP#3, and _____.

CCN: means a certificate of convenience and necessity or similar permit authorizing a specified entity to be the retail water or sewer service provider in a specified area.

City: The City of Bastrop, Texas, a home rule municipality, organized and operating pursuant to the applicable laws of the State of Texas

City Manager: means the City of Bastrop's City Manager

Commercial Customers: means all non-residential retail wastewater customers of District in the Wholesale Wastewater Service Area.

Commission or TCEQ: means the Texas Commission on Environmental Quality or its successor agency.

Connecting Facilities: means facilities connecting any Internal Facilities to a Point of Entry (excluding any Interceptors).

Contract Amount*; means the agreed upon amount in the Infrastructure and Capacity Contract.*

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Costs of the System: means all of Bastrop's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining,

and operating the Bastrop System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the System in accordance with policies of Bastrop's City Council.

County: means Bastrop County, Texas.

Daily BOD loading*:* means the daily biochemical oxygen demand loading as measured based on the arithmetic average of all samples, grab or composite, within a calendar month, consisting of at least four separate representative samples taken in accordance with the Permit.

Developer: means _____., a _____, its successors or assigns.

Development: means the mixed-use development of the Tract, including residential and non-residential land uses, together with parkland, open space, recreational amenities and related facilities, intended to produce developed lots.

District: means the municipal utility district organized and operating in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, encompassing the Tract, known as _____ District.

District's Wastewater System: means the Wastewater facilities of the District for collection and transportation of Wastewater from its retail customers to the Points of Entry into the Bastrop System.

District Service Area: means the retail wastewater service territory of _____ District, as amended from time to time.

Effective Date: means the last date of execution by all of the Parties.

ETJ: means extraterritorial jurisdiction.

Emergency: means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Bastrop. The term includes Force Majeure and acts of third parties that cause the Bastrop System to be unable to provide the Wholesale Water Services agreed to be provided herein.

EPA: means United States Environmental Protection Agency

Excess Wastewater Treatment Capacity Reservation Fees: means the product of the Wastewater Treatment Capacity Reservation Fee and: (i) the difference between the number of SUE's shown on a phase of a preliminary plat and the final plat for that phase, if the subdivision is developed in phases; or (ii) the number of SUE's shown on a preliminary plat and the final plat, if the property is not developed in phases.

Existing Wastewater Treatment Plant: means the City-owned 1.4 MGD wastewater treatment plant operating pursuant to TPDES Permit No. WQ001107600, a copy of which is attached as Exhibit "B".

Force Majeure: means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Bastrop or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

~~***Impact Fee:*** means a charge imposed on each service unit on new development pursuant to Chapter 395 of the Local Government Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions.~~

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Infiltration: means water that enters Bastrop's System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

Inflow: means water that enters the Bastrop System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

Infrastructure and Capacity Contract: *means the Contract by and between the City and District that includes the amount to be collected from the District for all infrastructure, facilities and capacity needed to serve the development.*

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Initial Wholesale Wastewater Service: means the reception, transportation, treatment, and disposal of no less than _____ GPD Wastewater to be provided by Bastrop to District, during the period before WWTP#3 is capable of providing service to the District.

Interceptors: any wastewater mains, including, _____, or other wastewater facilities constructed by on behalf of Bastrop after the Effective Date of this Agreement that connect the City's Existing Wastewater Treatment Plant or WWTP#3 to a Point of Entry.

Internal Facilities: means the internal Wastewater collection and lift station facilities and related equipment, facilities, and appurtenances to be constructed by or on behalf of District for the District System.

Lift Stations: The lift stations and force main located in the District, which are more particularly described in Exhibit "C".

Maximum Wastewater SUE Capacity: Use of wastewater treatment capacity up to _____ GPD.

Metering Facility: means the Wastewater flow meter, meter vault, and all metering and telemetering equipment located at a Point of Entry to measure Wholesale Wastewater Service to District. The Bastrop System shall include each Metering Facility.

Parties: means the City, the District, and the Developer.

Peak Hour Flow Rate: means the highest metered and calculated flow rate delivered from District to Bastrop's System at a Point of Entry under any operational condition, including inflow and infiltration.

Planned Development Agreement or PDA: means the agreement was entered into by the City and the Developer on _____, 20_____.

Points of Entry: means the locations, to be approved by Bastrop, District and Developer, in Bastrop's System at which all Wastewater will pass from District's Connecting Facilities to Bastrop's System generally shown on Exhibit "D". The initial Point of Entry shall be located at _____("Initial Point of Entry"). Future Points of Entry shall be agreed upon by Bastrop and District in connection with the acquisition or construction and commencement of operation of new Connecting Facilities after the Effective Date that connect to Bastrop's System.

Prohibited Waste: means those substances and wastes prohibited from being discharged into Bastrop's System as identified in Bastrop's Code of Ordinances.

Residential Customers: means retail residential Wastewater customers of District in the Wholesale Wastewater Service Area.

Single Family Residence: means the use of a site for only one dwelling unit, where a dwelling unit is a building, or portion thereof, designed or used exclusively for residential occupancy (not including hotels and motels).

SUE: means Service unit equivalent which is the basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4 " diameter simple water meter, using American Water Works Association C700-C703 standards. For purposes of this Agreement and as reflected in Bastrop Code of Ordinances Section 10.02.004, 3/4 " water meters are considered to equal one SUE; except that for multifamily development, each living unit is equivalent to 0.5 SUE.

~~***SU multiplier:*** means the number of SUEs to be multiplied by the Impact Fee for each active connection served that is not a single family residence in accordance with the SU Equivalency Chart in Bastrop Code of Ordinances Section 10.02.004.~~

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Tract: means the approximately 347.9 acres of land within the District's boundaries to be served under the terms of this Agreement.

_____***:*** means the wastewater interceptor that will connect the District to the City's Existing Wastewater Treatment Plant and WWTP#3.

Waste or Wastewater: means liquid or water borne waster, including without limitation, sewage

WWTP #3: The planned wastewater treatment plant to be built by the City in which the District's ultimate capacity needs will be reserved. Its planned location is shown on Exhibit "D".

Section 1.02 Captions.

The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II. PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service Commitment.

a. Subject to the terms and conditions of this Agreement and the requirements of applicable law, Bastrop agrees to provide Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area in a quantity not to exceed the Wholesale Service Commitment.

b. District or Developer may request that Bastrop increase the Wholesale Wastewater Service Area and/or the Wastewater Service Commitment. In such event, Bastrop District and Developer will enter into good faith negotiations to amend this Agreement to increase the Wholesale Service Commitment and/or the Wholesale Wastewater Service Area, as appropriate.

Section 2.02 Phasing of Wholesale Wastewater Service.

Subject to the provisions of the foregoing paragraph 2.01, Bastrop shall make Wholesale Wastewater Service available within the Wholesale Wastewater Service Area on a phased basis as follows:

a. Phase 1: _____ GPD of Wholesale Wastewater Service shall be made available from the City's Existing Wastewater Treatment Plant to the Wholesale Wastewater Service Area upon acceptance of Connecting Facilities to a Point of Entry.

b. City will provide District new data on available capacity in Existing Wastewater Treatment Plant within thirty (30) days of the date the District is consuming _____ GPD.

c. City Commits to have WWTP#3 online before District utilizes _____ GPD.

d. Subsequent Phases: District shall give Bastrop written notice at such time that District determines that additional Wholesale Wastewater Service is needed in the Wholesale Wastewater Service Area. Such notice will include the number of SUE's that will require Wholesale Wastewater Service. Such notice shall be given at the time of preliminary plat approval in accordance with Section 5.07, provided that District may give written notice that additional Wholesale Wastewater Service is needed at other times as determined appropriate in District's discretion.

e. Bastrop shall make Wholesale Wastewater Service available for the number of SUE's requested within eighteen (18) months of the date of the request, up to the Wholesale Wastewater Commitment, and payment of the Wastewater Treatment Capacity Reservation Fee for the number of SUE's stated in the notice. Payment of the Wastewater Treatment Capacity Reservation Fee shall guarantee capacity within the WWTP#3 and other parts of the Bastrop System, as applicable, for the number of SUEs for which the Wastewater Treatment Capacity Reservation Fee is paid.

Section 2.03 Peak Hour Flow Rate Limitations.

a. The Peak Hour Flow Rate at a Point of Entry shall not exceed an average of 0.65 gallons per minute (gpm) for each SUE allocated to all Phases served by such Point of Entry.

b. The Peak Hour Flow Rate for Phase 1 shall not exceed 117 gpm.

c. The Peak Hour Flow Rate for all subsequent phases shall be calculated in accordance with this subsection.

Peak Hour Flow Rate (gpm) = (0.65 gpm) x (number of SUEs requested per phase)

d. The Parties agree that any increase in the agreed Peak Hour Flow Rate or the daily BOD of Wholesale Wastewater Service that Bastrop provides to District under this Agreement will require a written amendment of this Agreement duly authorized by the governing bodies of the Parties.

Section 2.04 Wastewater Strength Limitations.

The Wholesale Service Commitment shall be subject to the following additional limitations:

The daily BOD Loading, as measured based on the arithmetic average of all samples, grab or composite, within a calendar month, consisting of at least four (4) separate representative samples taken in accordance with the Permit -- shall not exceed an average of 0.425 pounds (BOD-5) per SUE allocated to a Phase. The daily BOD Loading for Phase l shall not exceed 76.5 pounds (BOD-5). The daily BOD loading for all subsequent phases shall be calculated in accordance with this subsection.

Daily BOD Loading (BOD-5) = (0.425 pounds) x (number of SUEs requested per phase).

Section 2.05 Sole Provider; Waste Disposal Permit Application.

a. For so long as Bastrop meets its obligations under this Agreement, Bastrop will be the sole source of Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area unless: i) Bastrop consents in writing to District's conversion to another wholesale provider; or, ii) Bastrop refuses or fails to provide Wholesale Wastewater Service in accordance with the terms of this Agreement, in which event District shall be free to find an alternative Wholesale Wastewater Service provider.

b. Under the terms and conditions set forth herein, Bastrop shall be entitled to provide Wholesale Wastewater Service to District for the Wholesale Wastewater Service Area from any source of treatment capacity available to Bastrop.

Section 2.06 Wholesale Service Commitment Not Transferable.

a. Bastrop's commitment to provide Wholesale Wastewater Service under this Agreement is solely to District and solely for the Wholesale Wastewater Service Area. District may not assign or transfer in whole or in part Bastrop's service commitment to any person or entity without Bastrop's approval, and any assignment will be subject to the terms and conditions of this Agreement.

b. Bastrop may not assign or transfer in whole or in part its obligations under this Agreement to any other person or entity, with District's prior written consent, which consent shall not be unreasonably withheld.

Section 2.07 District Responsible for Retail Connections.

District will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement and for the proper and lawful application of District's policies and regulations governing connection to the District System.

Section 2.08 Retail Billing and Collection.

District agrees that it will be solely responsible for retail billings to and collections from its customers within the Wholesale Wastewater Service Area.

Section 2.09 Curtailment of Service.

The Parties agree that, if Wastewater Service is curtailed by Bastrop to other customers of the Bastrop System due to the need to conduct maintenance operations or due to an emergency, Bastrop may impose a like curtailment, with notice to District, on Wholesale Wastewater Service delivered to District under this Agreement. Bastrop will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Bastrop from curtailing service completely in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance.

Section 2.10 Cooperation during Maintenance or Emergency.

District will reasonably cooperate with Bastrop during periods of emergency or required maintenance. If necessary, upon prior notice, District will operate and maintain its system at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.11 Retail Service and CCN.

The Parties acknowledge and agree that District shall be the retail provider of sewer service to lands within the Wholesale Wastewater Service Area. Bastrop agrees that it will not oppose or protest an application by District to obtain a sewer CCN for the Wholesale Wastewater Service Area within the District boundaries. Bastrop will not provide retail sewer service within the Wholesale Wastewater Service Area and shall amend any agreements providing for Bastrop to provide retail wastewater service within the Wholesale Wastewater Service Area to be consistent with the retail sewer service area boundaries and the agreements regarding inspection of Internal Facilities set forth in this Agreement.

ARTICLE III. DESIGN AND CONSTRUCTION OF FACILITIES

Section 3.01 Design and Construction of the Internal Facilities.

a. District will be responsible for design and construction of, or for causing one or more third parties to design and construct, the Internal Facilities within the District System.

b. District agrees to be responsible for and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Internal Facilities; provided that District may require Developer to be responsible and pay for all or a portion of the costs of right-of- way, easements, design, engineering, contracting, construction, and inspection of the Internal Facilities.

c. The Internal Facilities will be designed and constructed in accordance with applicable regulations and specifications of Bastrop, the State of Texas and United States, and with the terms and conditions of this Agreement.

Section 3.02 Design and Construction of the Connecting Facilities.

a. District shall be responsible for design and construction of, or for causing one or more third parties to design and construct, any Connecting Facilities, or modification to the existing Connecting Facilities, required for the transmission of Wastewater to the Bastrop System.

b. Subject to the terms and conditions of this Agreement, District agrees to engage or cause to be engaged the services of a professional engineer registered in Texas to produce the engineering design, including detailed plans and specifications for Connecting Facilities in conformance with Bastrop's design criteria and construction standards in effect at the time the plans and specifications are submitted to Bastrop for approval, or in accordance with District's design criteria and construction standards if such are more stringent; provided that the parties shall reasonably cooperate to determine the design standards that will control. The plans and specifications will address the sizing, routing, material selection, service method, cost estimates, proposed construction schedule, easements, and such other and further information as Bastrop deems necessary or advisable for proper review and assessment of the plans and specifications. The design for the Connecting Facilities shall be procured at District's sole expense; provided that District may cause Developer to be responsible for designing the Connecting Facilities, and the cost thereof. The plans and specifications for the Connecting Facilities will be submitted to Bastrop for review and comment before District approves said plans and specifications. Bastrop shall provide written comments within thirty (30) days of the date of the receipt of the plans unless a longer period is specified by City Staff. District shall cause any comments provided by Bastrop to be addressed. If Bastrop does not provide comments within the greater of thirty (30) days or the time specified by City Staff, District may approve the plan and specifications, subject to compliance with District's regulations.

c. The Parties agree that the Connecting Facilities shall be designed and constructed so that they will not deliver Wastewater to the Bastrop System at a Peak Hour Flow Rate in excess of the Peak Flow Rate limitations set forth in this Agreement. District agrees to design and construct, or cause the design and construction of, the Connecting Facilities so that any wastewater flows to a Metering Facility can be accurately measured, in the event the Wholesale Wastewater Rate is calculated based on volumetric charges.

d. District solely shall be responsible for the construction of the Connecting Facilities, or for causing Developer to be responsible for the construction of the Connecting Facilities. District solely shall be responsible for funding construction, and all costs related thereto, of the Connecting Facilities, or for causing one or more third party developers or owners of land within the Wholesale Wastewater Service Area to be responsible for funding construction, and all costs related thereto, of the Connecting Facilities.

e. District agrees to be responsible for, and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System, or for causing Developer to be responsible for and to pay all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System.

f. The parties will cooperate in good faith to determine the location of Connecting Facilities that are located in Bastrop's city limits or ETJ. Bastrop agrees to make good faith efforts to cause the dedication of easements or right-of-way that may be necessary for the location and installation of

Connecting Facilities within the city limits and ETJ of Bastrop. Pursuant to separate written instruments, Bastrop will further allow District to access and use rights-of-way and easements owned or controlled by City for the purpose of installing, constructing, repairing, replacing, maintaining, and operating or causing to be installed, constructed, repaired, replaced, maintained and operated, Connecting Facilities.

Section 3.03 Notification of Commencement of Construction on Connecting Facilities.

After all required approvals for construction of the Connecting Facilities are obtained but prior to commencement of construction, District will provide, or cause to be provided, written notice to Bastrop of the date on which construction of the Connecting Facilities is scheduled to commence. Bastrop must receive this written notice at least five (5) days before the scheduled construction date.

Section 3.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.

The Parties agree that Bastrop has the right to make periodic inspections during the construction phase of the Connecting Facilities. Acceptance of the Connecting Facilities by District is subject to final inspection by Bastrop.

Section 3.05 Agreement to Submit As-Built or Record Drawings and Final Plats.

District agrees to provide, or cause to be provided, to Bastrop: a) as-built or record drawings of all Internal Facilities and Connecting Facilities that contribute directly to the Bastrop System; and b) final plats for property located within the Wholesale Wastewater Service Area; within thirty (30) days of District receiving them, not to exceed sixty (60) days following completion and acceptance of the construction of such facilities or recording of the final plat, as appropriate.

Section 3.06 Ownership and Operation of Connecting Facilities.

Except as set forth below or otherwise agreed, District shall own and operate all Connecting Facilities located on its side of a Point of Entry after completion of construction by District or the Developer, and acceptance of the Connecting Facilities by Bastrop.

Section 3.07 Design and Construction of Interceptors.

a. The District will pay the full design and construction costs of _____. The City will own, operate and maintain _____ upon its completion, acceptance and conveyance by the District to the City. The District shall have the right to the percentage of the line's capacity necessary to transport sewage at a flow rate of _____ GPD to serve the District at full buildout.

b. Except as described in Subsection 3.07(a) or as otherwise agreed by the Parties, Bastrop shall be responsible for design and construction of the Interceptors, including the acquisition of all easements required for the construction, ownership and operation of the Interceptors.

c. Bastrop agrees that the Interceptors shall be designed and constructed with sufficient capacity to make wholesale service available to District in an amount not less than required for Bastrop to fulfill its obligations under this Agreement.

d. Under no circumstances shall District construct any Interceptors that would connect to, or contribute Wastewater into the Bastrop System without Bastrop's prior written approval.

Section 3.08 Design and Construction of Improvements to the Bastrop System and WWTP#3

a. Bastrop shall be responsible for the design and construction of WWTP#3 (Permit No. WQ0011076002) and the portions of the Bastrop System that serve the Wholesale Wastewater Service Area.

b. For the term of this Agreement, Bastrop agrees that it will provide Wholesale Wastewater Service to District up to the Wholesale Wastewater Commitment under the terms and conditions of this Agreement and payment of the Wastewater Treatment Capacity Reservation Fee shall guarantee capacity in the WWTP#3 and the Bastrop System for the number of SUE's for which the Wastewater Treatment Capacity Reservation Fee is paid.

ARTICLE IV. DESIGN AND CONSTRUCTION OF WASTEWATER FACILITIES

Section 4.01 Wastewater Flow Meters.

All Wastewater Flows from the Wholesale Wastewater Service Area must be metered through Metering Facilities that are designed and constructed by District and are subject to Bastrop's review and approval. Upon completion of installation, the Metering Facilities shall be dedicated to Bastrop. The parties acknowledge and agree that the initial Wholesale Wastewater Rate is a flat rate charge as set forth in Article V. This Article shall also govern metering of Wastewater flows for the purpose of calculating the Volumetric Rate in the event that the Wholesale Wastewater Rate is a volume-based rate. The Metering Facilities shall be tested and calibrated to ensure said facilities are operative and measuring accurately prior to instituting and charging District a volume-based Wholesale Wastewater Rate.

Section 4.02 Wastewater Flow Meter Calibration and Testing.

a. Bastrop agrees to calibrate and routinely service the Wastewater flow meter no less than once during each twelve (12) month period as a Cost of the System. Calibration will be accomplished according to Bastrop's standard methods.

b. Bastrop will notify District in writing of proposed calibrations in advance of such occurrences so that District may observe if desired.

c. It will be the duty of the Parties to this Agreement to notify the other Party in the event any Party becomes aware that a Wastewater flow meter is registering inaccurately or malfunctioning. Any Party will have the right to test a flow meter at any time. Notification of a proposed test will be provided at least forty (48) hours before conducting the test except in the case of emergencies. Any Party will have the right to witness Wastewater flow meter tests. Payment for meter calibration and testing under this Section will be the responsibility of the Party requesting the meter calibration and testing.

Section 4.03 Ownership, Operating and Maintenance of the Wastewater Flow Meters.

Following completion and final acceptance of the Metering Facilities by District, Bastrop will own, operate and maintain the Metering Facilities.

Section 4.04 Billing Adjustments.

If, for any reason, a Wastewater flow meter is out of service or inoperative, or if, upon any test, any meter is found to be inaccurate (variance of five percent (5%) or more), Bastrop will calibrate the meter to measure within five percent (5%) accuracy. In addition, Bastrop will adjust billings by an amount that corresponds to the percentage that the meter varies from accurate measurement for one-half of the months since the most recent calibration of the same meter but not to exceed six (6) months. If adjustment results in credit to District, Bastrop may provide such credit against future billings to District. If adjustment results in additional amounts due to Bastrop, District will pay such amounts to Bastrop in accordance with the billing terms provided in this Agreement.

Section 4.05 Wastewater Flow Monitoring.

If Bastrop discovers a wastewater flow problem, as determined in its reasonable discretion, associated with a Point of Entry, Bastrop may, at any time, with notice to District, conduct smoke testing, television of lines, or other methods to determine the cause of the problem. The Parties agree to fully cooperate in this investigation. If the cause of the problem is determined to be solely in Bastrop's System, then Bastrop will solely pay for all investigation costs. If the cause of the problem is determined to be solely in District's System, then District will solely pay for all investigation costs. If the cause of the problem is determined to be in both District and Bastrop Systems, then investigation costs will be proportionally distributed based upon the number of connections investigated for each Party. District agrees to reimburse Bastrop for District's portion of this investigation costs within thirty (30) days of receipt of invoice, which invoice shall include supporting data in reasonable detail. District agrees to correct any problems identified in the investigation with reasonable promptness, depending on the nature of the problem.

ARTICLE V. WASTEWATER RATES AND CHARGES

Section 5.01 Wholesale Wastewater Rate Fees and Charges.

a. In accordance with the terms and conditions of this Agreement, District, through its Board of Directors, will establish and District (as set forth below) will pay Bastrop rates, charges and fees for the Wholesale Wastewater Service provided under this Agreement. The rates, charges and fees for Wholesale Wastewater Service shall consist of:

(1) the Wholesale Wastewater Rate, which shall consist of either: (i) a Flat Rate as set forth in Section 5.02; or (ii) a Volume Charge and Monthly Minimum Charges as set forth in Section 5.04; and

(2) ~~Impact Fees.~~The agreed upon Contract Amount for infrastructure, facilities and capacity, or portions thereof constructed to serve the District.

b. Bastrop may charge either a metered Volume Charge and Monthly Minimum Charges or a Flat Rate Charge for Wholesale Wastewater Service at the discretion of its governing body and after thirty (30) days prior notice to District. Bastrop specifically agrees that the Volume Charge and Minimum Monthly Charges or Flat Rate Charges will be calculated so that all Costs of the System on which the charges are based are properly allocated between District, any other wholesale customers of the System, and Bastrop's retail customers in a just, reasonable and nondiscriminatory manner and in accordance with this Agreement.

c. Any subsequent changes in rates shall be shall be set in accordance with the following principles:

d. Bastrop agrees that it will review the Costs of the System that form the basis for the Wholesale Wastewater Rate not less than once every three (3) years; provided, however, that Bastrop shall not be required to employ persons other than Bastrop employees for purposes of doing so unless Bastrop wishes to increase the Wholesale Wastewater Rate, or unless the Bastrop employee is qualified to conduct a wastewater rate study.

Section 5.02 Flat Rate.

Bastrop agrees that the initial Wholesale Wastewater Rate will be a Flat Rate in the amount of $_____ per month, per Active Connection multiplied by the SUE Multiplier, if applicable, billed monthly. The Flat Rate is calculated by subtracting an amount that represents the portion of Bastrop's cost of retail customer service, billing, and line maintenance (the "Retail-Only Service Costs") from Bastrop's retail flat rate. The current flat rate is based on the following calculation: _____ (Bastrop's retail flat rate) - _____ (the "Retail-Only Service Costs").

Section 5.03 Notice to and Review by District.

a. Bastrop will provide District with at least thirty (30) days prior written notice of any changes to the Wholesale Wastewater Rate ~~or Impact Fees.~~ Written notice shall include the proposed new rates and/or fees, and an updated cost of service study with reasonable detail that allows District to identify the methodology used to revise the rates (including enough detail to allow District to evaluate the exclusion of retail-only service costs from the Wholesale Wastewater Rate), the Costs of the System that necessitate the change, along with the allocation of Costs of the System between District, and all other customers of the Bastrop System (wholesale and retail). ~~Bastrop will not be required to provide notice related to setting of Impact Fees beyond those notices required by the Texas Impact Fee Law (Texas Local Government Code, Chapter 395, as amended), other than the notice described in this Section 5.03(a).~~

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b. District will have the right to inspect and copy, at its expense, Bastrop's books and records to verify any statement, billing, charge, computation or demand made to District by Bastrop. Bastrop agrees to make all such information available to District for inspection and copying with reasonable promptness during normal business hours.

Section 5.04 Volume Charges and Monthly Minimum Charges.

a. This Section shall govern and be in effect in the event that Bastrop establishes a Wholesale Wastewater Rate based on volume charges.

b. Bastrop will measure Wastewater flows at the Meter(s) monthly and will bill District as provided in Article VI this Agreement for the Volume Charges based on the Wastewater flows measured.

c. In addition to the Volume Charges, Bastrop's City Council may establish Minimum Monthly Charges to recover that portion of the capital-related Costs of the System incurred by Bastrop related to that portion of the Bastrop System that is used or useful for the provision of Wholesale Wastewater Service hereunder and that are not otherwise financed through the collection of Impact Fees or Wastewater Treatment Capacity Reservation Fee or the Contract Amount. Bastrop specifically agrees that the Minimum Monthly Charge will be calculated so that all capital-related Costs of the System not collected as part of the Contract Amount are allocated between District, any other wholesale customers of the System, and Bastrop's retail customers in a fair, equitable, nondiscriminatory and impartial manner and in accordance with this Agreement. Without limitation

to the generality of the foregoing, the Monthly Minimum Charge will be calculated such that the Minimum Monthly Charges shall not pay any capital-related costs associated with capacity in the System that is being constructed to provide Wastewater treatment and disposal service in excess of the Wholesale Service Commitment.

d. Prior to revision of the Monthly Minimum Charge, Bastrop shall provide written notice thereof to District, and provide a reasonable period for review and comment. A period of thirty (30) days shall be deemed a reasonable period for review and comment. The notice shall specify the lands within the Wholesale Wastewater Service Area for which Bastrop has received or credited payment of Impact Fees.

e. Each updated cost of service study shall identify the capital related costs previously paid by payment of the Monthly Minimum Charge and Impact Fees to Bastrop.

f. Bastrop agrees that any subsequent agreements that it enters into with any other person or entity for Wholesale Wastewater Treatment and Disposal Services from the System will also require such person or entity to pay a minimum monthly fee to be calculated in a just, reasonable, and nondiscriminatory manner based on the wholesale service commitments made to such other customers and the most recent rate study conducted by Bastrop.

g. District agrees to provide payment to Bastrop for the Minimum Monthly Charges associated with the provision of Wholesale Wastewater Service.

~~**Section 5.05 Bastrop Wastewater Impact Fees.**~~

a. ~~The provision of Wholesale Wastewater Service to District under this Agreement is subject to payment to Bastrop of Impact Fees as adopted by Bastrop's City Council for customers in the same service area under Chapter 395, Texas Local Government Code. The Impact Fee as of the Effective Date of this Agreement for the Wholesale Wastewater Service Area is $_____ per SUE. For those properties served that are not a single family residence, the SUE Multiplier that corresponds to the type of property as described in Exhibit "E". The Parties acknowledge that the Impact Fees may be subject to the procedures and requirements of the Texas Impact Fee Law.~~

b. ~~The Impact Fee less the Wastewater Treatment Capacity Reservation Fee (if a Wastewater Treatment Capacity Reservation Fee was paid and remitted to Bastrop as provided in Section 5.07) (the "Impact Fee Balance") or the Impact Fee (if a Wastewater Treatment Capacity Reservation Fee was not paid and remitted to Bastrop as provided in Section 5.07) shall be collected by District at the time of application for a building permit or, if no building permit is required, at the time of a request to connect to District's System for each lot within the Wholesale Wastewater Service Area. District shall pay the Impact Fee Balance or Impact Fee, as appropriate, to Bastrop within thirty (30) days of receipt. District agrees that it will not approve a request for connection to District's System, as appropriate, for a lot until the Impact Fee or Impact Fee Balance, as appropriate, is paid. In the event Bastrop amends the Impact Fee, the amended Impact Fee will apply for purposes of this Agreement only to lands within the Wholesale Wastewater Service Area that receive final plat approval after the amendment of the Impact Fees, or for properties that develop without platting, at the time of an application for building permit or plumbing permit as applicable, or for properties which have not otherwise been given Impact Fee credits; provided that in the case of such properties for which a Wastewater Treatment Capacity Reservation Fee was paid prior to amendment of the Impact Fee, the Impact Fee will be fixed at the Impact Fee in effect at the time the Wastewater~~

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~~Treatment Capacity Reservation Fee was paid and will not be subject to adjustment if the Impact Fee is increased, but will be subject to adjustment if the Impact Fee is decreased. The Impact Fees or Impact Fee Balance, as appropriate, shall be calculated for each subdivision plat based on the number of lots and the uses within that plat, as required by Bastrop's ordinance establishing Impact Fees. Bastrop shall maintain a current copy of Bastrop's Impact Fee Ordinance, with Bastrop. If Impact Fees are paid prior to the time of connection, Bastrop will provide District with certificates for the number of wastewater connections, i.e., SUEs, for which District paid Impact Fees. Said certificates shall be based on credits available and credited at time of platting, limited to specific platted lots within the Wholesale Wastewater Service Area. Certificates shall be issued for one SUE per lot, unless Bastrop receives payment for a larger number of SUEs per lot. Assuming that Bastrop has received Impact Fees for one SUE per lot within a platted subdivision, in the event service to a platted lot requires service at a level in excess of one SUE, District shall, within forty five (45) days of provision of retail wastewater service to the platted lot, pay or cause to be paid to Bastrop Impact Fees for the remaining SUEs of service.~~

c. ~~The Bastrop City Council may amend the Impact Fee applicable to the Wholesale Wastewater Service Area from time to time in accordance with the process set forth in Chapter 395, Texas Local Government Code, provided that Bastrop shall give District at least thirty (30) days prior written notice before amending the Impact Fee.~~

Section 5.06 Wholesale Wastewater Rates.

The City shall invoice the District for wholesale wastewater delivery and treatment service at the same rate that the City charges its other wholesale customers per GPD of use. The District shall pay the City monthly, one month in arrears, as more fully described in Section 6 of this Agreement.

Section 5.07 Wastewater Treatment Capacity Reservation Fees.

a. *Initial Wastewater Treatment Capacity Reservation Fee.* The District, or the Developer if the District does not have sufficient funds, will pay to the City the Initial Wastewater Treatment Capacity Reservation Fee. The payment to be made to the City within ninety (90) days of the Effective Date to reserve wastewater treatment capacity equivalent to Wastewater SUEs for the District, in the amount of ~~_____ 10% of the City Wastewater Impact Fees at the City's then current rates per Wastewater SUE.~~

b. *Incremental Wastewater Treatment Capacity Reservation Fee.* The District, or the Developer if the District does not have sufficient funds, will pay to the City Incremental Wastewater Treatment Capacity Reservation Fees in increments of not less than 100 Wastewater SUEs as needed by the Development. The payment to be made to the City at the point in time that is three (3) years in advance of absorption or need to reserve successive tranches of wastewater treatment capacity for the District, in the amount of ~~_____ 25% of the City Wastewater Impact Fees at the City's then current rates per Wastewater SUE, multiplied by no fewer than 100 Wastewater SUEs.~~ The District and Developer intend to continue making incremental Wastewater Treatment Capacity Reservation Fee payments until the District is built out, in incremental payments for capacity of no fewer than 100 Wastewater SUEs of capacity per increment, unless otherwise agreed by City staff, the District and the Developer.

c. District shall pay, or cause to be paid, a portion of the Contract Amount ~~Impact Fee~~ to Bastrop to guarantee capacity in the Bastrop System, which portion shall be $_____ per SUE (the " Wastewater Treatment Capacity Reservation Fee") for land that is platted in the Wholesale

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Commented [A1]: If we are not charging an impact fee, we will need to have a set amount for the reservation fee or set this as a portion of the Contract Amount. – Assuming we will allow them to reserve additional service beyond what we agree to in the contract.

Could go the route that the Contract amount covers the cost of the infrastructure needed to serve the development and reserves service for the number of SUEs agreed to in the Contract. Any additional service requested by the Developer would need to be done as an amendment or addendum to the Contract Amount.

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Commented [A2]: Do you want the entire amount up front?

Commented [A3]: Do you want to have this be a portion of the Contracted Amount or a set amount?

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Wastewater Service Area. Owners of property that develop without platting shall not be charged a Wastewater Treatment Capacity Reservation Fee; provided that such Owners will be required to pay an Impact Fee as provided in Section 5.05. Owners of property in the Wholesale Wastewater Service Area that do not pay a Wastewater Treatment Capacity Reservation Fee shall not have capacity reserved in the Bastrop System, until such time that the Impact Fee is paid. Payment of the Wastewater Treatment Capacity Reservation Fee will secure the right to capacity in the Bastrop System for the number of SUEs for which fees are paid. Upon payment of the Wastewater Treatment Capacity Reservation Fee, a credit shall be applied to the Impact Fee for each SUE for which the Wastewater Treatment Capacity Reservation Fee was paid. District will pay, or cause to be paid, to Bastrop a Wastewater Treatment Capacity Reservation Fee for each SUE shown in a preliminary plat approved by City within thirty (30) days after approval of the preliminary plat. The payment of the Wastewater Treatment Capacity Reservation Fee shall be accompanied by a copy of the preliminary plat, and, if not clearly apparent on the preliminary plat, written notice of the number of SUE's on the property subject to the preliminary plat. If District has paid the Wastewater Treatment Capacity Reservation Fee at a time other than in connection with a preliminary plat, then District may apply all or a portion of said fees towards the Wastewater Treatment Capacity Reservation Fee owed for a preliminary plat and shall notify Bastrop of such application at the time that a Wastewater Treatment Capacity Reservation Fee is owed.

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d. The District and Developer shall to continue making incremental reservation fee payments until the District is built out, in incremental payments for capacity of no Wastewater Treatment Capacity Reservation Fee fewer than 100 Wastewater SUEs of capacity per increment, unless otherwise agreed by City, the District, and the Developer.

e. Upon the Effective Date of this Agreement, an initial Wastewater Treatment Capacity Reservation Fee of $_____ is owed from District to Bastrop for the reservation of Phase I SUEs of the Wholesale Wastewater Service Commitment (the "Initial Wastewater Treatment Capacity Reservation Fee "). The Initial Wastewater Treatment Capacity Reservation Fee shall be a payment in the amount of $_____, which District shall pay to Bastrop on or before the ninetieth (90th) day from the Effective Date. District may require Developer to pay for or to reimburse District for the Initial Wastewater Treatment Capacity Reservation Fee and the Wastewater Treatment Capacity Reservation Fee.

f. If a preliminary plat is amended to reduce the number of SUE's, or if a final plat is approved that contains fewer SUE's than shown in a preliminary plan or a phase thereof, Bastrop shall refund to District the Excess Wastewater Treatment Capacity Reservation Fees within thirty (30) days of request by District, unless District requests in writing that Bastrop apply the Excess Wastewater Treatment Capacity Reservation Fee to another preliminary plat, another phase of the preliminary plat, or another property. Such request shall identify the preliminary plat, preliminary plat phase, or property to which the Excess Wastewater Treatment Capacity Reservation Fees will be applied. A refund for an Excess Wastewater Treatment Capacity Reservation Fee is not applicable for the payment of the Initial Wastewater Treatment Capacity Reservation Fee as required in Section 5.07(a).

g. In the event that a preliminary plat expires, District may apply the Wastewater Treatment Capacity Reservation Fees paid in related to said preliminary plat to another preliminary plat or property. District shall notify Bastrop in writing if a preliminary plat has expired and the preliminary plat, preliminary plat phase, or property to which the Wastewater Treatment Capacity Reservation Fees will be applied.

h. In the event that a building permit is not issued or an application for connection to District's System is not approved within three (3) years of payment of a Wastewater Treatment Capacity Reservation Fee for an SUE, District shall pay, or cause to be paid, an additional $ _____ for said SUE. The additional payment shall be credited against the Impact Fee for said SUE.

i. Bastrop and District shall each keep accurate records of the Wastewater Treatment Capacity Reservation Fees paid. For each payment of Wastewater Treatment Capacity Reservation Fees made by District, Bastrop shall give District a certificate stating the total Wastewater Treatment Capacity Reservation Fees paid and the number of SUE's guaranteed by such payment. The parties may inspect each other's' records during normal business hours.

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Section 5.08 Reasonableness of Rates and Right of Appeal.

District agrees that the Rates initially charged by City and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by City are subject to modification as provided herein. District agrees that it is reasonable for City to adjust the Rates periodically as provided herein and understands that any adjustments made in accordance with this Agreement are part of the consideration for this Agreement. Notwithstanding any provision to the contrary, District does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by City that is not in conformance with the terms of this Agreement.

Section 5.09 Other Service Fees.

District acknowledges and agrees that Bastrop, through its City Council, may adopt charges and fees for Wholesale Wastewater Service in addition to the ~~Impact Fees,~~ Monthly Minimum Charge, and Volume Charge. These additional charges and fees are limited to review fees and inspection fees related to review and inspection of plans for the Connecting Facilities, and these charges or fees shall be just and reasonable, and nondiscriminatory and are not to exceed the lower of the actual costs of review and inspection fees or $_____ per Connecting Facility. Plan review, inspection, and similar fees or charges relating to the design and/or construction of the Connecting Facilities shall be charged to and paid by the constructing party.

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Section 5.10 District Wastewater Rates and Charges.

District will determine and charge its retail Wastewater customers such rates as are determined by its governing body. During the term of this Agreement, District will fix and collect rates and charges for retail Wastewater service that are, in the opinion of its governing body, sufficient, together with any other revenues available to District, to produce the amount necessary to operate, repair, and maintain the District System, and to pay the cost of Wholesale Wastewater Service from Bastrop. District will establish retail rates consistent with industry standards. District will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable Jaw.

Section 5.11 District Wastewater Fees.

The Parties acknowledge that District has the right to the extent allowed under applicable law to assess, charge, and collect such impact fees, capital recovery fees, connection fees, meter fees, or other service fees, rates, truces, or other charges as its governing body will deem appropriate ~~in excess of the Bastrop Impact Fee~~. This Agreement will not be construed to require, limit, or restrict the governmental power of District to implement the same. District will be solely responsible for the proper exercise of its

governmental power to assess and collect such fees and charges and for ensuring that all fees, rates, and charges District elects to charge are in compliance with applicable law.

Section 5.12 Verification of District Wastewater Connections.

For verification of the Wholesale Wastewater Rate and ~~Impact~~ Fees paid to Bastrop and for any other purpose, District will make available for inspection and copying during regular business hours, all records for retail connections to the District System. In addition, Bastrop will have the right to inspect the District System at any reasonable time, at Bastrop's sole expense, after giving District written notice of its intention to inspect and allowing the opportunity for District to be present, to verify the type and amount of retail connections made or the condition of the District System (related to contractual compliance issues) and District will provide lawful access to Bastrop for this purpose.

ARTICLE VI. WASTEWATER WHOLESALE BILLING METHODOLOGY

Section 6.01 Monthly Statement.

a. For each monthly billing period, Bastrop will forward to District a bill providing a statement of the total Wholesale Wastewater Rate owed by District for Wholesale Wastewater Service provided to District during the previous monthly billing period. The invoice shall contain sufficient detail to allow District to verify the charges. District shall not be charged for Wholesale Wastewater Services until such services commence. District will pay Bastrop for each bill submitted by Bastrop to District by check or bank-wire on or before thirty (30) days from the date of the invoice.

b. Payments by District shall be mailed to the address indicated on the invoice or can be hand-delivered to Bastrop's City Hall in Bastrop, Bastrop County, Texas, upon prior arrangement. If payments will be made by bank-wire, District shall verify wiring instructions with Bastrop's Finance Department. Payment must be received at Bastrop's bank by the due date in order not to be considered past due or late, unless District timely contests a bill, or a portion thereof, in accordance with Section 6.05. In the event District fails to make payment of an uncontested bill within said thirty (30) day period, District shall pay a one-time late payment charge of five percent (5%) of the unpaid balance of the invoice. In addition, District shall pay interest on the unpaid uncontested balance at a rate equal to one and one-half percent (l.5%) per month.

Section 6.02 Monthly Billing Calculations.

a. This subsection 6.02(a) shall govern and be in effect in the event that Bastrop establishes a Wholesale Wastewater Rate based on volume charges. Bastrop will compute the Volume Charge included in the monthly billing for Wholesale Wastewater Service on the basis of monthly readings of metered Wastewater flows of the Metering Facilities. The total of these amounts multiplied by the Wholesale Wastewater rate, set from time to time by the Bastrop City Council, will be used to compute the monthly bill for the Volume Charge.

b. This subsection 6.02(b) shall govern and be in effect when the Wholesale Wastewater Rate is a Flat Rate. Bastrop will calculate the Wholesale Wastewater Rate by multiplying the Flat Rate set forth in this Agreement, as amended by the Bastrop City Council, by the number of SUEs per Active Connection set forth in the monthly report provided by District under Section 6.02(c).

c. Each calendar month, District shall deliver to Bastrop the number of Active Connections within the Wholesale Wastewater Service Area, and the number of SUEs associated with each Active Connection. Bastrop shall use the number of Active Connections and the associated SUEs stated in the report to calculate the Wholesale Wastewater Rate for the billing period in which the report was filed.

Section 6.03 Infiltration and Inflow.

District acknowledges that water entering the Bastrop System from the District System emanating from any source whatsoever must be given treatment and handling whether or not its source is revenue producing for District. Therefore, District agrees to pay, as part of the Volume Charge, if the Wastewater Rate includes a Volume Charge, for infiltration and inflow originating within the District system without abatement in the same manner and cost as other Wastewater entering Bastrop's System from the District System.

Section 6.04 Effect of Nonpayment.

With respect to monthly billings, including billings for the Wholesale Wastewater Rate and any other fees or charges applicable under this Agreement, if Bastrop has not received payment from District by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Bastrop will notify District in accordance with this Agreement, of such delinquency in writing. If District fails to make payment of the delinquent billing within thirty (30) calendar days from the date of transmittal of such written notice of delinquency from Bastrop, then Bastrop may, at its discretion, suspend or reduce the level of Wastewater service to District until payment is made. District may exercise its right to dispute its obligation to pay all or a portion of a bill during the cure period following the procedure set forth in Section 6.05.

Section 6.05 Billing Disputes.

Should District dispute its obligation to pay all or any part of the amount stated in any statement or notice, District may pay such amount along with a written notice of protest, in which event such amount shall be deposited by Bastrop in a separate interest-bearing account mutually acceptable to both Bastrop and District pending final resolution of such dispute in accordance with this Agreement. Bastrop may not terminate this contract or deny Wastewater service that is otherwise in accordance with this Agreement for failure to pay the amount stated in any statement or notice if District pays such amount under protest.

ARTICLE VII. WASTEWATER QUALITY

Section 7.01 Condition of Wastewater Delivered.

a. District shall have the right to discharge Wastewater into the Bastrop System meeting the requirements of quality as set forth in this Section and not containing wastes identified in Bastrop's Code of Ordinances.

b. Discharges into the Bastrop System shall consist only of domestic Wastewater and Wastewater that the Bastrop System is capable of handling:

(1) So that the effluent and sludge from the Bastrop System meets the current legal standards of the EPA, the TCEQ, or any governmental body having legal authority to set standards for such effluent;

(2) Without causing damage or corrosion to the Bastrop System that would result in increased maintenance costs;

(3) Without causing excessive treatment costs; and

(4) That meets any applicable requirements of the EPA Pretreatment Regulations, 40 CFR Part 403.

c. EPA and TCEQ periodically modify standards on prohibited discharges. It is the intention of the Parties, therefore, that the Prohibited Wastes be reviewed periodically by Bastrop and that they revised by Bastrop in accordance with the latest standards of EPA, TCEQ or any federal or state agency having regulatory authority over discharges made to the Bastrop System. Any required revisions shall be made by Bastrop and upon the effective date, District shall be responsible for integrating such changes into its regulations and notifying all affected users of the change.

Section 7.02 Remedies for Delivery of Prohibited Wastes.

a. In the event Wastewater delivered from the District System to the Bastrop System fails to meet the standards specified in this Agreement, and Bastrop reasonably determines that the addition of oxidizing chemicals or another acceptable method of pretreatment of Wastewater or operation of the District System is necessary in order for Wastewater delivered to the Bastrop System to be non-corrosive and non-injurious to the Bastrop System, District agrees to install such facilities within twenty-four (24) hours of receiving notice from Bastrop or immediately implement such methods of operation and maintenance, at its sole expense, as are reasonably deemed by Bastrop to be necessary for the Wastewater delivered by District to meet the requirements of this Article .

b. In the event Wastewater delivered from the District System to the Bastrop System fails to meet the standards specified in this Agreement, District shall pay to Bastrop, in the same manner provided in this Agreement for the payment of the Volume Charges, a surcharge calculated in accordance with and subject to the requirements of this section (the "Treatment Surcharge").

(1) The Treatment Surcharge shall be based on the following formula:
S = V x 8.34 (A [BOD -200] + B [TSS -200]), where

A. "S" means the surcharge that will appear on District's monthly bill;

B. "V" means Wastewater actually billed in millions of gallons during the billing period; "8.34" means pounds per gallon of water;

C. "A" means the unit charge in dollars per pound of BOD which unit charge shall be based on the unit charge adopted by the Bastrop City Council for wastewater service from the Bastrop System. as amended from time to time, which unit charge is $0.49 per pound as of the Effective Date; provided that increases in such charge shall not be effective as to District until notice of the increase has been given to Leander;

D. "BOD" means biological oxygen demand measured in milligrams per liter by weight; "200" means 200 mg/l;

E. "B" means the unit charge in dollars per pound of total suspended solids. which unit charge shall be based on the unit charge adopted by the Bastrop City Council for wastewater service from the District System, as amended from time to time, which unit charge is $0.____per pound as of the Effective Date; provided that increases in such charge shall not be effective as to District until notice of the increase has been given to District; and,

F. "TSS" means total suspended solids measured in milligrams per liter by weight.

(2) The Treatment Surcharge shall be charged for each month following sampling completed in accordance with this Agreement that measures BOD in excess of 200 mg/I or TSS in excess of 200 mg/I until subsequent sampling measures both BOD and TSS below those levels. In the event any Treatment Surcharge is based on sampling performed by Bastrop, Bastrop will provide written notice of the sampling results prior to charging the Treatment Surcharge to District and shall give District an opportunity to be present during the testing.

c. In the event District delivers to Bastrop Wastewater that fails to meet the standards specified in this Agreement, District agrees to pay Bastrop for all damages and costs of repair to the Bastrop System and/or regulatory fines reasonably incurred by Bastrop that were caused by District's delivery of Wastewater that fails to meet the standards specified in this Agreement. Bastrop may require payment of the cost of repair of damaged facilities and/or regulatory fines as a condition to the further provision of Wholesale Wastewater Service, restrict District's flows to the extent necessary to protect Bastrop's System, file suit to recover for any and all damages to the Bastrop System caused by such failure on the part of District, or seek such other and further relief, at law or in equity, as Bastrop will deem advisable.

Section 7.03 Sampling and Testing.

a. District will perform sampling of Wastewater at the Point(s) of Entry and provide an analysis to Bastrop due every _____ 1, (year) and _____ 1, (year) after the Connecting Facilities are completed.

(1) AU samples will be Composite Samples, that is, a series of at least twelve (12) samples taken from a waste stream without regard to the flow in the waste stream and over a period of time not Jess than twenty- four (24) hours at intervals of not less than one (1) hour, which samples shall be averaged in accordance with standard industry practice.

(2) The analysis of the sample shall be performed by a National Environmental Laboratory Accreditation Conference (NELAC) approved laboratory. District will require a copy of the report to include at a minimum, levels of pH, BOD-5, COD TSS and oil and grease. The report also must contain the chain of custody for the sample and the Quality Assurance/Quality Control (QA-QC) report.

(3) District will be responsible for the cost of sampling and analysis.

(4) District will provide written notice to Bastrop or Bastrop's current plant operator at least five (5) business days prior to conducting Wastewater sampling and shall allow Bastrop or Bastrop's current plant operator representatives to observe the sampling.

(5) In the event District fails to perform sampling by the deadlines provided in this section, after notice and an opportunity to cure within thirty (30) days, District shall pay to Bastrop a sampling surcharge in the amount of _____ ($_____) per event. In addition, District will pay Bastrop for Bastrop's actual costs to perform the sampling if Bastrop does so during the next thirty (30) days after the expiration of the cure period if District does not perform the sampling within the cure period.

b. District agrees that Bastrop or Bastrop's current operator will have the right, at its option and expense, to sample Wastewater discharges within the District System at:

(1) the site of discharge;

(2) Points of Entry to the Bastrop System; and

(3) other locations as required for the purpose of determining the source, type, and strength of discharge.

c. District will use reasonable efforts to make necessary arrangements for and provide assistance to Bastrop in obtaining lawful access to sampling points within areas served by District. Bastrop will provide written notice to District at least five (5) business days prior to conducting Wastewater sampling and shall allow one or more District representatives to observe the sampling.

d. District agrees that to the extent authorized by applicable laws, any of its individual customers found in violation of allowable discharges or any of its individual customers who refuse access for the purpose of sampling may be disconnected from District and Bastrop's Wastewater System in accordance with applicable regulations of District or Bastrop and federal law.

e. Notwithstanding any other provision in this Agreement to the contrary, the Parties agree as follows:

(1) no Party shall be obligated to perform any sampling of Wastewater except at Points of Entry constructed with sampling ports; and

(2) all future sampling ports at Points of Entry shall be identified on plans and specifications for Connecting Facilities to be approved by Bastrop.

ARTICLE VIII. STANDARDS FOR WASTEWATER CONNECTIONS TO DISTRICT SYSTEM

Section 8.01 District Prevention of Infiltration and Inflow.

It will be District's responsibility to undertake such measures as are reasonably necessary or prudent to minimize infiltration and inflow to District's System. District will prohibit the discharge of drainage water and storm water run-off into the District System.

Section 8.02 Construction and Testing Criteria for District Sewer Connections.

a. All tests required by the design criteria and specifications of the State of Texas for connections to the District System within the Wholesale Wastewater Area will be at District's or its customer's expense.

b. District agrees that the physical connection of each service line to the local Wastewater facility within the Wholesale Wastewater Area will be the responsibility of District and will not be left to the discretion of the plumber or contractor unless said plumber or contractor is under the direct supervision of or whose work is inspected by District's authorized representative.

c. Connections made to the District System after the date of execution of this Agreement will be made using only materials permitted by applicable codes and development criteria manuals of the State of Texas. District will inspect all connections to its System in accordance with its own rules and regulations in order to insure compliance with it.

d. A failure on the part of District to provide and enforce such regulations governing connections to the District System will, at the option of Bastrop after: (i) notice to District in writing of the specific violation, and (ii) failure within thirty (30) days to correct said violation or, if the violation is of a nature that it cannot be corrected within thirty (30) days, to begin to correct such violation and to diligently pursue such curative action, constitutes sufficient grounds for Bastrop to restrict or limit Wastewater flows, or immediately terminate this Agreement, to such extent Bastrop deems reasonably necessary in order to protect the Bastrop System from damage or excessive flows.

ARTICLE IX. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER

Section 9.01 Liability of District.

As between the Parties and except as otherwise provided herein, District shall bear responsibility for damages, if any, claimed by third persons arising from the reception, transportation, delivery, and disposal of all Wastewater discharged while it remains within the District System, and District, to the extent authorized by law, holds Bastrop harmless therefrom. Notwithstanding the foregoing, Bastrop shall bear responsibility for damages, if any, claimed by third persons because Bastrop does not accept Wastewater at a Point of Entry in a quantity that it is contractually obligated to accept under this Agreement, and Bastrop, to the extent authorized by law, agrees to hold District harmless therefrom.

Section 9.02 Liability of Bastrop.

Bastrop will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of Wastewater received by it at Points of Entry in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause Bastrop to bear responsibility for damages to the Bastrop System or to third persons arising from: i) the delivery by District of Prohibited Wastes or Wastewater that is in violation of this Agreement and corrosive or otherwise damaging to the Bastrop System or to persons or property; or, ii) the delivery of Wastewater at a Point of Entry in excess of the Peak Hour Flow Rate.

ARTICLE X. REGULATORY COMPLIANCE

Section 10.01 Agreement Subject to Applicable Law.

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 10.02 Cooperation to Assure Regulatory Compliance.

Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE XI. TERM, TERMINATION, DEFAULT, REMEDIES

Section 11.01 Term and Termination.

a. This Agreement shall become effective upon the Effective Date and shall extend until _____, 20___ unless terminated earlier as provided herein.

b. District may terminate this Agreement by providing not less than sixty (60) days written notice of termination to Bastrop.

c. In the event that any agreement provided for in the definition of Bastrop System Agreements are terminated or expires, this Agreement shall be terminated and be of no further force or effect. Either party shall give thirty (30) days prior written notice of an anticipated termination or expiration of any agreement provided for in the definition of Bastrop System Agreements.

Section 11.02 Default.

a. In the event District shall default in the payment of any amounts due to Bastrop under this Agreement, or in the performance of any material obligation to be performed by District under this Agreement, then Bastrop shall give District at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, Bastrop shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

b. In the event Bastrop shall default in the performance of any material obligation to be performed by Bastrop under this Agreement, then District shall give Bastrop at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Bastrop.

Section 11.03 Additional Remedies upon Default.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Bastrop's undertaking to provide Wholesale Wastewater Service to the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Bastrop agrees, in the event of any default on its part, that District shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of District's obligations could not be adequately compensated in money damages alone, District agrees in the event of any default on its part that Bastrop shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Bastrop including the right to obtain a writ of mandamus or an injunction against District requiring the District to collect rates and

charges sufficient to pay the amounts owed to Bastrop by District under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

ARTICLE XII. GENERAL PROVISIONS

Section 12.01 Assignability.

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 12.02 Amendment.

This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of District and Bastrop and executed by duly authorized representatives of each.

Section 12.03 Necessary Documents and Actions.

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 12.04 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Service by Bastrop to District for the District Service Area.

Section 12.05 Applicable Law.

This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 12.06 Venue.

All obligations of the Parties created in the Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 12.07 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 12.08 Duplicate Originals.

This Agreement may be executed in duplicate originals each of equal dignity.

Section 12.09 Notices.

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other party shown below:

DISTRICT:

Attn:

DEVELOPER:

Attn:

CITY OF BASTROP: City of Bastrop
113 E. 8th Street
Bastrop, Texas 78626
Attn: City Manager

WITH REQUIRED COPY TO: Alan Bojorquez
Bojorquez Law Firm, PC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

Notices shall be deemed received on the date of hand delivery or within three (3) days of deposit in first-class mail.

Section 12.10 Consents and Approvals.

Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 12.11 Severability.

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 12.12 Records.

Bastrop and District each agree to preserve, for a period of at least two (2) years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Bastrop and District shall each, respectively, have the right during reasonable business hours to inspect such records to

the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 12.13 State Approval; Compliance with TCEQ Rules.

Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

Section 12.14 Force Majeure.

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 12.15 Good Faith.

Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 12.16 Authority of Parties Executing Agreement, Validity.

By their execution, each of the individuals executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 12.17 Exhibits.

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A: Metes and Bounds Description of the Land
Exhibit B: Bastrop TPDES Permit No. WQ001107600
Exhibit C: Map Showing Locations of Lift Stations and Force Main
Exhibit D: Map Showing Locations of Wastewater Delivery Points, WWTP#3
Exhibit E: Infrastructure and Capacity ~~Bastrop Impact Fee Calculation Sheet~~Contract

Section 12.18 Effective Date.

This Agreement will be effective from and after the last date of due execution by all Parties.

(Reminder of page left blank intentionally)

CITY OF BASTROP, TEXAS

By: _____

Name: Lynda Humble

Title: City Manager

Date: _____

ATTEST: _____
City Secretary

_____ ***DISTRICT***

By: _____

Name: _____

Title: _____

Date: _____

Attest:

_____

STATE OF TEXAS §

§

COUNTY OF BASTROP §

This instrument was acknowledged before me the ____ day of _____, 20___, by _____, _____City of Bastrop, Texas, on behalf of City.

_____

Notary Public Signature

_____ ***DEVELOPER***

A Texas _____

By:

A _____ company, _____

By: _____

Title:

Date: _____

STATE OF _____ §

§

COUNTY OF _____§

This instrument was acknowledged before me on the _____ day of _____, 20__, by _____, _____ of _____, a Texas _____company, _____ of _____., a Texas _____, on behalf of said _____ as _____ of the _____.

_____

Notary Public, State of _____

Exhibit "A"

Metes and Bounds Description of the Land

Exhibit "B"

Bastrop TPDES Permit No. WQ001107600

Exhibit "C"

Map Showing Locations of Lift Stations and Force Main

Exhibit "D"

Map Showing Locations of Wastewater Delivery Points, WWTP#3

Exhibit "E"

Bastrop Impact Fee Calculation Sheet

WHOLESALE WATER AGREEMENT
BETWEEN CITY OF BASTROP, _____ DISTRICT AND
_____

This **WHOLESALE WATER AGREEMENT** (this "**Agreement**") is made and entered into by and between the **CITY OF BASTROP**, a home rule city located in Bastrop County ("**Bastrop**" or "**City**") and the _____ District, a political subdivision of the state operating under Chapters 49 and 54, Texas Water Code (the "**District**"), and _____., a Texas _____("**Developer**") (collectively referred to herein as the **"Parties"**). The Parties hereby mutually agree as follows:

RECITALS

WHEREAS, the City and the Developer entered into a Planned Development Agreement, to be known in this Agreement as "the PDA" on _____, 20__, requiring a wholesale water agreement; and

WHEREAS, by Resolution R-_____, on _____, 20___, the City granted consent for creation of _____District; and

WHEREAS, by Order signed on _____, 20__, the Texas Commission on Environmental Quality granted the Petition for Creation of _____District; and

WHEREAS, by Resolution R-_____ the City confirmed its consent for creation of the _____ District, on _____, 20__; and

WHEREAS, the District encompasses approximately _____ acres of land within the extraterritorial jurisdiction ("ETJ") of the City (the "Tract"). The Tract is more particularly described in Exhibit "A"; and

WHEREAS, Developer intends to develop the Tract as a _____ community, initially to be referred to as "_____" projected to consist primarily of residential uses, expected at the time of execution of this Agreement to include approximately _____ homes, and also will include other limited nonresidential uses (the "Development"); and

WHEREAS, City, District and Developer wish to enter into this Agreement, to provide the terms of wholesale water service for the benefit of the present and future residents of City and the District; and

WHEREAS, the Tract is within the water CCN of Aqua Water Supply Corporation (10294), from which the City intends to purchase potable water at wholesale rates (the "Bastrop Aqua Agreement"), and intends to sell potable water at wholesale rates to the District; and

WHEREAS, Bastrop has adequate water supply and distribution infrastructure to provide up to _____ gallons per day to District; and

NOW, THEREFORE, for and in consideration of the agreements set forth below, the City, District and Developer agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 Definitions of Terms.

In addition to the terms otherwise defined in the above recitals; in the City's ordinances; or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

Active Connection: means a connection for which there is an open utility account with the District during any portion of a monthly billing period. Each connection is the equivalent of one SUE, provided that the property served by the connection is a single-family residence.

Agreement: means this Wholesale Water Agreement by and among the City of Bastrop, Texas, _____ District, and _____.

AWWA: means the American Water Works Association.

Bastrop Aqua Agreement: means the Agreement to be entered by the City of Bastrop and Aqua Water Supply Corporation ("Aqua") pursuant to which Aqua will sell potable water at wholesale to the City.

Bastrop Service Area: means the wholesale and retail water service territory for the City of Bastrop.

Bastrop Water System or City Water System*:* means the facilities, including water production wells, pumps, lines, meters, components, and equipment owned and operated by Bastrop, together with all extensions, expansions, improvements, enlargements, betterments and replacements to monitor, convey, supply, deliver and distribute potable water or Wholesale Water Services to Bastrop's customers, including _____. The Bastrop System does not include any improvements on District's side of the Delivery Point or any facilities on any other wholesale customer's side of its delivery point.

Bastrop Water Conservation and Drought Contingency Plan: means, collectively, the Bastrop Water Conservation Plan and the Bastrop Drought Contingency Plan, as may be amended by the Bastrop City Council from time to time. A copy of the Bastrop Water Conservation and Drought Contingency Plan in effect as of the Effective Date is attached hereto as Exhibit "B".

CCN*:* means a certificate of convenience and necessity or similar permit authorizing a specified entity to be the retail water or sewer service provider in a specified area.

City: The City of Bastrop, Texas, a home rule municipality, organized and operating pursuant to the applicable laws of the State of Texas

City Manager: means the City of Bastrop's City Manager

Commercial Customers: means all non-residential retail water customers of District in the Wholesale Water Service Area.

Commission or TCEQ: means the Texas Commission on Environmental Quality or its successor agency.

Connecting Facilities: means facilities connecting any Internal Facilities to a Delivery Point.

Contract Amount*: means the agreed upon amount in the Infrastructure and Capacity Contract.*

Costs of the System: means all of Bastrop's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the Bastrop System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the System in accordance with policies of Bastrop's City Council.

County: means Bastrop County, Texas.

Delivery Point: means the point at which Bastrop will deliver treated water to District under this Agreement, which point shall be at the _____inch Master Meter as depicted on Exhibit "C".

Developer: means _____., a Texas _____, its successors or assigns.

Development: means the mixed-use development of the Tract, including residential and non-residential land uses, together with parkland, open space, recreational amenities and related facilities, intended to produce developed lots.

District: means the municipal utility district organized and operating in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, encompassing the Tract, known as _____ District.

District's water system: means District's water transmission, distribution and delivery systems that provide service to District's retail customers through the Wholesale Water Services provided under this Agreement. The District System shall be owned, operated and maintained by - _____ District and shall not include the Master Meter or any facilities on Bastrop's side of the Delivery Point.

District Service Area: means the retail water service territory of _____ District, as amended from time to time.

Effective Date: means the last date of execution by all of the Parties.

ETJ: means extraterritorial jurisdiction.

Emergency: means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Bastrop. The term includes Force Majeure and acts of third parties that cause the Bastrop System to be unable to provide the Wholesale Water Services agreed to be provided herein.

EPA: means United States Environmental Protection Agency

Force Majeure: means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Bastrop or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

Infrastructure and Capacity Contract: *means the Contract by and between the City and District that includes the amount to be collected from the District for all infrastructure, facilities and capacity needed to serve the development.*

~~***Impact Fee:*** means a charge imposed on each service unit on new development pursuant to Chapter 395 of the Local Government Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions.~~

Initial Wholesale Water Service: means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to _____ GPD.

Internal Facilities: means the internal Water distribution facilities and related equipment, facilities, and appurtenances to be constructed by or on behalf of District for the District System.

Maximum Water SUE Capacity: Use of water treatment capacity up to _____ GPD.

Metering Facility: means the water flow meter, meter vault, and all metering and telemetering equipment located at a Delivery Point to measure Wholesale Water Service to District. The Bastrop System shall include each Metering Facility.

Monthly Water Supply: means the quantity of water for which Bastrop agrees to provide Wholesale Water Services to District under the terms and conditions of this Agreement. The Monthly Water Supply shall be _____ gallons per month.

Parties: means the City, the District, and the Developer.

Planned Development Agreement or PDA: means the agreement that was entered into by the City and the Developer on _____, 20___.

Point(s) of Connection – Water: The point(s) at which the City's Water System connects to the District's Water System, generally shown on Exhibit C.

Residential Customers: means retail residential water customers of District in the Wholesale Water Service Area.

Single Family Residence: means the use of a site for only one dwelling unit, where a dwelling unit is a building, or portion thereof, designed or used exclusively for residential occupancy (not including hotels and motels).

SUE: means service unit equivalent which is the basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4 " diameter simple water meter, using American Water Works Association C700-C703 standards.

~~***SU multiplier:*** means the number of SUEs to be multiplied by the Impact Fee for each active connection served that is not a single family residence in accordance with the SU Equivalency Chart in Bastrop Code of Ordinances Section 10.02.004.~~

Tract: means the approximately _____ acres of land within the District's boundaries to be served under the terms of this Agreement.

Wholesale Water Services: means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to the Monthly Water supply.

Section 1.02 Captions.

The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II. DESIGN AND CONSTRUCTION OF FACILITIES

Section 2.01 Design and Construction of the Internal Facilities.

a. District will be responsible for design and construction of, or for causing one or more third parties to design and construct, the Internal Facilities within the District System.

b. District agrees to be responsible for and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Internal Facilities; provided that District may require Developer to be responsible and pay for all or a portion of the costs of right-of-way, easements, design, engineering, contracting, construction,

and inspection of the Internal Facilities.

c. The Internal Facilities will be designed and constructed in accordance with applicable regulations and specifications of Bastrop, the State of Texas and United States, and with the terms and conditions of this Agreement.

Section 2.02 Design and Construction of the Connecting Facilities.

a. District shall be responsible for design and construction of, or for causing one or more third parties to design and construct, any Connecting Facilities, or modification to the existing Connecting Facilities, required for the transmission of water to the Bastrop System.

b. Subject to the terms and conditions of this Agreement, District agrees to engage or cause to be engaged the services of a professional engineer registered in Texas to produce the engineering design, including detailed plans and specifications for Connecting Facilities in conformance with Bastrop's design criteria and construction standards in effect at the time the plans and specifications are submitted to Bastrop for approval, or in accordance with District's design criteria and construction standards if such are more stringent; provided that the parties shall reasonably cooperate to determine the design standards that will control. The plans and specifications will address the sizing, routing, material selection, service method, cost estimates, proposed construction schedule, easements, and such other and further information as Bastrop deems necessary or advisable for proper review and assessment of the plans and specifications. The design for the Connecting Facilities shall be procured at District's sole expense; provided that District may cause Developer to be responsible for designing the Connecting Facilities, and the cost thereof. The plans and specifications for the Connecting Facilities will be submitted to Bastrop for review and comment before District approves said plans and specifications. Bastrop shall provide written comments within thirty (30) days of the date of the receipt of the plans unless a longer period is specified by City Staff. District shall cause any comments provided by Bastrop to be addressed. If Bastrop does not provide comments within the greater of thirty (30) days or the time specified by City Staff, District may approve the plan and specifications, subject to compliance with District's regulations.

c. District solely shall be responsible for funding construction, and all costs related thereto, of the Connecting Facilities, or for causing one or more third party developers or owners of land within the Wholesale Water Service Area to be responsible for funding construction, and all costs related thereto, of the Connecting Facilities.

d. District agrees to be responsible for, and pay for all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System, or for causing Developer to be responsible for and to pay all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System.

e. The parties will cooperate in good faith to determine the location of Connecting Facilities that are located in Bastrop's city limits or ETJ. Bastrop agrees to make good faith efforts

to cause the dedication of easements or right-of-way that may be necessary for the location and installation of Connecting Facilities within the city limits and ETJ of Bastrop. Pursuant to separate written instruments, Bastrop will further allow District to access and use rights-of-way and easements owned or controlled by City for the purpose of installing, constructing, repairing, replacing, maintaining, and operating or causing to be installed, constructed, repaired, replaced, maintained and operated, Connecting Facilities.

Section 2.03 Notification of Commencement of Construction on Connecting Facilities.

After all required approvals for construction of the Connecting Facilities are obtained, but prior to commencement of construction, District will provide, or cause to be provided, written notice to Bastrop of the date on which construction of the Connecting Facilities is scheduled to commence. Bastrop must receive this written notice at least five (5) days before the scheduled construction date.

Section 2.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.

The Parties agree that Bastrop has the right to make periodic inspections during the construction phase of the Connecting Facilities. Acceptance of the Connecting Facilities by District is subject to final inspection by Bastrop.

Section 2.05 Agreement to Submit As-Built or Record Drawings and Final Plats.

District agrees to provide, or cause to be provided, to Bastrop: a) as-built or record drawings of all Internal Facilities and Connecting Facilities that take from the Bastrop System; and b) final plats for property located within the Wholesale Water Service Area; within thirty (30) days of District receiving them, not to exceed sixty (60) days following completion and acceptance of the construction of such facilities or recording of the final plat, as appropriate.

Section 2.06 Ownership and Operation of Connecting Facilities.

Except as set forth below or otherwise agreed, District shall own and operate all Connecting Facilities located on its side of a Delivery after completion of construction by District or the Developer, and acceptance of the Connecting Facilities by Bastrop.

ARTICLE III. PROVISION OF WHOLESALE WATER SERVICES

Section 3.01 Wholesale Water Services.

Bastrop agrees to provide Wholesale Water Services to District for the Monthly Water Supply in accordance with the flow limitations and other provisions of this Agreement, all as hereafter specified.

Section 3.02 District Responsible for Retail Connections.

District will be solely responsible for providing retail water service within the District Service Area. District will be solely responsible for the proper and lawful application of District's policies and regulations governing connection to the District System.

Section 3.03 Source.

a. Bastrop, by entering into this Agreement with District and Developer, confers upon District, the right to purchase on a wholesale basis the Monthly Water Supply from the water secured by Bastrop from Aqua Water Supply Corporation.

b. In the event that the amount of water supplied by Aqua to Bastrop in the Aqua Agreement is reduced, the Monthly Water Supply to District shall be reduced on a pro rata basis.

Section 3.04 Title to and Responsibility for Water; Delivery Point(s).

a. Title to the water diverted, treated and transported to District by Bastrop under this Agreement shall remain with Bastrop at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the water shall pass to District. Each of Each party shall bear responsibility for the loss of water on their respective side of the point or points of delivery.

b. District shall be solely responsible for conveying water from the Delivery Point to the District's intended places of use. At its cost and expense, District may change the Delivery Point from time to time following prior written notice to and written approval by Bastrop, which approval shall not be unreasonably withheld, denied or delayed.

Section 3.04 Quantity and Pressure.

Subject to the terms of this Agreement, Bastrop agrees to deliver potable water to District all water needed and requested by District for the District Service Area, at prevailing pressure up to, but not in excess of: (i) a minimum of _____ GPD per SUE (ii) a maximum daily delivery of _____ gallons per day; and (iii) a maximum flow rate of 0.6 gallons per minute per connection.

Section 3.05 Quality of Water Delivered to District.

The water delivered by Bastrop at the Delivery Point shall be potable water of a quality conforming to the requirements of any applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies.

Section 3.06 Maintenance and Operation; Future Construction.

a. Bastrop shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging all current and future facilities of the City. The City commits to acquire necessary easements and complete construction on a schedule that serves and protects the property owners and their structures in the District.

b. District shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the District System in good working condition and shall promptly repair any leaks or breaks in the District System.

Section 3.07 Rights and Responsibilities in Event of Leaks or Breaks.

District shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the District System.

Section 3.08 Commencement of Wholesale Water Service.

Bastrop will commence the provision of Wholesale Water Service to District upon final inspection and approval of connecting facilities to the district.

Section 3.09 Wholesale Service Commitment Not Transferable.

Bastrop's commitment to provide Wholesale Water Services is solely to District. District may not assign or transfer in whole or in part it's right to receive Wholesale Water Services without Bastrop's prior written approval.

Section 3.10 Conservation and Drought Planning.

District, within ninety (90) days of the date the District begins operation of the District Water System, the District shall adopt a water conservation plan consistent with and no less stringent than the City's drought contingency plan then in effect and in compliance with TCEQ Rules, 30 Texas Administrative Code, Chapter 288. A copy of the City's current drought contingency plan is attached as Exhibit "B" to this Agreement.

Section 3.11 Curtailment of Service.

The Parties agree that, if water service is curtailed by Bastrop to other similarly-situated customers of the Bastrop System, Bastrop may impose a like curtailment, with notice to District, on Wholesale Water Services delivered to District under this Agreement. Bastrop will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Bastrop from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

Section 3.12 Cooperation during Maintenance or Emergency.

District will reasonably cooperate with Bastrop during periods of Emergency or required maintenance. If necessary, upon prior notice, District will operate and maintain the District System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 3.13 Re-sale of Water Prohibited.

District is prohibited from selling any water sold to District hereunder to any person or entity, except to its retail water customers.

ARTICLE IV. WATER METERING PROVISIONS

Section 4.01 Master Meter Accuracy.

Meter shall meet accuracy standards required by the AWWA with calibration maintained as described in Section 4.02.

Section 4.02 Meter Calibration.

a. The Master Water Meters shall be calibrated each calendar year by District at District's sole cost and expense. Bastrop shall provide prior notice of each such calibration, and a representative of Bastrop may be present to observe each calibration.

b. In the event any question arises at any time as to the accuracy of the Master Meter, but not more than a frequency of once per consecutive twelve (12) month period without mutual consent of both Parties, then the Master Meter shall be tested by Bastrop promptly upon demand of District. The expense of such test shall be borne by Bastrop.

c. If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess of AWWA and manufacturer's standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon, if no such period is known or agreed upon, the shorter of:

1. a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or

2. a period extending back one-half of the time elapsed since the last previous test; and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

ARTICLE V. WATER RATES AND CHARGES

Section 5.01 Wholesale Water Rates, Fees and Charges.

a. In accordance with the terms and conditions of this Agreement, District, through its Board of Directors, will establish and District (as set forth below) will pay Bastrop rates, charges and fees for the Wholesale Wastewater Service provided under this Agreement. The rates, charges and fees for Wholesale Wastewater Service shall consist of:

(1) a base meter charge and the volumetric charge; and

(2) The agreed upon Contract Amount for infrastructure, facilities and capacity, or portions thereof constructed to serve the District. ~~District will pay Bastrop for the Wholesale Water Service provided under this Agreement based on a base meter charge and the volumetric charge. No other rates, fees or charges shall be owed by the District to Bastrop for Wholesale Water Service.~~

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Section 5.02 ~~Bastrop Water Impact Fee.~~ Builder Payment for Infrastructure, Facilities and Capacity.

Builders in the District will be required in a contract by and between the builder and the Developer to pay the Contract Amount for infrastructure, facilities and capacity or portions thereof constructed to serve the District.

~~**The Water Impact Fee is $_____ per SUE.**~~

Section 5.03 Base Meter Charge.

District will pay Bastrop the monthly retail base meter charge applicable to the meter size at the Point of Delivery. Such fee shall be subject to change from time to time when Bastrop retail rates are reviewed. The initial base meter charge for the meter at the Point of Delivery is $_____ per month.

Section 5.04 Volumetric Charge.

a. Bastrop will measure water flows monthly based on monthly readings of the Master Meter. The total of these amounts multiplied by the volumetric rate will be used by Bastrop to compute the volume charge as provided in Section 6.02 below.

b. The initial volumetric rate shall be Bastrop's non-residential volumetric water rate ($_____ per 1,000 gallons of water).

c. Bastrop may amend the volumetric rate from time to time when Bastrop retail rates are reviewed. Bastrop shall provide written notice to District of any rate adjustments not later than thirty (30) days prior to the effective date thereof.

Section 5.05 Changes to Rates and Fees.

The City agrees that a change in the monthly base meter charge or volumetric charge will not become effective against the District until thirty (30) days after effective written notice to the District if a change is provided by the City.

Section 5.06 District Water Rates and Charges.

District will determine and charge its retail water customers such rates as are determined by its governing body. During the term of this Agreement, District will fix and collect rates and charges for retail water service that are, in the opinion of its governing body, sufficient, together with any other revenues available to District, to produce the amount necessary to operate, repair, and maintain the District System, and to pay the cost of Wholesale Water Service from Bastrop. District will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

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Section 5.07 District and Developer to Pay All Costs for Connection to the City.

The District, or Developer if the District does not have sufficient funds, will pay the entire cost of connection to the City's Water System.

Section 5.08 Wholesale Water Rates.

The City shall invoice the District for wholesale water delivery and treatment service at the same rate that the City charges its other wholesale customers per gallon of use. The District shall pay the City monthly, one month in arrears, as more fully described in Article XIII of this Agreement.

Section 5.09 District Payment for Wholesale Service.

Billing for wholesale service will commence after the first date water service is provided to the District. The City will send one bill to the District on or before the first day of each month after the date water service has commenced, at a rate that is the same as the rate the City charges its city customers of each class. The Developer agrees to require the builders in the District to send notice of each such closing to the City within thirty (30) days of the closing of each lot in a separate agreement with each such builder.

~~**Section 5.10 Builder Payment for Impact Fees.**~~

~~**Builders in the District will be required in a contract by and between the builder and the Developer to pay the standard impact fee to the City related to the use of the capacity in the City's Water System.**~~

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ARTICLE VI. WHOLESALE WATER BILLING METHODOLOGIES; REPORTS AND OTHER RELATED MATTERS

Section 6.01 Monthly Statement.

For each monthly billing period, Bastrop will forward to District a bill providing a statement of the Base Meter Fee and the total Volume Charge owed by District for Wholesale Water Service provided to District during the previous monthly billing period. District will pay Bastrop for each bill submitted by Bastrop to District by check or bank-wire on or before thirty (30) days from the date of receipt of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to Bastrop's headquarters in Bastrop County, Texas. If payments will be made by bank-wire, District shall verify wiring instructions. Payment must be received at Bastrop's headquarters or bank by the due date in order not to be considered past due or late. In the event District or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, District shall pay in addition Bastrop's then current late payment charges on the unpaid balance of the invoice.

Section 6.02 Monthly Billing Calculations.

Bastrop will compute the sum of the base meter charge and the volume charge for Wholesale Water Service on the basis of monthly readings of the Master Meter and will bill District such sum on a monthly basis.

Section 6.03 Effect of Nonpayment.

With respect to monthly billings, if Bastrop has not received payment from District by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Bastrop will notify District of such delinquency in writing, and if District fails to make payment of the delinquent billing within thirty (30) calendar days from the date of transmittal of such written notice of delinquency from Bastrop, then Bastrop may, at its discretion, terminate or reduce the level of Wholesale Water Service to District until payment is made.

Section 6.04 Reasonableness of Rates.

District agrees that the Rates initially charged by City and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by City are subject to modification as provided herein. District agrees that it is reasonable for City to adjust the Rates periodically as provided herein and understands that any adjustments made in accordance with this Agreement are part of the consideration for this Agreement. Notwithstanding any provision to the contrary, District does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by City that is not in conformance with the terms of this Agreement.

Section 6.05 Records and Reports

The District shall promptly provide to the City upon written request, and without charge, copies of any District records or documents relating to the construction, operation, maintenance, or repair of the District Water System.

ARTICLE VII. REGULATORY COMPLIANCE

Section 7.01 Agreement Subject to Applicable Law.

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 7.02 Cooperation to Assure Regulatory Compliance.

Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE VIII. TERM, TERMINATION, DEFAULT, REMEDIES

Section 8.01 Term and Termination.

a. This Agreement shall become effective upon the Effective Date and shall extend until - _____, _____ unless terminated earlier as provided herein.

b. District may terminate this Agreement by providing not less than sixty (60) days written notice of termination to Bastrop.

c. In the event that any agreement provided for in the definition of Bastrop's System Agreements are terminated or expires, this Agreement shall be terminated and be of no further force or effect. Either party shall give thirty (30) days prior written notice of an anticipated termination or expiration of any agreement provided for in the definition of Bastrop's System Agreements.

Section 8.02 Default.

a. In the event District shall default in the payment of any amounts due to Bastrop under this Agreement, or in the performance of any material obligation to be performed by District under this Agreement, then Bastrop shall give District at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, Bastrop shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

b. In the event Bastrop shall default in the performance of any material obligation to be performed by Bastrop under this Agreement, then District shall give Bastrop at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Bastrop.

Section 8.03 Additional Remedies upon Default.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Bastrop's undertaking to provide Wholesale Water Service to the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Bastrop agrees, in the event of any default on its part, that District shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of District's obligations could not be adequately compensated in money damages alone, District agrees in the event of any default on its part that Bastrop shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Bastrop including the right to obtain a writ of mandamus or an injunction against District requiring the District to collect rates and charges sufficient to pay the amounts owed to Bastrop by District under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

ARTICLE IX. GENERAL PROVISIONS

Section 9.01 Assignability.

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 9.02 Amendment.

This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of District and Bastrop and executed by duly authorized representatives of each.

Section 9.03 Necessary Documents and Actions.

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 9.04 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Service by Bastrop to District for the District Service Area.

Section 9.05 Applicable Law.

This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 9.06 Venue.

All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 9.07 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 9.08 Duplicate Originals.

This Agreement may be executed in duplicate originals each of equal dignity.

Section 9.09 Notices.

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery the address of the other party shown below:

DISTRICT:

Attn:

DEVELOPER:

Attn:

CITY OF BASTROP: City of Bastrop
113 E. 8th Street
Bastrop, Texas 78626
Attn: City Manager

WITH REQUIRED COPY TO: Alan Bojorquez
Bojorquez Law Firm, PC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

Notices shall be deemed received on the date of hand delivery or within three (3) days of deposit in first-class mail.

Section 9.10 Consents and Approvals.

Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 9.11 Severability.

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 9.12 Records.

Bastrop and District each agree to preserve, for a period of at least two (2) years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Bastrop and District shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 9.13 State Approval; Compliance with TCEQ Rules.

Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

Section 9.14 Force Majeure.

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 9.15 Good Faith.

Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 9.16 Authority of Parties Executing Agreement, Validity.

By their execution, each of the individuals executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 9.17 Exhibits.

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A: Metes and Bounds Description of the Land
Exhibit B: Bastrop Water Conservation and Drought Contingency Plan
Exhibit C: Map Showing Locations of Water Delivery Points, Water Connection Points

Section 9.18 Effective Date.

This Agreement will be effective from and after the last date of due execution by all Parties.

CITY OF BASTROP, TEXAS

By: _____
Name: Lynda Humble
Title: City Manager
Date: _____

ATTEST: _____
City Secretary

_____ ***DISTRICT***

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF BASTROP §

This instrument was acknowledged before me the ____ day of _____, 2018, by _____, _____City of Bastrop, Texas, on behalf of City.

_____
Notary Public Signature

_____(***DEVELOPER***)
A _____
By:
A _____ company, _____

By: _____
Name:
Title: Manager
Date: _____

Attest:

_____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20___, by _____, _____of _____, a Texas _____company, _____ of _____., a Texas _____, on behalf of said _____ company as _____ of the _____.

_____
Notary Public, State of _____

Exhibit "A"

Metes and Bounds Description of the Land

Exhibit "B"

Bastrop Water Conservation and Drought Contingency Plan

Exhibit "C"

Map Showing Locations of Water Delivery Points

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 8G

TITLE:
Hold discussion regarding "grandfathered status" under Chapter 245 of the Texas Local Government Code.

STAFF REPRESENTATIVE:
Alan Bojorquez, City Attorney

BACKGROUND/ HISTORY:
Generally, the right to develop property is subject to intervening regulations or regulatory changes. The Texas Legislature altered this general rule through the adoption of Chapter 245 of Texas Local Government Code, which requires that each permit in a series of permits required for a development project be subject only to the regulations in effect at the time of the application for the project's first permit, and not any intervening regulations.

The question of whether a project should receive "grandfathered status" under Chapter 245 of the Texas Local Government Code—that is, whether a project should be exempt from current regulations—is not a straightforward one. It requires information about and research on the project itself and the regulations the developer seeks to be exempt from. The city does not currently have written processes or standards in place to make these determinations. Without written processes or standards, staff must make these determinations on a case-by-case basis.

POLICY EXPLANATION:
The City Council seeks to promote orderly, safe, and reasonable development of land within its city limits and extraterritorial jurisdiction ("ETJ"). This ordinance provides a process and criteria for the City of Bastrop to determine if a project falls within the protection of Chapter 245 of the Texas Local Government Code; that is, to determine if a project should be exempt from current regulations. This ordinance, which incorporates case law on Chapter 245, creates a procedure and standards for complying with state law while protecting the public safety and welfare of the citizens of Bastrop.

Enactment of this ordinance is discretionary. State law does not require that such an ordinance be approved. However, over the last 20 years it has become increasingly common for dynamic municipalities to enact these types of ordinances.

Staff anticipates that the regulatory changes currently being contemplated by the City Council (as part of of the *Building Bastrop* endeavor and ongoign efforts to address drainage and stormwater concerns) will increase the instances of property owners asserting rights under Chapter 245 and seeking grandfathered status.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Hold discussion regarding “grandfathered status” under Chapter 245 of the Texas Local Government Code.

ATTACHMENTS:
- Ordinance
- PowerPoint Presentation

ORDINANCE No. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, ENACTING CHAPTER 1, ARTICLE 1.20, SECTIONS 1.02.001 THROUGH 1.20.120 OF THE BASTROP CODE OF ORDINANCES; ESTABLISHING CONSTRUCTION AND DEVELOPMENT STANDARDS AND PROCEDURES FOR ASSERTION, ESTABLISHMENT, DETERMINATION, AND RECOGNITION OF POTENTIAL GRANDFATHERED DEVELOPMENT STATUS OR VESTED RIGHTS CLAIMS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; EFFECTIVE DATE; CODIFICATION; PROPER NOTICE & HEARING; POPULAR NAME; PURPOSE; AND SCOPE.

WHEREAS, the City Council of the City of Bastrop ("City Council") seeks to promote orderly, safe and reasonable development of land within the City Limits and Extraterritorial Jurisdiction ("ETJ"); and

WHEREAS, the City Council supports the rights of private property owners and advocates clarity, predictability, and efficiency in the City's regulatory program; and

WHEREAS, generally, the right to develop property is subject to intervening regulations or regulatory changes; and

WHEREAS, the Texas Legislature altered this general rule, through adoption of Chapter 245, Texas Local Government Code ("LGC 245" or "Chapter 245"), by requiring that each permit in a series of permits required for a development project be subject only to the regulations in effect at the time of the application for the project's first permit, and not any intervening regulations; and

WHEREAS, the City Council strives to reduce instances of regulatory ambiguity, and to provide applicants with an increased level of certainty and predictability as to which rules will govern different phases of development projects; and

WHEREAS, with certain exceptions, the owners and developers of projects who have diligently pursued completion of the same should not be subjected to new regulations that substantively and substantially alter how the project can be built; and

WHEREAS, the City Council finds that dormant, outdated, and stagnant projects pose a substantial harm to comprehensive planning and responsible drainage management as well as to traffic safety and human health; and

WHEREAS, the City Council favors the development of construction projects in

accordance with current regulations that are based on modern standards and state-of-the-art technology; and

WHEREAS, the City Council seeks to apply up-to-date regulatory systems to projects to the extent reasonably possible and within the confines of the law; and

WHEREAS, the determination of whether a particular project has changed so as to lose the protections granted by LGC 245 is a question that must be resolved with the City, which is the regulatory agency and property owner for purposes of LGC 245; and

WHEREAS, through LGC 245, the Texas Legislature limited the scope of rules that may be made applicable to certain construction and development projects; and

WHEREAS, the City Council intends the provisions of this Ordinance to supplement and implement LGC 245 and provide guidelines for the application and interpretation of LGC 245; and

WHEREAS, pursuant to Texas Local Government Code Chapter 51, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and that is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Chapter 211, the City Council has the authority to establish procedures for enforcing its zoning regulations and boundaries; and

WHEREAS, pursuant to Texas Local Government Code Chapter 212, the City Council has the authority to establish rules governing plats and subdivisions of land; and

WHEREAS, pursuant to Texas Local Government Code Chapter 214, the City Council has the general authority to establish rules governing the construction of housing and other structures; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Bastrop, a home-rule municipality, to adopt an ordinance establishing a framework within which property owners and the City can determine what projects have obtained Grandfathered Development Status under certain regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:

SECTION 1. FINDINGS OF FACT: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ENACTMENT: Chapter 1, Section 1.20 of the City of Bastrop Code of Ordinances is hereby established so to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION 3. REPEALER: All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

SECTION 4. SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 5. CODIFICATION: The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

SECTION 6. EFFECTIVE DATE: This Ordinance shall be effective immediately upon passage and publication as provided for by law.

SECTION 7. PROPER NOTICE & MEETING: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ and APPROVED on First Reading on the 23rd day of April 2019.

READ and ADOPTED on Second Reading on the 14th day of May 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

Attachment "A"

City of Bastrop

CODE OF ORDINANCES

CHAPTER 1: GENERAL PROVISONS

ARTICLE 1.20: UNIFORMITY OF REQUIREMENTS

ENACTMENT PROVISIONS

1.20.001 Popular Name:
This section shall be commonly cited as the "Grandfathered Development Status Ordinance."

1.20.002 Introduction:
Texas Local Government Code Chapter 245 ("LGC 245"), provides an opportunity for landowners or developers to lock-in certain government regulations that apply to a particular development by filing a specific permit application.

1.20.003 Purpose:
This section provides standards and procedures for municipal determination of the alleged Grandfathered Development Status of development Projects. Specifically, this section is enacted to:

a. provide increased certainty and predictability in the City's regulatory process; and

b. guarantee that all Grandfathered Development Status determinations are made by the City only after the City is in receipt of all information necessary to make such a determination; and

c. provide a method of administrative review of Grandfathered Development Status Project decisions in accordance with LGC 245 and other applicable vesting laws; and

d. ensure that the City recognizes, respects, and protects all Grandfathered Development Status Projects created by LGC 245.

1.20.004 Scope:

a. This section applies to the City Limits and the Extraterritorial Jurisdiction ("ETJ").

b. This section shall only govern applications and permits covered by LGC 245.

c. This section shall not apply to permits or regulations listed as exemptions in LGC 245.004, as may be amended.

d. This section shall only govern situations involving a land use or development Project for which the owner or builder requests City approval(s), yet seeks to avoid the application of current municipal regulations by asserting Grandfathered Development Status, as provided by LGC 245.

e. This section shall not create any property rights in any application, Project, property, or person. This section shall not enlarge or expand any property right granted by LGC 245.

1.20.005 Policy:

There shall be a bias in the City of Bastrop against dormant or new land development Projects being constructed pursuant to outdated regulations previously repealed by the City Council. It is the preferred policy of the City of Bastrop that all land development Projects for which municipal permits and approvals are needed, be constructed in accordance with current municipal regulations. Limited exceptions to this general rule shall only be allowed when mandated by state law, as procedurally implemented through this section.

1.20.006 Presumption:

It is the policy of the City of Bastrop that construction, development, and/or land use permit applications filed with the City are presumed to be governed by then-current regulations. Exceptions are to be recognized as required by state law in a manner provided herein.

1.20.007 Definitions General:

Words and phrases used in this section shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the

present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

1.20.008 Definitions Specific:

Applicant: A person or entity who submits to the City an application for an approval required by the City. The term shall be restricted to include only the property owner(s), or a duly authorized agent of the property owner(s), as demonstrated in writing to the City.

Application for a Permit: The term as referenced in Texas Local Government Code Chapter 245, as may be amended. The term does not include an application to rezone property.

Board of Adjustment or Zoning Board of Adjustment ("ZBA"): The citizen board appointed by the city council pursuant to Exhibit A, Section 9, of Chapter 14 of the Bastrop Code of Ordinances, as provided by Texas Local Government Code Chapter 211.

City: The City of Bastrop, an incorporated municipality located in Bastrop County, Texas.

City Manager: The City's chief administrative officer, as appointed by the City Council. The term also includes the City Manager's designee.

City Engineer: The individual or entity employed by the City to render engineering services to the City.

City Limits: The incorporated municipal boundaries of the City of Bastrop.

Complete Application: An Application for a Permit that contains all necessary documents and any additional information necessary to comply with the City's Code of Ordinances, either at the time of submittal or within 45 days of the time of submittal.

Grandfathering Review Committee: A group consisting of the Director of Planning and Development, the City Engineer, and the Public Works Director.

Director of Planning and Development: The individual employed by the City Manager to administer land development ordinances and advise the City in relation to the administration, interpretation, and enforcement of the City's Development Code.

ETJ: The extraterritorial jurisdiction of the City of Bastrop.

Grandfathered Development Status: A recognition by the City of an applicant's ability to process a Permit application under pre-existing regulations in accordance with LGC 245.

LGC: The Texas Local Government Code.

LGC 245: Texas Local Government Code Chapter 245.

New Project: A land development endeavor over which the City's municipal regulatory jurisdiction exists that has not previously been formally considered or approved by the City, and for which one or more Permits are required to initiate, continue, or complete the endeavor.

Permit: The term as defined by Texas Local Government Code Chapter 245, as may be amended.

Project: The term as defined by Texas Local Government Code Chapter 245, as may be amended. The term refers to a specific property use and/or improvement undertaken on a particular tract of land as documented in a manner that provides the City with fair notice.

P&Z: The Planning and Zoning Commission of the City.

Public Works Director: The individual appointed by the City Manager to administer the installation and operation of city infrastructure.

1.20.009 Applicable Regulations:

a. The City shall consider the approval, disapproval, or conditional approval of an application for a Permit covered by LGC 245 solely on the basis of any municipal regulations in effect at the time the Complete Application for the Permit is filed, with the exception of those exemptions listed in LGC 245, as may be amended, and in accordance with the procedures established by this Ordinance.

b. The extent and scope of what constitutes a Project for purposes of this section and LGC 245 shall be determined by the City based upon the

information provided by the Applicant and those documents filed among the City's records.

c. The City shall not bestow any form of Grandfathered Development Status on a hypothetical undertaking that is not expressly illustrated or demonstrated to the City at the time of submission of a Complete Application.

d. Endeavors not submitted for consideration by the Applicant to the City when a prior Permit application for a Project was filed with the City shall be considered New Projects subject to the current regulations. The burden rests on the Applicant to establish that the Project for which approval is sought is the same Project to which Grandfathered Development Status allegedly attached.

1.20.010 Submission:

a. An Applicant seeking Grandfathered Development Status with the City in accordance with LGC 245 shall submit to the Planning Department a letter explaining the factual and legal bases upon which the Applicant relies.

b. The Planning Department shall prescribe a form application. Applications may be sought prior to or concurrent with the permitting process.

c. Such written submission shall include the following:

1. The name, mailing address, phone number, email address, and fax number of the Applicant;

2. The name, mailing address, phone number, email address, and fax number of the property owner, if different than the Applicant;

3. Identification of the property for which the Applicant claims Grandfathered Development Status, including a clear legal description of the exact boundaries of the property encompassed by the Project;

4. Identification of the "Project," as that term is defined in LGC § 245.001(3), as may be amended;

5. Narrative description of the development/construction Project or proposed land use for which a Permit is being sought;

6. Layout of the site, including locations of buildings, streets, utilities, fences, drives, sidewalks, drainage facilities, and any other permanent or temporary structures which may be present at the time

of application;

7. Identification of the original application for the first Permit in the series of Permits required for the Project, as described in LGC § 245.001(1) and § 245.002(a) and (b), as may be amended;
8. The date that the first Permit in the series of Permits required for the Project was filed with the City;
9. A chronology of the history of the Project, with special emphasis on facts establishing that the Project was in progress on or commenced after September 1, 1997, as required by LGC § 245.003, as may be amended;
10. Identification of each City regulation in effect at the time the original application for the Permit was filed that applies to the Project and that the Applicant contends:
    A. is grandfathered; and
    B. controls the approval, disapproval, or conditional approval of an application for a Permit, pursuant to LGC § 245.002(a) and (b), as may be amended;
11. Identification of each current City regulation for which the applicant seeks an exemption due to the grandfathered development status provided the property owner by LGC 245 or other applicable vesting laws;
12. Explanation of the applicability of any approval expirations and related requests for extension of approvals;
13. Photographs, drawings, maps, and previous approvals that would assist the Grandfathering Review Committee in making its determination regarding the application;
14. A certified land survey of topography showing existing drainage patterns and structures; and
15. Any other information or supportive materials deemed necessary and requested in writing by the Director of Planning and Development.

d. Notwithstanding the above, an Applicant may subsequently seek Grandfathered Development Status for other regulations once an initial determination has been made by the City.

e. If an Applicant contends that certain City regulations do not apply to the Project, the Applicant is expected to identify, with particularity, all

requirements that the Applicant contends do not apply to the current application. Global references to a particular ordinance, or set of criteria, may be deemed insufficient and the City may consider the request for Grandfathered Development Status determination to be incomplete and, hence, not subject to a staff determination at that time.

f. The Applicant is responsible for demonstrating to the City that the Project for which approval is sought is the same Project for which Grandfathered Development Status attached, based on fair notice provided to the City.

g. An application for recognition of Grandfathered Development Status shall not be considered to have been filed with the City, for purposes of this section or LGC 245, until such time as the application is administratively complete. In order to be administratively complete, the application must:

   1. contain all materials required by this section;
   2. be presented within the time specified by this section; and
   3. be accompanied by a check payable to the City for the full amount of the application review fee established by the City Council, as codified in the City's Fee Schedule.

1.20.011 Determination:

a. The Director of Planning and Development shall promptly forward the Application for Grandfathered Development Status, along with any supporting information or documentation provided, to the Grandfathering Review Committee for review.

b. Within fifteen (15) business days after a complete Application for Determination of Grandfathered Development Status has been filed, the Grandfathering Review Committee shall issue a written administrative determination approving the application, disapproving the application, or requesting additional information from the Applicant.

c. If the application is approved, the determination shall identify the date that the application for the original Permit was filed, and, shall identify, with particularity, which claims for Grandfathered Development Status have been recognized and which claims have been rejected.

d. Prior to rendering a determination, the City or the Applicant may request a pre-determination conference to discuss the Applicant's claim and to ensure that the nature of the claim is fully and completely understood prior to a determination being rendered. The Director of Planning and

Development and/or the Grandfathering Review Committee shall participate in the conference.

e. If the Committee does not provide a written response to the Applicant within fifteen business (15) days after the application was filed, the application is automatically deemed to have been denied.

f. The Director of Planning and Development may extend the time period established by this section upon receipt of a written request from the Applicant.

g. If the Grandfathering Review Committee requests more information from the Applicant, the fifteen (15) day time period will be tolled until the Applicant provides the request information to the Committee.

h. The Director of Planning and Development is signatory and spokesperson for the Grandfathering Review Committee, for purposes of this section.

1.20.012 Standards:

In determining whether a Project is grandfathered, the City shall consider the following:

a. **Date of first application:** Which was the first Permit application, plan for development, or plat application that gave the City fair notice of the Project and of the nature of the Permit sought, and on what date was that document filed with the City?

b. **Fair Notice:** What was the nature and extent of proposed development shown on the Permit application, plan for development, or plat application identified in (a)?

c. **Consistency:** Is the current Project related to and consistent with the nature and extent of proposed development identified in (b)?

d. **Subsequent development:** What is the nature and extent of any development of the property, including any permitting or construction activity, that occurred after the date identified in (a)?

e. **Prior vested rights determinations:** Have there been any prior vested rights determinations made for development of the property, and what were those determinations?

f. **Regulations:** What are the effective dates of each of the regulations that the Applicant contends do not apply?

g. **Expiration of prior applications:** Have any prior approved applications for the property expired or been terminated in accordance with the law?

h. **Exemptions:** How do the exemptions in LGC 245.004, as may be amended, apply?

i. **Expiration of Project:** Has the Project expired in accordance with Section 1.20.019 of this ordinance or other applicable regulations?

j. **City Code:** Do any other factors established by the City Code apply?

k. **State Law:** Do any other factors established by LGC 245 or other state laws apply?

1.20.013 Reconsideration:

a. If any person believes that the Grandfathering Review Committee's determination under this section is in error, the person shall have the right to request reconsideration. To be actionable, a request for reconsideration by the Grandfathering Review Committee must:

1. be filed with the Director of Planning and Development in writing within fifteen (15) business days of the date of the Grandfathering Review Committee's previous determination or the date of automatic denial;

2. state the reasons why the previous determination should be reversed or modified;

3. present information that has not previously been presented for consideration by the Grandfathering Review Committee;

4. provide an explanation of the legal and factual grounds of the request; and

5. be accompanied by payment of the reconsideration fee established by the City Council, as codified in the City's Fee Schedule.

b. The Grandfathering Review Committee shall, within fifteen (15) business days of receipt of a Request for Reconsideration that conforms to this section, issue an administrative determination or a statement declining reconsideration. If the Grandfathering Review Committee fails to issue a written determination or statement declining reconsideration within fifteen (15) business days after an application has been received at City Hall, the request for reconsideration is deemed to have automatically been declined.

c. No person may appeal the Grandfathering Review Committee's determination under this section without first seeking reconsideration.

1.20.014 Appeal to City Manager:

The Grandfathering Review Committee's determination denying an application seeking recognition of Grandfathered Development Status shall automatically be submitted by the City to the City Manager for determination in writing within fifteen (15) business days of the date that the Grandfathering Review Committee declined to reconsider the application. If the City Manager fails to make a written determination within fifteen (15) business days after an appeal has been received, then the appeal is deemed to have automatically been denied.

1.02.015 Appeal to Board of Adjustment:

a. If any person believes that the City Manager's determination under this section is in error, the person shall have the right to appeal such determination to the City's Zoning Board of Adjustment ("ZBA"). To be actionable, an appeal must be filed with the ZBA in writing within fifteen (15) business days of the date of the City Manager's determination or the date of the City Manager's automatic denial. The written request for an appeal must include:

    1. a statement that the appellant sought an appeal from the City Manager, and that the appeal:

        A. was denied; or

        B. yielded an erroneous determination regarding the Project's eligibility for Grandfathered Development Status.

    2. a statement of the reasons why the determination should be reversed or modified;

    3. an explanation of the legal and factual grounds of the appeal; and

    4. payment of the appeal fee established by the City Council, as codified in the City's Fee Schedule.

b. The appellant may also request that the ZBA grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in the city's code of ordinances, as amended.

c. The ZBA shall convene a meeting and act upon an appeal within thirty (30) days of receipt of a written appeal that conforms to this section. If the ZBA fails to make a written determination within thirty (30) days after an appeal has been received, then the appeal is deemed to have automatically been denied.

d. Notice and a public hearing shall be provided for as established in the code for zoning variance requests.

1.20.016 Extensions:

Any time period established under this section may be extended by the City Manager to a date certain, upon receipt of a written request from the Appellant.

1.20.017 Judicial Review:

Should the Appellant be dissatisfied with the actions of the ZBA, the Appellant may pursue all legal remedies to review the ZBA's decision as set forth in LGC Section 211.011.

1.20.018 Binding Nature:

a. The City's determinations under this Article, if not timely appealed, shall be immediately filed in the City's files related to the Project and the determination shall be considered binding upon the City, the Appellant, and the property owner (if not the Appellant) for the duration of the Project.

b. Notwithstanding the binding nature of a determination issued by the Grandfathering Review Committee or City Manager, and any ruling by the ZBA, the City and the property owner may, at any time, enter into a Development Agreement or negotiate the enactment of a Planned Development District that, to the extent authorized by law, modifies the determination and the applicable development regulations to be applied to the Project. The issue of which rules apply to a Permit application may be resolved by mutual agreement. The agreement may contain special terms and conditions, as deemed necessary to protect the public interest.

c. The City's recognition of Grandfathered Development Status does not prevent the City from requiring the submission of updated engineering reports, site plans, or drainage plans, as may be applicable under current regulations.

1.20.019 Expirations:

a. **Permits:** Permits issued by the City of Bastrop that are subject to LGC 245 but do not expressly contain an expiration date, shall expire by operation of law two (2) years after issuance. This subsection shall not apply to Permits pursuant to which progress has been made toward the completion of the Project, as determined by LGC 245.005(c), as may be amended.

b. **Projects:** Projects subject to LGC 245 shall expire by operation of law

five (5) years after an application was filed for the first Permit necessary for the Project. This subsection shall not apply to Permits for which progress has been made toward the completion of the Project, as determined by LGC 245.005(c), as may be amended.

c. **Incomplete Applications:** Applications shall expire by operation of law 45 days after the date the application is filed if the applicant fails to provide documents or other information necessary to comply with the Code of Ordinances, and if the City provided, not later than ten (10) business days after the date the application is filed, written notice to the applicant of its failure to provide such documents or information.

1.20.120 Transferability:

Grandfathered Development Status, as recognized by the City pursuant to this section, runs with the land. Thus, Grandfathered Development Status is transferable to subsequent owners and occupants.

Grandfathered Development Status Discussion



April 9, 2019

Alan Bojorquez
City Attorney

BASTROPTX
Heart of the Lost Pines
Est. 1832

BOJORQUEZ LAW FIRM, PC
TexasMunicipalLawyers.com

State Law

- **Generally,** the right to develop property is subject to intervening regulations or regulatory changes.
- **Exception:** Texas Local Government Code Chapter 245 requires that a development ***Project*** be subject only to the regulations in effect at the time of the ***Application*** for the ***Project's*** first ***Permit***.

Current Practice

- Bastrop does not have written criteria or process in place for determining when a Project is “grandfathered” under Tex. Loc. Gov’t Code Ch. 245 (i.e., when old rules rather than current regulations).

- Grandfathering decisions are made on a case-by-case basis.

Essentials of this Ordinance

1. **Provides certainty and predictability** in the city's regulatory process;
2. **Creates a process** for property owners seeking Grandfathered Development Status (GDS);
3. **Requires relevant data** so that all GDS determinations are made by the city only after the city has received the information necessary to make such a determination;

Essentials of Ordinance *Cont'd*

4. **Provides a method** of administrative review of GDS project decisions in accordance with LGC 245 and other applicable vesting laws;
5. **Establishes standards** for determining whether a project should be grandfathered; and
6. **Ensures that the city** recognizes, respects, and protects grandfathered projects.

Key Components

- Creates a presumption (*as a policy matter*)
- Application Process
- Grandfathering Review Committee
- List of Standards
- Reconsideration by Committee
- Appeal to City Manager
- Appeal to ZBA
- Appeal to Court *(as per state law)*

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 9A

TITLE:
Receive Presentation and Update from the YMCA of Austin/Bastrop Branch.

STAFF REPRESENTATIVE:
James Altgelt, Director of Public Safety/Chief of Police
Terry Moore, YMCA of Austin/Bastrop Branch Executive Director

BACKGROUND/HISTORY:
On November 13, 2018, City Council approved a Community Support Service Agreement with the YMCA of Austin/Bastrop Branch (YMCA) to provide recreational services and operate the Bastrop State Park Pool in the amount of Seventy-Nine Thousand Eight Hundred and 00/100 Dollars ($79,800) for FY 2018-2019. The Community Support Service Agreement requires that the YMCA attend a regular meeting of the City Council on a quarterly basis to make a public presentation on their progress related to the Scope of Services identified in the agreement.

The Bastrop YMCA provides quality recreational programs for the community in partnership with the City of Bastrop. The FY 2018-2019 Community Support Service Agreement requires that recreational programs and activities be designed to benefit and include persons of all backgrounds. The following services are required to be provided during this agreement period:

- Youth sports such as soccer, tennis, and volleyball
- Monthly enrichment programs such as art and nutrition
- Weekly health and wellness programs
- Operate and manage the State Park Pool with aquatic activities including swim lessons, water fitness, open and public swim, and youth job opportunities
- Family park events, including but not limited to Safety Month, Field Days, Halloween Bash, Happy Healthy New Year's Bash, and Movies in the Park
- Outreach programs such as youth summer programming, pickleball, teen events, and senior programming

POLICY EXPLANATION:
The City Council's focus areas of Economic Vitality, Fiscal Responsibility, Organizational Excellence, and Unique Environment are supported through this partnership for recreational services and through the programs offered to our customers by the YMCA. The services outlined in the Community Support Service Agreement with the YMCA also support the following goals and objectives of the City of Bastrop Comprehensive Plan 2036:

- **Goal 3.1:** *Provide adequate and appropriate public facilities and services to maintain the safety and quality of life of residents, visitors, and workers in Bastrop*
- **Goal 3.3:** *Engage in partnerships with other public entities to maximize the utility of, and access to public buildings and grounds.*

    - *Objective 3.3.1:* Maintain and/or engage in inter-local agreements with other public or nonprofit entities to enable joint program development
- **Goal 7.3:** *Meet future recreational demand through adjustments to the City's operational capacity*

ATTACHMENTS:

- Power Point Presentation

2nd QUARTER REPORT



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

EVERYONE GETS TO PLAY AT

- 2019 Membership
  Jan-Mar is up 15% over 2018
  - Participation in programming is up 11%





OUTREACH
Hands Up High Ministry Movie Night
- Children's Activities before movie starts

Spring Break Camp
- w/Friendship Bible Baptist Church

Membership For All - Financial Assistance Program

At the Y, strengthening community is our cause. Every day, we work side-by-side with our neighbors to make sure that everyone, regardless of age, income or background, has the opportunity to learn, grow and thrive. Each year, we provide over two million dollars in financial assistance locally, thanks to generous gifts from our members and donors through our annual giving campaign, grants and special events.

COMMUNITY SUPPORTING












2019 Goal for Bastrop is $38,000. During the campaign period, the community raised $30,000 through special events, rallies, smoothie days, and philanthropy giving.

YOUTH SPORTS AT the YMCA



25 Youth Participants in Winter Track

- Association Meet was held in Bastrop with 2 other branches participating.
- 100 additional runners with approximately 200 additional spectators.



44 Youth participated in the free 4 week tennis clinic.





Youth Soccer registration is up from 2018 by 72%.

PROGRAMMING AT the YMCA



Ballet Ages 4-11


Gymnastics
Ages 5-12



Science Explorers

Parent/Child
Programs Ages 1-4





Women's Self Defense Seminar

- Community CPR
- Powerful Tools for Caregivers
- Kids Fit Dance
- Outdoor Fitness

ACTIVE OLDER ADULTS AT the YMCA



Fitness Classes:

- AOA Fitness
- CT AOA
- Hatha Flow Yoga
- Gentle Yoga
- Chair Yoga
- Cardio Dance
- And more….



Member Socials:
Mondays at 1:30pm

The Y welcomes the following insurance plans:

- Silver Sneakers
- AARP Renew
- Silver Renew Active



LOOKING AHEAD

- Movies in the Park Series
- Healthy Kids Day
- Big Game Day
- Extended Hours at the OFU
- Adult Soccer
- Opening of the Bastrop State Park Pool
- Splash Day
- Swim Lessons
- Splashball
- Swim League
- Water Aerobics
- Theme Camp
- Summer Mini Camps



STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 9B

TITLE:
Receive Presentation and Update from the Bastrop Opera House.

STAFF REPRESENTATIVE:
James Altgelt, Director of Public Safety/Chief of Police
Lisa Holcomb, Bastrop Opera House Executive Director

BACKGROUND/HISTORY:
On November 13, 2018, City Council approved a Community Support Service Agreement with the Bastrop Opera House to provide services associated with operating, marketing, and providing cultural art and theater services in the amount of Ninety-Two Thousand Five Hundred and 00/100 Dollars ($92,500) for FY 2018-2019. The Community Support Service Agreement requires that the Bastrop Opera House attend a regular meeting of the City Council on a quarterly basis to make a public presentation on their progress related to the Scope of Services identified in the agreement. Those services include:

- Presenting an annual season of theater performances and productions designed to enrich the authentic Bastrop experience
- Increase overnight visitation by appealing to out of town visitors.

POLICY EXPLANATION:
Chapter 351.101 of the Texas Local Government Code authorizes the use of Hotel Occupancy Tax (HOT) revenue for the encouragement, promotion, improvement, and application of the arts. The statute also allows for advertising and conducting of promotional programs to encourage tourists to visit preserved historic sites. The services outlined in the Community Support Service Agreement with the Bastrop Opera House also support the following goals and objectives of the City of Bastrop Comprehensive Plan 2036:

- **Goal 8.1:** *Leverage existing downtown assets to spur additional business activity*
  - *Objective 8.1.4:* Create multiple downtown destination events that rely on Bastrop's cultural assets
- **Goal 8.3:** *Bolster family and heritage tourism assets*
  - *Objective 8.3.1:* Diversify family-orientated tourism offerings
  - *Objective 8.3.3:* Solicit support for historical structures and landmarks

ATTACHMENTS:
- Power Point Presentation

Bastrop Opera House Quarterly Report









The Cemetery Club

January 11th – 26th 2019







February 14th



A Time for Love; or, Somewhere in Bastrop









Expressions Of African-American Culture
February 16th-17th 2019

Trip The Light Fantastic

February 23, 2019














5


Texas Free!
Victor OR Death







Guy Forsyth Concert March 9th, 2019

March 17th, 2019











DRACULA: The Musical?
March 29th – 13th, 2019







Bastrop Opera House Performing Arts Youth Academy





AACTFest Competition

Ticket Sales January – March, 2019
Total Tickets - 1354
Total Tickets sold to patrons from outside of Bastrop County - 787
Total Tickets sold to patrons within Bastrop County - 567

Volunteer Hours January – March 2019
536 Volunteer Hours

Includes:
Box office/concession
Tech/Lights /Sound
Stage Managing/Set Design

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 9C

TITLE:
Receive Presentation and Update from the Bastrop County Historical Society.

STAFF REPRESENTATIVE:
James Altgelt, Director of Public Safety/Chief of Police
Kaye Sapikas, Bastrop County Historical Society Director

BACKGROUND/HISTORY:
On November 13, 2018, City Council approved a Community Support Service Agreement with the Bastrop County Historical Society to provide services associated with operating, marketing, and providing museum and visitor center services in the amount of One Hundred Forty-Six Thousand Nine-Hundred Thirty-Seven and 00/100 Dollars ($146,937) for FY 2018-2019. The Community Support Service Agreement requires that the Bastrop County Historical Society attend a regular meeting of the City Council on a quarterly basis to make a public presentation on their progress related to the Scope of Services identified in the agreement. The funds were awarded to the Bastrop County Historical Society according to the different functions the organization provides, as outlined in the Scope of Services. Those services and amounts include:

- $115,000 for the operation of the Bastrop County Historical Society Museum and Visitor Center
- $34,893 for historic preservation efforts
- $9,944 for the annual Holiday Tour of Homes

POLICY EXPLANATION:
Chapter 351.101 of the Texas Local Government Code authorizes the use of Hotel Occupancy Tax (HOT) revenue for the operation of visitor information centers as well as historical preservation activities and promotional programs to encourage tourist visits. The services outlined in the Community Support Service Agreement with the Bastrop County Historical Society also support the following goals and objectives of the City of Bastrop Comprehensive Plan 2036:

- **Goal 8.1***: Leverage existing downtown assets to spur additional business activity*
  - *Objective 8.1.3:* Enhance the offerings available at the Bastrop Museum and Visitor Center
  - *Objective 8.1.4:* Create multiple downtown destination events that rely on Bastrop's Cultural Assets
- **Goal 8.3:** *Bolster family and heritage tourism assets*
  - *Objective 8.3.1:* Diversify family-orientated tourism offerings
  - *Objective 8.3.3:* Solicit support for historical structures and landmarks

ATTACHMENTS:

- Power Point Presentation

Bastrop
MUSEUM & VISITOR CENTER
of the Bastrop County Historical Society

Bastrop City Council – April, 2019

HOT Fund Presentation

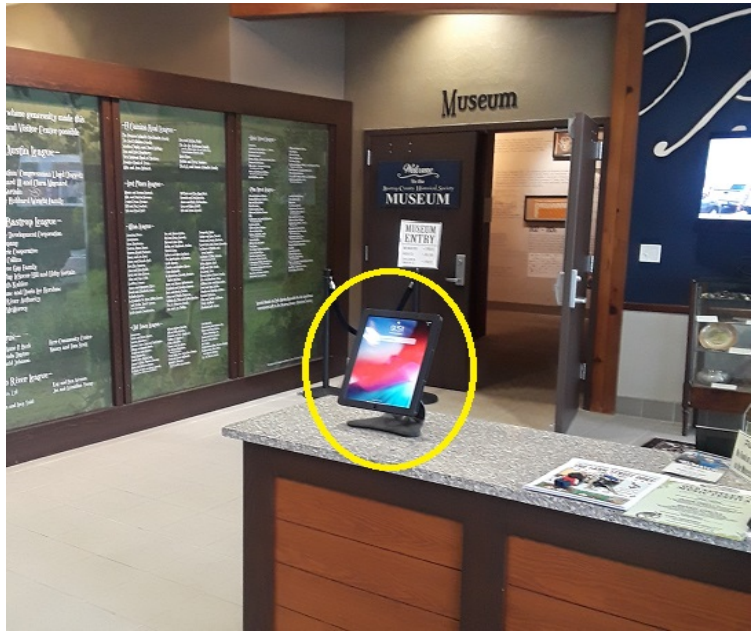






Visitor Center – 2nd Quarter Highlights

Best of Awards, Interactive Activities









Visitor Center – 2nd Quarter Highlights

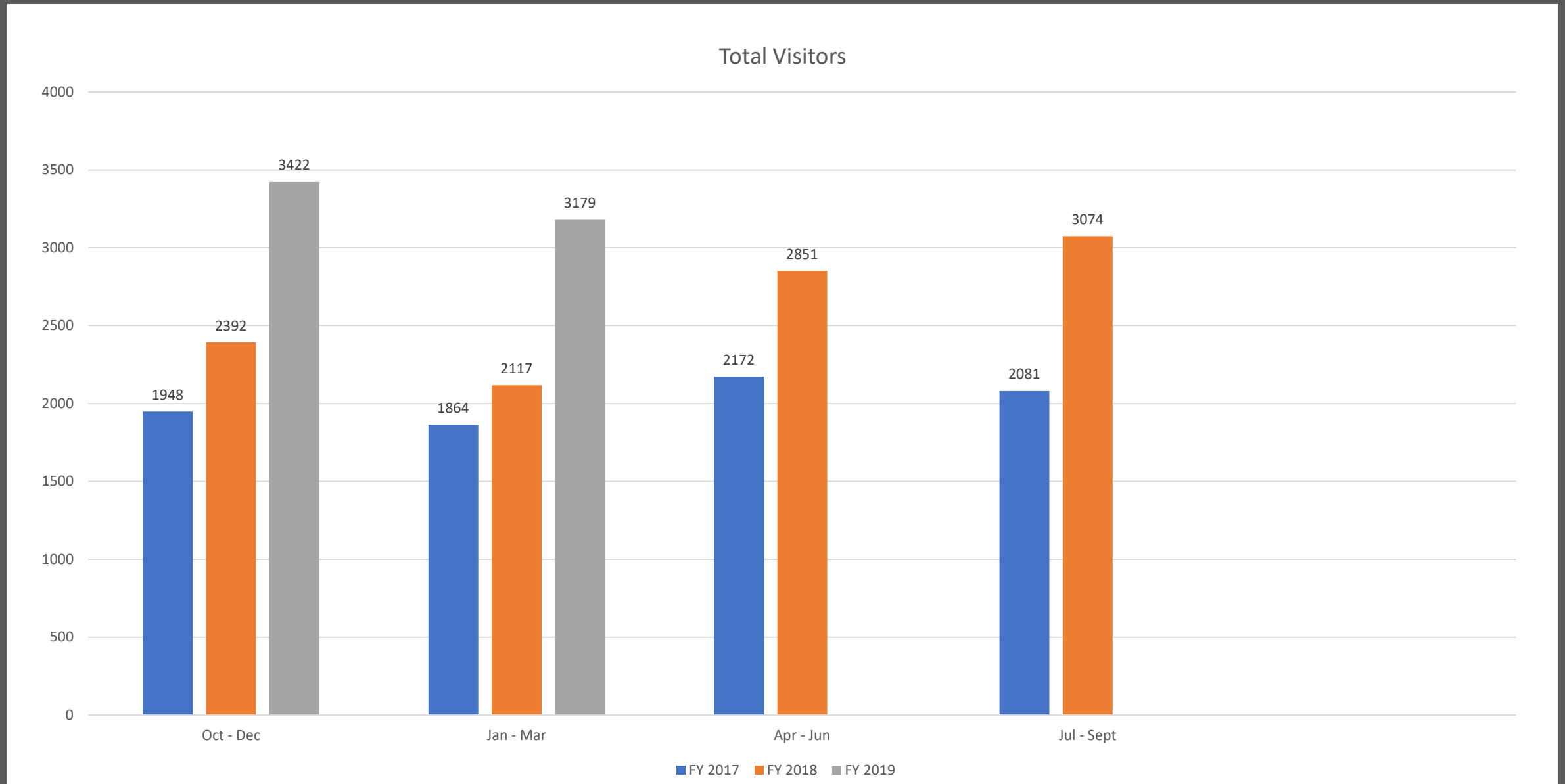
Interactive Activities – Kiosk, firefighter outfit, photo op with old fire truck, picture scavenger hunt







Community Support

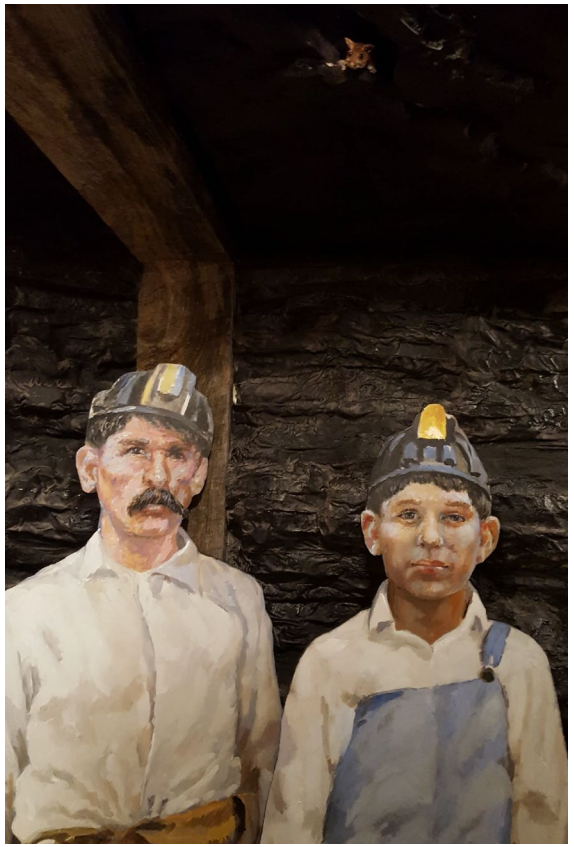

Total Visitors
4000
3500
3000
2500
2000
1500
1000
500
0
1948
2392
3422
1864
2117
3179
2172
2851
2081
3074
Oct - Dec
Jan - Mar
Apr - Jun
Jul - Sept
FY 2017
FY 2018
FY 2019

Volunteer Hours

- Visitor Center 240

- Dollar Value = $5,520 ($23 hr.)

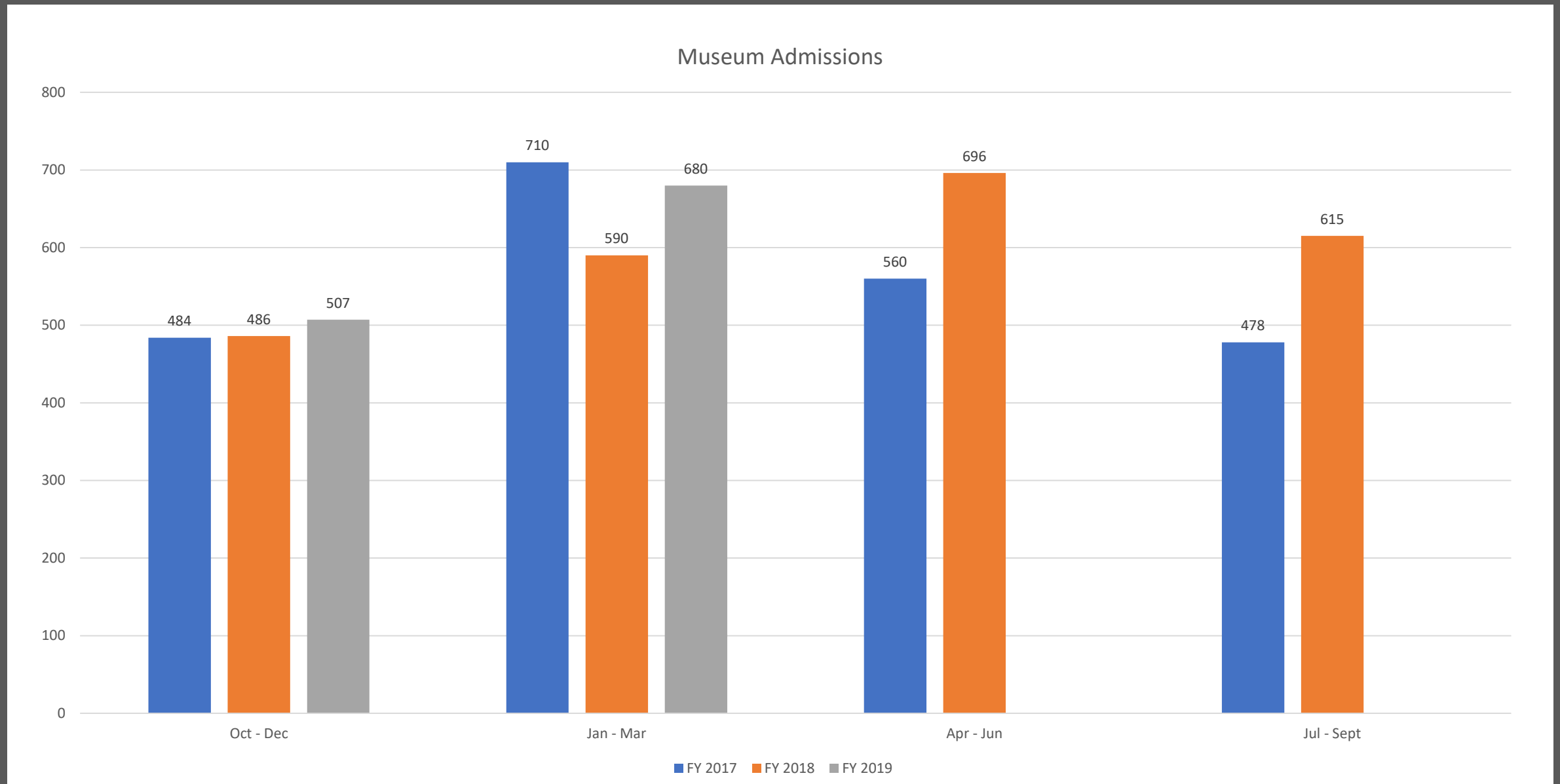






Museum Highlights

Final Permanent Exhibit - Coal, Name the Mouse - Riskers


Museum Admissions
800
700
600
500
400
300
200
100
0
484
486
507
710
590
680
560
696
478
615
Oct - Dec
Jan - Mar
Apr - Jun
Jul - Sept
FY 2017
FY 2018
FY 2019





Special Exhibits

Maps, Episcopal Church – 150 Years







Quarterly Speaker Meetings

Genealogy Meets DNA (October), Research Success Stories (January), Episcopal Church (April)

Preservation & Promotion

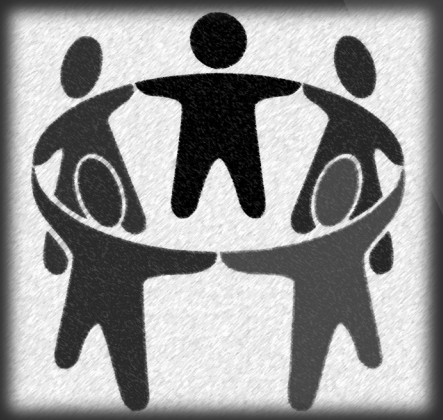
- Received 141 new acquisitions.
- Assisted 46 individuals doing historical research.
- **Freedom Colonies** BCHS Research Library has embarked upon a research project centering on the location of the Freedom Colonies in Bastrop County. These colonies were formed from the end of the Civil War until 1920.
    - The team (currently 18 members) meets every Thursday morning in the Kerr Community Center. About 80% of the members are descendants of Freedom Colony settlers. They use their personal connections to obtain oral interviews of the family folk lore and history and are gathering archival material and artifacts to be used in a Special Exhibit on Freedom Colonies to run during the months of June, July and August of this year.
    - Other participants come from the Smithville Heritage Society, the Elgin Depot Museum, the McDade Museum, the Sayersville Historical Association, a historical archaeologist from the Texas State Archaeological Society and The Fayette County Historical Association. Newspaper articles relative to the endeavor have been published in the Elgin Courier, The Bastrop Advertiser and the Austin American-Statesman.

Preservation & Promotion

- Assisted Robbie Sanders with completing the article “Never the Same, How WWII Transformed Bastrop” that she wrote for Texas Historical Foundation and appeared in Texas Heritage Magazine, Volume 1 2019.
- Archivist and Director attended the Real Places Conference in January hosted by the Texas Historical Commission.

Volunteer Hours

- Museum
  - 355*
- Dollar Value = $8,165



*These do not include the hours contributed by our dedicated Board of Trustees or Museum Curator throughout the year.

THANK YOU!

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 10

TITLE:

CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Citizens' Comment portion of the Council meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible future action.

To address the Council concerning any item on the agenda, please submit a fully completed request card to the City Secretary prior to the start of the meeting.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of the Council, as a body, or any member or members of the Council individually or collectively, or members of the City's staff. Accordingly, profane, insulting or threatening language directed toward the Council and/or any person in the Council's presence will not be tolerated.

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 11A

TITLE:
Consider action to approve City Council minutes from the March 26, 2019, meeting.

STAFF REPRESENTATIVE:
Lynda Humble, City Manager
Ann Franklin, City Secretary

BACKGROUND/HISTORY:
N/A

POLICY EXPLANATION:
Section 551.021 of the Government Code provides as follows:

(a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
(b) The minutes must:
1. State the subject of each deliberation; and
2. Indicate the vote, order, decision, or other action taken.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Consider action to approve City Council minutes from the March 26, 2019, meeting.

ATTACHMENTS:
- March 26, 2019, DRAFT Regular Meeting Minutes.

BASTROP CITY COUNCIL
MARCH 26, 2019

The Bastrop City Council met in Regular Meeting on Tuesday, March 26, 2019, at 5:00 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were Mayor Schroeder, Mayor Pro Tem Nelson and Council Members Ennis, Rogers, Peterson and Jones. Officers present were City Manager Lynda Humble, Deputy City Secretary Traci Chavez and City Attorney Alan Bojorquez.

EXECUTIVE SESSION – CALL TO ORDER

At 5:00 p.m. Mayor Schroeder convened the City Council into a closed executive session pursuant to Section 551.071 of the Texas Government Code to confer with City Attorney regarding status of Building Bastrop Codes.

The Bastrop City Council reconvened at 6:30 p.m. into open session to take any necessary or appropriate action on matters posted for consideration in closed/executive session.

REGULAR SESSION – CALL TO ORDER

At 6:30 p.m. Mayor Schroeder called the regular session to order with a quorum being present.

PLEDGE OF ALLEGIANCE

Zoey Croft and Alex Mitchell, Bastrop High School Student Council.

INVOCATION

Cliff Sparks, Police Chaplain gave the invocation

PRESENTATIONS

7A. Mayor's Report

7B. Councilmembers' Report

7C. City Manager's Report.

7D. A proclamation of the City of Bastrop, Texas recognizing the month of April as Child Abuse Prevention Month for the City of Bastrop.

STAFF AND BOARD REPORTS

9C. Provide an update on the Chicken Relocation Project in Downtown Bastrop, Texas.
Chief James Altgelt presented at update to the Council. The following citizens spoke to Council on this item.

Herb Goldsmith 1105 Pecan St. Bastrop, Tx 78602 979-203-1150	Shawn Pletch 1507 Pecan St. Bastrop, Tx 78602	Deborah Johnson 1109 Pecan St. Bastrop, Tx 78602 512-657-4275	Glen Johnson 1109 Pecan St. Bastrop, Tx 78602 512-657-5687

WORK SESSION/BRIEFINGS

8A. Receive presentation and discussion regarding update to the Transportation Master Plan, Chapter 5, Thoroughfare Plan by Tom Grant with Kimley-Horn.
City Manager Lynda Humble, presented this item to Council and introduced Mr. Grant.

8B. Receive presentation and hold discussion regarding the analysis of Gill's Branch 2-D Modeling from Paul Morales of Halff Associates.
Engineer Paul Morales presented this item to Council.

8C. Receive presentation from Specialized Public Finance, the City's Financial Advisors, on utility system revenue bond projects and bond issuance timeline.
Financial Advisor Dan Wegmiller presented this item to Council.

STAFF AND BOARD REPORTS

9A. Receive Monthly Report from Visit Bastrop.
President and CEO Susan Smith presented this item.

9B. Receive Quarterly Report on the Bastrop Convention & Exhibit Center.
Convention Center Director Kathy Danielson presented this item.

9D. Receive presentation on the unaudited Monthly Financial Report for the period ending February 28, 2019
Chief Financial Officer Tracy Waldron presented this item.

9E. Receive Monthly Development Update.
Director of Planning & Development Matt Jones presented this item.

At 9:37 p.m. Mayor Schroeder called a recess. At 9:42 p.m. Mayor Schroeder called the meeting back to order.

CITIZEN COMMENTS
None

CONSENT AGENDA

A motion was made by Mayor Pro Tem Nelson to approve item 11A listed on the Consent Agenda after being read into the record by Deputy City Secretary, Traci Chavez. Seconded by Council Member Peterson, motion was approved on a 5-0 vote.

11A. Consider action to approve City Council minutes from the March 12, 2019, regular meeting

ITEMS FOR INDIVIDUAL CONSIDERATION

12A. Consider action and approve Resolution No. R-2019-29 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules).

Presentation was made by Assistant Director of Planning and Zoning, Jennifer Bills.

A motion was made by Council Member Jones to approve Resolution No. R-2019-29 for 400 Magnolia Street, seconded by Council Member Peterson, motion was approved on a 5-0 vote.

A motion was made by Council Member Jones to approve Resolution No. R-2019-29 for 1515 Chestnut Street, seconded by Council Member Peterson, motion was approved on a 5-0 vote.

A motion was made by Council Member Jones to approve Resolution No. R-2019-29 for 2309 Water Street, seconded by Council Member Ennis, motion was approved on a 5-0 vote.

A motion was made by Council Member Jones to approve Resolution No. R-2019-29 for 2407 Pecan Street, seconded by Council Member Peterson, motion was approved on a 5-0 vote.

12B. Consider action to approve first reading of Ordinance No. 2019-05 of the City Council of the City of Bastrop, Texas amending the City of Bastrop, Texas Code of Ordinances, Chapter 3 Building Regulations, Article 3.17 Flood Damage Prevention, Section 3.17.007 Administration to allow the City Manager to appoint a designee to serve as Floodplain Administrator; repealing conflicting provisions; providing for severability; proper notice and meeting; establishing for an effective date; and move to include on the April 9, 2019 consent agenda for second reading.
Director of Planning & Development Matt Jones presented this item to Council.

A motion was made by Council Member Jones to approve on first reading and move to consent agenda on April 9, 2019, seconded by Mayor Pro Tem Nelson, motion was approved on a 5-0 vote.

12C. Consider action to approve Resolution No. R-2019-30 of the City Council of the City of Bastrop, Texas approving a Professional Services Agreement between the City of Bastrop and SimpleCity Design, LLC dated February 6, 2019 to nullify the previous contract dated August 30, 2018 for Zoning and Sign Ordinances Update and replace those services with creation of the Bastrop Building Block (B^3) Code, B^3 Pattern Book, and Technical Criteria Manual; and adding additional services for Urban Design Services for Thoroughfare Master Plan and Internal Development Process Alignment for B^3 Code in the amount of Two Hundred Fifty-Six Thousand Six-Hundred ($256,600.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
City Manager Lynda Humble presented this item to Council.

A motion was made by Council Member Jones to approve Resolution R-2019-30, seconded by Council Member Peterson, motion was approved on a 5-0 vote.

WORK SESSIONS/BRIEFINGS

8D. Hold discussion regarding Parking Standards for Building Bastrop Codes.
Director of Planning & Development presented this item to Council.

8E. Discussion regarding Mobile Food Vehicle Pilot Program
Director of Planning & Development Matt Jones and Assistant Planning Director Jennifer Bills presented this item to Council.

8F. Review Established Purpose Statement and Evaluation Criteria to create Policy Statement for Council adoption for International Code Reviews by Construction Standards Board and Staff.
Director of Planning & Development Matt Jones presented this item to Council.

8G. Continue discussion from the February 26, 2019 work session regarding the creation of rates and standardized contracts for future wholesale water and wastewater customers.
Item pulled from Agenda.

8H. Receive presentation and continue discussion regarding Storm Drainage Design Manual & Ordinance.
Managing Director of Public Works and Leisure Services Trey Job presented this item to Council.

8I. Update and discussion of current Legislative Session and its impact on local municipalities.
Mayor Schroeder presented this item to Council.

ADJOURNMENT

Adjourned at 12:09 a.m. without objection.

APPROVED: ATTEST:

_____ _____

Mayor Connie B. Schroeder Deputy City Secretary Traci Chavez

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM:** 11B

TITLE:
Consider action to approve second reading of Ordinance No. 2019-05 of the City Council of the City of Bastrop, Texas amending the City of Bastrop, Texas Code of Ordinances, Chapter 3 Building Regulations, Article 3.17 Flood Damage Prevention, Section 3.17.007 Administration to allow the City Manager to appoint a designee to serve as Floodplain Administrator; repealing conflicting provisions; providing for severability; proper notice and meeting; and establishing for an effective date.

STAFF REPRESENTATIVE:
Matt Jones, Director of Planning and Development

BACKGROUND/HISTORY:
The Floodplain Administrator is responsible for administering the Flood Damage Prevention Ordinance. This Ordinance is designed to minimize flood losses in flood hazard areas by elevating, floodproofing, and otherwise protecting property from flood damage. Flood mitigation is accomplished by methods such as elevating structures, restricting or prohibiting uses, controlling the alteration of natural floodplains and streams, and regulating flood barriers. Technical training, knowledge, and skills are needed to adequately understand and administer the Flood Damage Prevention Ordinance. Currently, Section 3.17.007 appoints the City Manager as the Floodplain Administrator with no consideration to allow a designee.

POLICY EXPLANATION:
This ordinance amendment adds the text “or their designee” to allow the City Manager to appoint appropriate staff to serve as Floodplain Administrator and ensures that qualified personnel are administering the Flood Damage Prevention Ordinance. This change to the Code of Ordinances can only be made through an ordinance amendment approved by City Council. The proposed amendment would read as follows:

Section 3.17.007 Administration

(a) *Designation of the Floodplain Administrator.* The City Manager, or their designee, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this section and other appropriate sections of 44 CFR (Emergency Management and Assistance National Flood Insurance Program regulations) pertaining to floodplain management.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Consider action to approve second reading of Ordinance No. 2019-05 of the City Council of the City of Bastrop, Texas amending the City of Bastrop, Texas Code of Ordinances, Chapter 3 Building Regulations, Article 3.17 Flood Damage Prevention, Section 3.17.007 Administration to allow the City Manager to appoint a designee to serve as Floodplain Administrator; repealing conflicting provisions; providing for severability; proper notice and meeting; and establishing for an effective date.

ATTACHMENTS:
- Ordinance 2019-05

ORDINANCE NO. 2019-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE CITY OF BASTROP, TEXAS CODE OF ORDINANCES, CHAPTER 3 BUILDING REGULATIONS, ARTICLE 3.17 FLOOD DAMAGE PREVENTION, SECTION 3.17.007 ADMINISTRATION TO ALLOW THE CITY MANAGER TO APPOINT A DESIGNEE TO SERVE AS FLOODPLAIN ADMINISTRATOR; REPEALING CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROPER NOTICE AND MEETING; AND ESTABLISHING FOR AN EFFECTIVE DATE.

WHEREAS, the City Manager is the only person currently designated to serve as the Floodplain Administrator; and

WHEREAS, technical training, knowledge, and skills are required to adequately perform in the position of Floodplain Administrator; and

WHEREAS, the technical training, knowledge, and skills required for a Floodplain Administrator are separate from the training, knowledge, and skills of a City Manager; and

WHEREAS, the City Manager makes assignments, appointments, and staffing decisions based on the best qualified personnel.

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

Section 1: That Chapter 3 of the City of Bastrop, Texas Code of Ordinances, entitled "Building Regulations", Article 3.17, entitled "Flood Damage Prevention", Section 3.17.007, entitled "Administration", shall be amended as follows:

ARTICLE 3.17 - FLOOD DAMAGE PREVENTION

Section 3.17.007 Administration

(a) *Designation of the Floodplain Administrator.* The City Manager, or their designee, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this section and other appropriate sections of 44 CFR (Emergency Management and Assistance National Flood Insurance Program regulations) pertaining to floodplain management.

(b) *no change*

(c) *no change*

(d) *no change*

Section 2: In the case of any conflict between the other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

Section 3: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

Section 4: This Ordinance shall take effect upon the date of final passage noted below.

Section 5: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ and APPROVED on First Reading on the 26th day of March 2019.

READ and ADOPTED on Second Reading on the 9th day of April 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12A

TITLE:
Consider action and approve Resolution No. R-2019-34 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules).

STAFF REPRESENTATIVE:
Jennifer Bills, Assistant Planning Director



STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12B

TITLE:
Consider action to approve Ordinance No. 2019-08 of the City Council of the City of Bastrop, Texas, Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; repealing all ordinances and actions in conflict herewith; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

STAFF REPRESENTATIVE:
Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:
The City of Bastrop has always used Certificate of Obligation Bonds to finance water and wastewater infrastructure improvements. This is the first time that the City will be establishing a Financing Program to issue Revenue Bonds that will be solely supported by revenue generated by the Utility Fund.

This Master Ordinance is the document that establishes the Utility System Revenue Financing Program, that will be used to fund projects in the Water and Wastewater Capital Improvement Plan. Once this Master Ordinance is approved, any future issuance will be approved through a Supplemental Ordinance specific to that issuance. The City is working with our Financial Advisors to develop a schedule for issuing bonds, that will be in line with the project draw-down schedules. This way, the Utility Fund will receive the funds when needed. The debt created by these revenue bonds will be paid for by the rate payers through utility fees along with Impact Fees collected through future development.

A Utility System Capital Improvement Plan for water and wastewater, including new plants for both utilities, was included in the FY 2019 adopted budget, which documenting the funding source(s) for each. There is existing fund balance in the Capital Projects Fund that has been earmarked to pay for the design of these projects. However, once these projects reach construction, revenue bonds will be necessary.

Because the Utility System is considered an Enterprise Fund, it must be operated by revenue generated by the rate payers to cover expenditures needed to provide services to those same rate payers. The rate consultant has been working on establishing the model that rate calculations to be determined for a five (5) to ten (10) year period. Once completed, Staff will discuss the model with Council this summer during the budget process anticipating a January 1, 2020 effective date for any approved changes to the Rate Ordinance.

POLICY EXPLANATION:
City Charter Sec. 7.01 – Powers to Issue
In keeping with state law, the City shall have the power to borrow money on the credit of the City for any public purpose not now or hereafter prohibited by state law.

Bond Council has advised that state law supersedes the City Charter in only requiring one reading for a Bond Ordinance.

RECOMMENDATION:
Consider action to approve Ordinance 2019-08 of the City Council of the City of Bastrop, Texas, Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; repealing all ordinances and actions in conflict herewith; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

ATTACHMENTS:
- Ordinance 2019-08

ORDINANCE NO. 2019-08

MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

Adopted April 9, 2019

ORDINANCE NO. 2019-08

MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

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EXHIBIT A – Definitions

ORDINANCE NO. 2019-08

MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

THE STATE OF TEXAS §
COUNTY OF BASTROP §
CITY OF BASTROP §

WHEREAS, the City of Bastrop (the "City") does not have any outstanding bonds payable from and secured by the net revenues of the City's water and wastewater utility system; and

WHEREAS, in order to reduce costs, increase borrowing capacity and provide the City with greater financial flexibility, the City desires to establish a new water and wastewater utility system financing program (the "Utility System Revenue Financing Program" or the "Financing Program") pursuant to which the City may issue debt obligations, including bonds, notes and other public securities and execute credit agreements, secured by and payable from a pledge of and lien on all or part of the Security which includes a senior lien on the Net Revenues of the Utility System; and

WHEREAS, Chapter 1502, Texas Government Code, as amended (the "Enabling Act"), authorizes the City to issue obligations secured by and payable from a pledge of and senior lien on all or part of the Security, as hereinafter defined, and which obligations may be issued in multiple series and issues from time to time for one or more purposes authorized by law including to: (i) pay all or part of the costs of acquiring, purchasing, constructing, improving, renovating, enlarging or equipping property, buildings, structures, facilities or related infrastructure for a utility system; (ii) create debt service reserve accounts; (iii) pay interest on obligations for the period authorized by State law; (iv) refund or cancel outstanding obligations; and (v) pay the City's costs of issuance; and

WHEREAS, the Debt, as hereinafter defined, issued pursuant to this Master Ordinance shall be secured by a lien upon the Net Revenues of the Utility System, which lien shall be a senior lien; and

WHEREAS, simultaneously with the adoption of this Master Ordinance, the City is adopting the First Supplement authorizing the initial series of obligations to be issued pursuant to the Financing Program in an aggregate principal amount of $_____; and

WHEREAS, the terms used in this Master Ordinance, including this preamble, and not otherwise defined shall have the meaning given in Exhibit "A" to this Master Ordinance attached hereto and made a part hereof.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BASTROP, TEXAS THAT:

Section 1. ESTABLISHMENT OF FINANCING PROGRAM AND ISSUANCE OF PARITY DEBT. As authorized by the Enabling Act and other applicable provisions of State law, the Utility System Revenue Financing Program is hereby established for the purpose of providing a new financing structure for the issuance of Debt by the City secured by and payable from a pledge of and lien on all or part of the Security. This Master Ordinance is intended to establish a master financing program under which Parity Debt of the Financing Program can be incurred. Each issue or series of Parity Debt shall be issued pursuant to a Supplement and no Parity Debt shall be issued unless the City has complied with this Master Ordinance. The City covenants that it will not issue obligations payable from Net Revenues with a lien superior to the lien created by this Master Ordinance.

Each Supplement shall provide for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of each issue or series of Parity Debt and any other matters related to Parity Debt not inconsistent with this Master Ordinance.

Section 2. SECURITY AND PLEDGE. (a) Pledge. Parity Debt shall be secured by and payable solely from a lien on and pledge of the following (collectively, the "Security"): (i) all Pledged Revenues; (ii) all amounts in the System Account and the Interest and Sinking Account; (iii) any additional account or subaccount that is subsequently established and so designated as being included within the Security pursuant to Section 3(f) hereof; (iv) all of the proceeds of the foregoing, including, without limitation, investments thereof; and (v) any applicable Credit Agreement to the extent set forth in such Credit Agreement. With respect to any applicable series of Parity Debt, the term "Security" shall also include all amounts in any reserve account or subaccount applicable to such Parity Debt pursuant to Section 3(e) hereof, including any reserve fund surety policy or other Credit Agreement entered into for the benefit of such account or subaccount. The City hereby assigns and pledges the Security to the payment of the Annual Debt Service Requirements on Parity Debt including the obligations due under and in connection with any Credit Agreement, to the extent set forth therein and in the related Supplement, and the Security is further pledged to the establishment and maintenance of any accounts or subaccounts which may be provided to secure the repayment of Parity Debt including the obligations due under and in connection with any Credit Agreement, to the extent set forth therein and in the related Supplement, in accordance with this Master Ordinance and any Supplement.

(b) Credit Agreements. To the extent permitted by law, including pursuant to Chapter 1371, Texas Government Code, as amended, the City may execute and deliver one or more Credit Agreements (i) to additionally secure Parity Debt or an issue or series or part of any issue or series of Parity Debt or (ii) in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing or redemption of Parity Debt or an issue or series or part of an issue or series of Parity Debt or interest on an issue or series or part of an issue or series of Parity Debt without regard to whether a Credit Agreement was contemplated, authorized or executed in relation to the initial issuance, sale or delivery of Parity Debt. Credit Agreements and the

obligations thereunder may, pursuant to their terms, constitute: (i) Parity Debt secured by a pledge of the Security on parity with all Parity Debt, (ii) Subordinated Debt secured by a pledge of the Security subordinate to Parity Debt or (iii) partially on a parity with Parity Debt and partially as Subordinated Debt.

(c) Perfection. Chapter 1208, Texas Government Code, applies to the issuance of Parity Debt and the pledge of the Security granted by the City under this Section and in any applicable Supplement, and such pledge is therefore valid, effective, and perfected. If State law is amended at any time while Parity Debt is outstanding and unpaid such that the pledge of the Security granted by the City under this Section and in any applicable Supplement is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve for the owners of Parity Debt the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 3. ACCOUNTS. (a) Creation or Affirmation of Funds. The City hereby establishes and/or affirms the creation of the following funds or accounts:

(i) the Water and Wastewater Utility System Revenue Fund or Account (the "System Account");

(ii) the Water and Wastewater Utility System Interest and Sinking Account (the "Interest and Sinking Account"); and

(iii) the Water and Wastewater Utility System Bond Proceeds Account (the "Bond Proceeds Account").

(b) System Account. Subject to the provisions of Section 4 of this Master Ordinance, moneys in the System Account may be used for any lawful purpose authorized pursuant to the Enabling Act and other State law.

(c) Interest and Sinking Account. Moneys in the Interest and Sinking Account shall be used to pay amounts due on or with respect to Parity Debt, including the principal of, premium, if any, and interest on Parity Debt as the same become due and payable (whether at Stated Maturity or upon prior redemption), and the City shall maintain such account as long as Parity Debt is Outstanding.

(d) Bond Proceeds Account. Proceeds from the issuance of Parity Debt shall be deposited from time to time upon the issuance of such Parity Debt as provided by the applicable Supplement into the Bond Proceeds Account, or any subaccount thereof created with respect to such Parity Debt. Such proceeds and the interest thereon shall remain in the Bond Proceeds Account or applicable subaccount thereof until expended to accomplish the purposes for which such Parity Debt was issued or until otherwise utilized as provided in the applicable Supplement. Amounts in the Bond Proceeds Account do not constitute Security.

(e) Reserve Accounts or Subaccounts. The City may establish a reserve account and/or any other account or subaccount pursuant to the provisions of the applicable Supplement for the purpose of paying or securing a particular issue or series of Parity Debt or any specific group of issues or series of Parity Debt and the amounts, once deposited into said accounts or subaccounts, shall no longer constitute Security for all Parity Debt but shall be held solely for the benefit of the owners of the particular issue or series or group of issues or series of Parity Debt for which such account or subaccount was established. Each such account or subaccount shall be designated in such manner as is necessary to identify the Parity Debt it secures and to distinguish such account or subaccount from any other accounts created for the benefit of any other Parity Debt. Any such reserve accounts or subaccounts shall be established in the Supplement related to such series or issue of Parity Debt. The City may, in its discretion, provide in the applicable Supplement for a surety bond, insurance policy or other Credit Agreement, to the extent then authorized by State law, to be held for the benefit of such a reserve account or subaccount.

(f) Other Accounts. The City reserves the right to establish, in connection with the issuance of Parity Debt or for other purposes, one or more additional accounts or subaccounts for such other purposes as the City may determine from time to time. The City may, at its option, declare in the action establishing the account or subaccount that the amounts in such additional account or subaccount will be either included within or excluded from the Security.

Section 4. FLOW OF FUNDS. All Gross Revenues shall be deposited in the System Account immediately upon receipt by the City. All Gross Revenues are hereby and shall be appropriated, deposited, and transferred from the System Account to the other accounts and subaccounts to the extent required for the following uses and in the order of priority shown:

> FIRST: to the payment of all necessary and reasonable Maintenance and Operating Expenses as defined herein or required by statute, including, but not limited to, Chapter 1502, Texas Government Code, as amended, to be a first charge on and claim against the Gross Revenues, including any reserve amount based upon the budgeted amount of Maintenance and Operating Expenses for the current Fiscal Year as determined by the Chief Financial Officer, which amount shall be retained in the System Account;
>
> SECOND: to the payment of amounts required to be deposited and credited to the Interest and Sinking Account to meet all financial obligations of the City relating to the Financing Program, including payments due on or with respect to the payment of Parity Debt as the same mature or come due;
>
> THIRD: pro rata, on the basis that the Outstanding Principal Amount of each particular issue or series of Parity Debt secured by a reserve account bears to the aggregate Outstanding Principal Amount of all such issues or series of such Parity Debt secured by any reserve account, to the payment of the amounts required to be deposited and credited to each reserve account created and established to maintain

a reserve in accordance with the provisions of any Supplement relating to the issuance of any Parity Debt;

FOURTH: any amounts to be deposited into any other fund, account or subaccount to the extent required pursuant to the provisions of any Supplement relating to the issuance of Parity Debt;

FIFTH: to the extent required by any resolution or other instrument adopted or approved by the City pursuant to which Subordinated Debt is issued, the amount necessary to meet all financial obligations on such Subordinated Debt and to accumulate or restore any required reserves to ensure payment of such principal, premium, and interest shall be deposited to any account or subaccount created for such purpose; and

SIXTH: all remaining Pledged Revenues shall be retained in the System Account and may be used for any lawful purpose authorized pursuant to the Enabling Act and other State law.

Section 5. RATE COVENANT. The City covenants and agrees with the Owners of the Bonds that so long as any Parity Debt, or any interest thereon, remain outstanding and unpaid, it will charge and collect for services rendered by the System amounts sufficient at all times to:

(a) Pay all operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining Net Revenues;

(b) Establish and maintain the Interest and Sinking Fund and Reserve Fund created for the payment and security of the Parity Debt; and

(c) Pay the requirements of all other outstanding lawful indebtedness of the System as and when the same becomes due.

Section 6. GENERAL REPRESENTATIONS AND COVENANTS. The City further represents, covenants and agrees that while Parity Debt or interest thereon is Outstanding:

(a) Payment of Parity Debt. The City will duly and punctually pay solely from the Security, (i) the Annual Debt Service Requirements on, and other payments with respect to, each and every Parity Debt on the dates and at the places, as such Parity Debt accrues or matures, or becomes subject to mandatory redemption prior to maturity and such payments will be made in the manner provided in said Parity Debt and the Supplement governing its issuance, according to the true intent and meaning thereof and (ii) the fees and expenses related to Parity Debt, including the fees and expenses of the Paying Agent and any registrar, trustee, remarketing agent, tender agent, or credit provider.

(b) Performance. The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Master Ordinance and in each

Supplement, and in each and every Parity Debt or evidence thereof and will take such action as is reasonably possible to perform each and every duty with respect to the Parity Debt.

(c) Redemption. The City will duly cause to be called for redemption prior to maturity, and will cause to be redeemed prior to maturity, all Parity Debt which by its terms is mandatorily required to be redeemed prior to maturity, when and as required.

(d) Determination of Annual Debt Service Requirements. For all purposes of this Master Ordinance, the judgment of the Chief Financial Officer shall be deemed final in the determination of the Annual Debt Service Requirements of the Financing Program.

(e) Lawful Authority. The City is lawfully authorized to pledge the Security herein pledged in the manner prescribed herein and has lawfully exercised such right.

(f) Preservation of Lien. Subject to the conditions set forth in subsection (g) of this Section and in Section 7 of this Master Ordinance, the City (i) will not do or suffer any act or thing whereby the pledge of the Security might or could be impaired and (ii) will take all actions to the extent necessary to ensure that the City does not do or suffer any act or thing whereby the pledge of the Security might or could be impaired.

(g) No Additional Encumbrance. The City shall not incur additional Debt secured by the Security in any manner, except as permitted by this Master Ordinance in connection with Parity Debt, unless said Debt is made junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Master Ordinance and any Supplement. Any Debt incurred by the City without satisfying the conditions for the issuance of Parity Debt, as set forth in this Master Ordinance, is hereby declared to be Subordinated Debt junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Master Ordinance and any Supplement whether such status is noted or not.

(h) Investments and Security. Moneys in all accounts and subaccounts established pursuant to this Master Ordinance and any Supplement will be held uninvested or invested and secured in the manner prescribed by State law for such funds and in accordance with the applicable Supplement and written policies adopted by the City. The investments of each account and subaccount shall be made under conditions that will timely provide money sufficient to satisfy the City's obligations hereunder and under any Supplement. Money in all accounts and subaccounts established pursuant to this Master Ordinance and any Supplement may be combined for investment purposes, as directed by the City. Such treatment does not constitute a commingling of the money in such accounts and subaccounts and the City shall keep or cause to be kept full and complete records indicating the money, investments and securities credited to each such account and subaccount. Any profits or losses from investments shall be credited or charged, respectively, on a pro rata basis among the accounts and other sources of money from which such investment was made.

(i) Records; Annual Audit. The City will keep proper books of record and account in which full, true, and correct entries will be made of all dealings, activities, and transactions relating to the

Utility System. Each year while any Parity Debt is Outstanding, the City covenants that as soon as practicable beginning with the end of the first Fiscal Year in which Parity Debt is issued, it will prepare or cause to be prepared a financial report of the Utility System for such Fiscal Year in accordance with generally accepted accounting principles, certified by a Certified Public Accountant. The City shall promptly furnish such audited financial report to the municipal bond rating agencies then maintaining a rating on Parity Debt and to any owner of Parity Debt who shall request the same in writing, and shall file or make available such audited financial report as required by each Supplement. In addition, a copy of each such audited financial report shall be retained on file in the City's finance office and open to the inspection of the owners of Parity Debt, and their respective agents and representatives, at all reasonable times during regular business hours, for at least a year following the preparation thereof.

(j) Inspection of Records. The City will permit any owner or owners of twenty-five percent (25%) or more of the then Outstanding Principal Amount of Parity Debt at all reasonable times to inspect all records, accounts, and data of the City relating to the Utility System and the Financing Program, except such records as federal or State law may designate as privileged and exempt from disclosure.

(k) Title. The City has or will obtain lawful title to the lands, buildings, structures and facilities constituting the Utility System, that it warrants that it will defend the title to all the aforesaid lands, buildings, structures and facilities, and every part thereof, for the benefit of any Owner of the Parity Debt, against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Parity Debt in the manner prescribed herein, and has lawfully exercised such rights.

(l) Liens. The City will from time to time and before the same become delinquent pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon it, or the Utility System; it will pay all lawful claims for rents, royalties, labor, materials and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the City.

(m) Operation of Utility System. The City will, while the Parity Debt is Outstanding and unpaid, continuously and efficiently operate the Utility System, and shall maintain the Utility System in good condition, repair and working order, all at reasonable cost. Except as may be authorized by law, the City shall not provide any free service from the Utility System.

(n) Sale or Disposal of Property. While the Parity Debt is Outstanding and unpaid, the City will not sell, convey, mortgage, encumber, lease or in any manner transfer title to, or otherwise

dispose of the Utility System, or any significant or substantial part thereof; provided that whenever the City deems it necessary to dispose of any property, machinery, fixtures or equipment, it may sell or otherwise dispose of such property, machinery, fixtures or equipment when it has made arrangements to replace the same or provide substitutes therefor, unless it is determined by an Authorized Representative that no such replacement or substitute is necessary; and, provided further, that the City retains the right to sell, convey, mortgage, encumber, lease or otherwise dispose of any significant or substantial part of the Utility System if (i) the Authorized Representative delivers a certificate to the City Council to the effect that, following such action by the City, the Utility System is expected to produce Gross Revenues in amounts sufficient in each Fiscal Year while the Parity Debt is to be Outstanding to comply with the obligations of the City contained in this Master Ordinance, (ii) the City Council makes a finding and determination to the same effect as the certificate of the Authorized Representative set forth in (i) above and (iii) for insured Parity Debt, the Net Revenues for the Fiscal Year prior to such sell, conveyance, mortgage, encumbrance, lease or disposal of any significant or substantial part of the Utility System are at least equal to 1.30 times the average Annual Debt Service Requirements or for uninsured Parity Debt, each Rating Agency then maintaining a rating on such Parity Debt delivers a letter to the City to the effect that such sale, conveyance, mortgage, encumbrance, lease or other disposition of a significant or substantial part of the Utility System will not cause the Rating Agency to withdraw or lower the rating then in effect. Proceeds from any sale hereunder not used to replace or provide for substitution of such property sold, shall be used for improvements to the Utility System or to purchase, redeem or defease Parity Debt.

(o) Insurance. (i) The City shall cause to be insured such parts of the Utility System as would usually be insured by municipal corporations operating like properties, with a responsible insurance company or companies, against risks, accidents or casualties against which and to the extent insurance is usually carried by municipal corporations operating like properties, including, to the extent reasonably obtainable at reasonable cost, fire and extended coverage insurance, insurance against damage by floods, and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless the City Attorney of the City gives a written opinion to the effect that the City is not liable for claims which would be protected by such insurance. At any time while any contractor engaged in construction work shall be fully responsible therefor, the City shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the Owners and their representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the City shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the City. The proceeds of insurance covering such property are hereby pledged as security for the Parity Debt and, together with any other funds necessary and available for such purpose, shall be used by the City for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the Utility System shall be used promptly as follows:

(i) for the redemption prior to maturity of the Parity Debt, ratably in the proportion that the Outstanding principal of each series of Parity Debt bears to the total Outstanding

principal of all Parity Debt, provided that if on any such occasion the principal of any such series is not subject to redemption, it shall not be regarded as Outstanding in making the foregoing computation; or

(ii) if none of the Outstanding Parity Debt is subject to redemption, then for the purchase on the open market and retirement of said Parity Debt in the same proportion as prescribed in the foregoing clause (i), to the extent practicable; or

(iii) to the extent that the foregoing clauses (i) and (ii) cannot be complied with at the time, the insurance proceeds, or the remainder thereof, shall be deposited in a special and separate trust fund, at an official depository of the City, to be designated the Insurance Account. The Insurance Account shall be held until such time as the foregoing clauses (i) and/or (ii) can be complied with, or until other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first.

(2) The foregoing provisions of (1) above notwithstanding, the City shall have authority to enter into a self-insurance program or coinsurance or similar plans where risk of loss is shared in whole or in part by the City.

(3) The payment of premiums for all insurance policies required under the provisions hereof and the costs associated with the maintenance of any self-insurance program shall be considered Maintenance and Operating Expenses. Nothing in this Master Ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the Utility System, but nothing herein shall be construed as preventing the City from doing so.

(p) Governmental Agencies. The City will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the Utility System, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorization and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the Utility System.

Section 7. ISSUANCE OF PARITY DEBT.

(a) General. The City reserves and shall have the right and power to issue or incur Parity Debt for any purpose authorized by State law, including the refunding of Parity Debt, Subordinated Debt, or other obligations of the City issued to finance the costs of a project authorized to be financed under the Financing Program, pursuant to the provisions of this Master Ordinance and Supplements to be hereafter authorized. The City hereby covenants and agrees to comply with all constitutional and statutory requirements of State law and, to the extent applicable, federal law governing the issuance of Parity Debt.

(b) Parity Debt. Provided that the City is in compliance with the requirements of any then applicable provisions of State law, the City may from time to time incur, assume, guarantee, or otherwise become liable in respect of Parity Debt if, in the applicable Supplement, the City finds that, upon the issuance of such Parity Debt, the Security will be sufficient to meet the financial obligations relating to the Financing Program, including Security in amounts sufficient to satisfy the Annual Debt Service Requirements of the Financing Program. In addition, the City shall not issue or incur such Parity Debt unless (i) an Authorized Representative shall deliver to the City an Officer's Certificate stating that, to the best of his or her knowledge, the City, has not failed to comply with the covenants contained in this Master Ordinance and any Supplement, to any material extent, and are not in default, to any material extent, in the performance and observance of any of the terms, provisions, and conditions hereof, thereof or under any Credit Agreement that constitutes Parity Debt and (ii) the Chief Financial Officer signs and delivers to the City a written certificate to the effect that, during either the next preceding Fiscal Year, or any twelve consecutive calendar month period ending not more than ninety (90) days prior to the date of the then proposed Parity Debt, the Net Earnings were, in the opinion thereof, at least equal to the sum of 1.20 times the average Annual Debt Service Requirements (computed on a Fiscal Year basis) of the Parity Debt to be outstanding after the issuance of the then proposed Parity Debt and 1.10 times the maximum Annual Debt Service Requirements (computed in the same manner as for Parity Debt) of the Subordinate Debt to be outstanding after the issuance of the then proposed Parity Debt.

In making a determination of Net Earnings for any of the purposes described in this Section, the Chief Financial Officer may take into consideration a change in the rates and charges for services and facilities afforded by the Utility System that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are determined and, for purposes of satisfying the Net Earnings tests described above, make a pro forma determination of the Net Earnings of the Utility System for the period of time covered by said Chief Financial Officer's certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Chief Financial Officer's certificate or opinion.

As used in this Section, the term "Net Earnings" shall mean the Gross Revenues of the Utility System after deducting the Maintenance and Operating Expenses of the Utility System but not expenditures which, under standard accounting practice, should be charged to capital expenditures.

(c) Credit Agreements. To the extent permitted by law, the City may execute and deliver one or more Credit Agreements (i) upon the delivery to the City of the Chief Financial Officer's Certificate to the effect that the Credit Agreement is in the best interest of the City and (ii) compliance with the requirements of subsection (b) or (c) of this section, as the case may be, if the Credit Agreement is to constitute Parity Debt. Each Credit Agreement shall be approved by the City, to the extent required by law, either pursuant to a Supplement or by other action. Credit Agreements and the obligations thereunder may, pursuant to their terms, constitute (i) Parity Debt secured by a pledge of the Security on parity with other Parity Debt, (ii) Subordinated Debt secured by a pledge of the Security subordinate to Parity Debt, or (iii) partially Parity Debt and partially Subordinated Debt.

(d) Non-Recourse Debt and Subordinated Debt. Non-Recourse Debt and Subordinated Debt may be incurred by the City in accordance with State law.

Section 8. WAIVER OF CERTAIN COVENANTS. The City may omit in any particular instance to comply with any covenant or condition set forth in Sections 6 and 7 hereof if before or after the time for such compliance the Holders of the same percentage in Outstanding Principal Amount, the consent of which would be required to amend the applicable provisions to permit such noncompliance, shall either waive such compliance in the particular instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective, the obligations of the City and the duties of the City in respect of any such covenant or condition shall remain in full force and effect. For the purpose of this Section, the City may determine in each Supplement the treatment of who may act as an "owner," "Holder," or "Bondholder" and other matters relating to such Parity Debt, including designating any municipal bond insurance company providing an insurance policy on the payment of Parity Debt or the provider under a Credit Agreement as the sole owner of such Parity Debt.

Section 9. INDIVIDUALS NOT LIABLE. All covenants, stipulations, obligations, and agreements of the City contained in this Master Ordinance and any Supplement shall be deemed to be covenants, stipulations, obligations, and agreements of the Financing Program, the Utility System and the City to the full extent authorized or permitted by State law. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council or agent or employee of the City in his or her individual capacity and neither the members of the City Council, nor any officer, employee, or agent of the City shall be liable personally on Parity Debt when issued, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 10. SPECIAL OBLIGATIONS; ABSOLUTE OBLIGATION TO PAY PARITY DEBT. All Parity Debt and the interest thereon shall constitute special obligations of the City payable from the Security and the owners of Parity Debt shall never have the right to demand payment out of funds raised or to be raised by taxation, or from any source other than those specified in this Master Ordinance or any Supplement. The obligation of the City to pay or cause to be paid the amounts payable under this Master Ordinance and each Supplement out of the Security shall be absolute, irrevocable, complete, and unconditional, and the amount, manner, and time of payment of such amounts shall not be decreased, abated, rebated, setoff, reduced, abrogated, waived, diminished, or otherwise modified in any manner or to any extent whatsoever, regardless of any right of setoff, recoupment, or counterclaim that the City might otherwise have against any owner or any other party and regardless of any contingency, force majeure, event, or cause whatsoever and notwithstanding any circumstance or occurrence that may arise or take place before, during, or after the issuance of Parity Debt while any Parity Debt is outstanding.

Section 11. DEFAULTS AND REMEDIES. (a) Events of Default. Each of the following occurrences or events for the purpose of this Master Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any Debt when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Registered Owners of the Debt, including, but not limited to, their prospect or ability to be repaid in accordance with this Master Ordinance, and the continuation thereof for a period of sixty (60) days after notice of such default is given by any Registered Owner to the City.

(b) Remedies for Default.

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the Registered Owners under this Master Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Debt then outstanding.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Debt or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Master Ordinance, the right to accelerate the Debt shall not be available as a remedy under this Master Ordinance.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of Debt authorized under this Master Ordinance, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Master Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the City or the City Council.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the Registered Owners with any liability, or be held personally liable to the Registered Owners under any term or provision of this Master Ordinance, or because of any Event of Default or alleged Event of Default under this Master Ordinance.

Section 12. DEFEASANCE OF PARITY DEBT. Each Supplement authorizing Parity Debt may provide by its respective terms the circumstances and conditions under which such Parity Debt may be considered Defeased Debt.

Section 13. AMENDMENT OF MASTER ORDINANCE. (a) Amendment Without Consent. This Master Ordinance and the rights and obligations of the City and of the owners of the Outstanding Parity Debt may be modified or amended at any time without notice to or the consent of any owner of the Outstanding Parity Debt, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the City contained in this Master Ordinance, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the City in this Master Ordinance;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Master Ordinance, upon receipt by the City of an approving Opinion of Counsel, that the same is needed for such purpose, and will more clearly express the intent of this Master Ordinance;

(iii) To supplement the Security for the Outstanding Parity Debt in accordance with State law;

(iv) To make such other changes in the provisions hereof as the City may deem necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the owners of Outstanding Parity Debt;

(v) To make any changes or amendments requested by the State Attorney General's Office as a condition to the approval of a series or issue of Parity Debt, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the owners of the Outstanding Parity Debt; or

(vi) To make any changes or amendments requested by any bond rating agency then rating or requested to rate Parity Debt, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the owners of the Outstanding Parity Debt.

(b) Amendments With Consent. Subject to the provisions of Section 13(g) of this Master Ordinance, the owners of Outstanding Parity Debt aggregating a majority in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in subsection (a) of this Section, to this Master Ordinance which may be deemed necessary or desirable by the City; provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the owners of all of the Outstanding Parity Debt (unless such amendment shall be determined by the City to affect only the owners of certain Parity Debt, in which case such amendment shall not be made without the approval of the owners so affected), the amendment of the terms and conditions in this Master Ordinance so as to:

(i) Grant to the owners of any Outstanding Parity Debt a priority over the owners of any other Outstanding Parity Debt; or

(ii) Materially adversely affect the rights of the owners of less than all Parity Debt then Outstanding; or

(iii) Change the minimum percentage of the Outstanding Principal Amount necessary for consent to such amendment; or

(iv) Make any change in the maturity of any Outstanding Parity Debt; or

(v) Reduce the rate of interest borne by any Outstanding Parity Debt; or

(vi) Reduce the amount of the principal payable on any Outstanding Parity Debt; or

(vii) Modify the terms of payment of the amounts required to meet any financial obligations of the City relating to the Financing Program, including payments due on or with respect to the payment of any Outstanding Parity Debt, or impose any conditions with respect to such; or

(viii) Amend this subsection (b) of this Section.

(c) Notice. If at any time the City shall desire to amend this Master Ordinance pursuant to subsection (b) of this Section, the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in the City of New York, New York (including, but not limited to, The Bond Buyer or The Wall Street Journal) or in the State (including, but not limited to, The Texas Bond Reporter), once during each calendar week for at least two successive calendar weeks or disseminated by electronic means customarily used to convey notices of redemption. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of each Registrar for any Parity Debt for inspection by all owners of Parity Debt. Such publication is not required, however, if the City gives or causes to be given such notice in writing, by certified mail, to each owner of Parity Debt. A copy of such notice shall be provided in writing to each national rating agency maintaining a rating on any Parity Debt.

(d) Receipt of Consents. With respect to any amendment undertaken pursuant to subsection (b) above, whenever at any time the City shall receive an instrument or instruments executed by all of the owners or the owners of a majority in Outstanding Principal Amount, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the City may adopt the amendatory resolution in substantially the same form.

(e) Effect of Amendments. Upon the adoption by the City of any resolution to amend this Master Ordinance pursuant to the provisions of this Section, this Master Ordinance shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the City and all the owners of then Outstanding Parity Debt and all future Parity Debt shall thereafter be determined, exercised, and enforced under this Master Ordinance, as amended.

(f) Consent Irrevocable. Any consent given by any owner of Parity Debt pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication or other service of the notice provided for in this Section or the date of such consent, whichever is later, and shall be conclusive and binding upon all future owners of the same Parity Debt during such period. Such consent may be revoked at any time after the applicable period of time that a consent is irrevocable by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Registrar for such Parity Debt and the City, but such revocation shall not be effective if the owners of the requisite amount of the Outstanding Principal Amount, prior to the attempted revocation, consented to and approved the amendment. Notwithstanding the foregoing, any consent given by an owner at the time of and in connection with the initial sale or incurrence of an issue or series Parity Debt by the City shall be irrevocable.

(g) Ownership. For the purpose of this Section, the City may determine in each Supplement the treatment of who may act as an "owner," "Holder," or "Bondholder" and other matters relating to all Parity Debt, including designating any municipal bond insurance company providing an insurance policy on the payment of Parity Debt or the provider under a Credit Agreement as the sole owner of such Parity Debt.

(h) Amendments of Supplements. Each Supplement shall contain provisions governing the ability of the City to amend such Supplement; provided, however, that no amendment may be made to any Supplement for the purpose of granting to the owners of Outstanding Parity Debt under such Supplement a priority over the owners of any other Outstanding Parity Debt.

Section 14. REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS. This Master Ordinance shall become effective immediately and all resolutions and all parts of any ordinances and resolutions which are in conflict or inconsistent with this Master Ordinance are hereby repealed and shall be of no further force or effect to the extent of such conflict or inconsistency.

Section 15. PARTIAL INVALIDITY. If any one or more of the covenants or agreements or portions thereof provided in this Master Ordinance on the part of the City should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Master Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Master Ordinance, but the Holders shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

Section 16. ISSUANCE OF SPECIAL PROJECT OBLIGATIONS. Nothing in this Master Ordinance shall be construed to deny the City the right and it shall retain, and hereby reserves unto itself, the right to issue Special Project obligations secured by liens on and pledges of revenues and proceeds derived from Special Projects.

Section 17. FURTHER PROCEDURES. Each Authorized Representative and the other officers, employees, and agents of the City, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the intent, the terms, and the provisions of this Master Ordinance, including with respect to the initial issuance of Parity Debt, approving any technical changes or corrections to this Master Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated by this Master Ordinance, (ii) obtain a rating from any of the national bond rating agencies or satisfy requirements of a municipal bond insurer insuring such Parity Debt or a provider under a Credit Agreement related to such Parity Debt, or (iii) obtain the approval of such Parity Debt by the State's Attorney General's Office.

Section 18. RULES OF INTERPRETATION. For purposes of this Master Ordinance, except as otherwise expressly provided or the context otherwise requires:

(a) The words "herein," "hereof" and "hereunder" and other similar words refer to this Master Ordinance as a whole and not to any particular Article, Section, or other subdivision.

(b) The definitions in a Section are applicable whether the terms defined are used in the singular or the plural.

(c) All accounting terms that are not defined in this Master Ordinance have the meanings assigned to them in accordance with then applicable accounting principles.

(d) Any pronouns used in this Master Ordinance include both the singular and the plural and cover both genders.

(e) Any terms defined elsewhere in this Master Ordinance have the meanings attributed to them where defined.

(f) The captions or headings are for convenience only and in no way define, limit or describe the scope or intent, or control or affect the meaning or construction, of any provisions or sections hereof.

(g) Any references to Section numbers are to Sections of this Master Ordinance unless stated otherwise.

(h) The recitals to this Master Ordinance Supplement and the exhibits hereto are incorporated herein and made a part hereof for all purposes.

FINALLY PASSED, APPROVED AND EFFECTIVE on first and final reading in accordance with Section 1201.028, Texas Government Code, on this April 9, 2019.

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

[CITY SEAL]

EXHIBIT "A"

DEFINITIONS

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

"Annual Debt Service Requirements" means, for any Fiscal Year, (i) the principal of, premium, if any, and interest on all Parity Debt coming due at Maturity or Stated Maturity (or that could come due on demand of the owner thereof other than by acceleration or other demand conditioned upon default by the City on such Parity Debt, or be payable in respect of any required purchase of such Parity Debt by the City) plus (ii) all payments required to be made by the City under each Credit Agreement constituting Parity Debt (net of any credits as provided in (7) below) in such Fiscal Year, and minus (iii) all amounts on deposit to the credit of the Interest and Sinking Account from original proceeds from the sale of Parity Debt or from any other lawfully available source (other than moneys that would constitute Pledged Revenues in the subject annual period) and, for such purposes, any one or more of the following rules shall apply at the election of the City; provided, however, that this definition shall never be applied in a manner which results in Annual Debt Service Requirements for any Fiscal Year being an amount that is less than the aggregate amount actually required to be paid in such Fiscal Year with respect to Outstanding Parity Debt:

(1) Committed Take Out. If the City has entered into a Credit Agreement constituting Parity Debt and constituting a binding commitment within normal commercial practice, from any bank, savings and loan association, insurance company, or similar institution to discharge any of its Funded Debt at its Stated Maturity (or, if due on demand, at any date on which demand may be made) or to purchase any of its Funded Debt at any date on which such debt is subject to required purchase, all pursuant to arrangements whereby the City's obligation to repay the amounts advanced for such discharge or purchase constitutes Funded Debt, then the portion of the Funded Debt committed to be discharged or purchased shall be excluded from such calculation and the principal of and interest on the Funded Debt incurred for such discharge or purchase that would be due in the Fiscal Year for which the calculation is being made, if incurred at the Stated Maturity or purchase date of the Funded Debt to be discharged or purchased, shall be added to such calculation, and the remaining provisions of this definition shall be applied to such added Funded Debt;

(2) Balloon Debt. If the principal, including the accretion of interest resulting from original issue discount or compounding of interest (collectively, "Principal"), of any series or issue of Funded Debt due (or payable in respect of any required purchase of such Funded Debt by the City) in any Fiscal Year either is equal to at least 25% of the total Principal of such Funded Debt or exceeds by more than 50% the greatest amount of Principal of such series or issue of Funded Debt due in any preceding or succeeding Fiscal Year (such Principal due in such Fiscal Year for such series or issue of Funded Debt being referred to herein as "Balloon Debt"), the amount of Principal of such Balloon Debt taken into account during any Fiscal Year shall be equal to the debt service calculated using the Principal of such

Balloon Debt amortized over the Term of Issue on a level debt service basis at an assumed interest rate equal to the rate borne by such Balloon Debt on the date of calculation;

(3) Consent Sinking Fund. In the case of Balloon Debt (as defined in clause (2) above), if an Authorized Representative shall deliver to the City an Officer's Certificate providing for the retirement of (and the instrument creating such Balloon Debt shall permit the retirement of), or for the accumulation of a sinking fund for (and the instrument creating such Balloon Debt shall permit the accumulation of a sinking fund for), such Balloon Debt according to a fixed schedule stated in such Officer's Certificate ending on or before the Fiscal Year in which such principal (and premium, if any) is due, then the principal of (and, in the case of retirement, or to the extent provided for by the sinking fund accumulation, the premium, if any, and interest and other payments due on) such Balloon Debt shall be computed as if the same were due in accordance with such schedule, provided that this clause (3) shall apply only to Balloon Debt for which the installments previously scheduled have been paid or deposited to the sinking fund established with respect to such debt on or before the times required by such schedule; and provided further that this clause (3) shall not apply where the City has elected to apply the rule set forth in clause (2) above;

(4) Prepaid Debt. Principal of, premium, if any, and interest on Parity Debt, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Fiscal Year for which such principal, premium, if any, or interest are payable from funds on deposit or set aside in trust for the payment thereof at the time of such calculations (including, without limitation, capitalized interest and accrued interest so deposited or set aside in trust) with a financial institution acting as fiduciary with respect to the payment of such Parity Debt;

(5) Variable Rate. As to any Parity Debt that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of the Annual Debt Service Requirement, at the election of the City, the interest rate for such Parity Debt shall be determined to be either (i) an interest rate equal to the average rate borne by such Parity Debt (or by comparable debt in the event that such Parity Debt has not been outstanding during the preceding twenty-four (24) months) for any twenty-four (24) month period ending within thirty (30) days prior to the date of calculation, (ii) if the Parity Debt bears interest at tax-exempt rates, an interest rate equal to twenty-four (24) month average of the Bond Market Association Bond Index (as most recently published in The Bond Buyer), unless such index is no longer published in The Bond Buyer, in which case the index to be used in its place shall be that index which the City determines most closely replicates such index as set forth in a certificate of an Authorized Representative, (iii) if the Parity Debt bears interest at taxable rates, an interest rate equal to the rate of the thirty (30) day London Interbank Offered Rate, (iv) that interest rate which, in the judgment of the Chief Financial Officer, based, to the extent possible, upon an accepted market index which corresponds with the provisions of the subject Parity Debt, is the average rate anticipated to be in effect with respect to such Parity Debt or (v) that interest rate which, in the judgment of the Chief Financial Officer, based upon the interest rate methodology in the applicable Credit Agreement if calculating payments under a Credit Agreement in accordance with paragraph 7 of this definition, is the average rate anticipated to be in effect;

(6) Short-Term Obligations. Notwithstanding anything in the foregoing to the contrary, with respect to any Parity Debt issued as Short-Term Obligations, the debt service on such Parity Debt shall be calculated assuming that such Parity Debt will be refunded and refinanced to mature over a 20-year period with level debt service requirements and bearing interest at then current market rates; provided, however, that to the extent permitted by law, if in the judgment of the Chief Financial Officer, as set forth in an Officer's Certificate delivered to the City, the result of the foregoing calculation is inconsistent with the reasonable expectations of the City, the interest on such Parity Debt shall be calculated in the manner provided in clause (5) of this definition and the maturity schedule shall be calculated in the manner provided in clause (2) of this definition; and

(7) Credit Agreement Payments. If the City has entered into a Credit Agreement in connection with an issue of Parity Debt, payments due under any such Credit Agreement (other than payments for fees and expenses) from either the City or the provider of a Credit Agreement shall be included in such calculation, except to the extent that the payments are already taken into account under clauses (1) through (6) above and any payments otherwise included under clauses (1) through (6) above which are to be replaced by payments under such a Credit Agreement, from either the City or the provider under a Credit Agreement, shall be excluded from such calculation.

"Authorized Representative" means the City Manager, any Assistant City Manager or Chief Financial Officer or such other individuals so designated by the City to perform the duties of an Authorized Representative under this Master Ordinance.

"Bond Proceeds Account" has the meaning assigned to that term in Section 3(d) hereof.

"Certified Public Accountant" means a certified public accountant or firm or corporation of certified public accountants, selected by the City, which in the case of an individual is not a member of the City Council or an employee of the City, and in the case of a firm or corporation does not have a partner, director, officer, or employee who is a member of the City or a director, officer, or employee of the City.

"Chief Financial Officer" means the Finance Director of the City or such other officer or employee of the City or such other individual so designated by the City to perform the duties of Chief Financial Officer under this Master Ordinance.

"City" means the City of Bastrop, Texas.

"Code" means the Internal Revenue Code of 1986, as amended, and the rulings, regulations, and procedures (including temporary, proposed, and final regulations and procedures) promulgated thereunder.

"Credit Agreement" means, collectively, a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase Debt, purchase or sale agreements, interest rate swap, cap

and/or floor agreement or commitment, or other contract or agreement authorized, recognized, and approved by the City as a Credit Agreement in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of Debt, the interest on Debt, or both.

"Debt" means all indebtedness of the City payable from all or part of the Security that is also:

(1) indebtedness incurred or assumed by the City for borrowed money (including all obligations arising under Credit Agreements) and all other financial obligations of the City that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet;

(2) all other indebtedness (other than indebtedness otherwise treated as Debt hereunder) for borrowed money or for the acquisition, construction, or improvement of property or capitalized lease obligations that is guaranteed, directly or indirectly, in any manner by the City, or that is in effect guaranteed, directly or indirectly, by the City through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; and

(3) all indebtedness secured by any mortgage, lien, charge, encumbrance, pledge, or other security interest upon property owned by the City whether or not the City has assumed or become liable for the payment thereof.

For the purpose of determining the "Debt" of the City, only outstanding Debt shall be included. No item shall be considered Debt unless such item constitutes indebtedness under generally accepted accounting principles applied on a basis consistent with the financial statements of the City in prior Fiscal Years.

"Defeased Debt" means any Parity Debt and the interest thereon deemed to be paid, retired, and no longer Outstanding pursuant to the provisions of the applicable Supplement authorizing such Parity Debt; and thus, no longer secured by, payable from, or entitled to the benefits of the Security.

"Enabling Act" means Chapter 1502, Texas Government Code, as amended.

"Financing Program" means the "City of Bastrop, Texas Utility System Revenue Financing Program."

"Fiscal Year" means the twelve-month accounting period used by the City in connection with the operation of the Utility System, currently ending on September 30 of each year, which

may be any twelve consecutive month period established by the City, but in no event may the Fiscal Year be changed more than one time in any three (3) calendar year period.

"Funded Debt" means all Parity Debt created, assumed, or guaranteed by the City that matures by its terms (in the absence of the exercise of any earlier right of demand), or is renewable at the option of the City to a date, more than one year after the original creation, assumption, or guarantee of such Debt by the City.

"Gross Revenues" and "Gross Revenues of the City's Utility System" mean all revenues, income and receipts of every nature derived or received by the City from the operation and ownership of the Utility System including any lawfully available impact fees and the interest income from investment or deposit of money in any account or subaccount created by this Master Ordinance or maintained by the City in connection with the Utility System (except any account or subaccount not pledged as Security under this Master Ordinance or any Supplement) and any other revenues hereafter pledged to the payment of all Parity Debt. Any interest income related to any reserve account shall operate as provided in the applicable Supplement.

"Holder" or "Bondholder" or "owner" means the (i) registered owner of any Parity Debt registered as to ownership, (ii) holder of any Parity Debt payable to bearer or (iii) obligee (other than the City) pursuant to any Credit Agreement.

"Interest and Sinking Account" has the meaning assigned to that term in Section 3(c) hereof.

"Maintenance and Operating Expenses" means the reasonable and necessary expenses of operation and maintenance of the Utility System as required by Section 1502.056, Texas Government Code, as amended, or other applicable State law including all salaries, labor, materials, repairs and extensions necessary to render efficient service (but only such repairs and extensions as, in the judgment of the Chief Financial Officer, are necessary to keep the Utility System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or conditions which would otherwise impair the Parity Debt), and all payments under contracts now or hereafter defined as operating expenses by State law. Depreciation shall never be considered as a Maintenance and Operating Expense.

"Master Ordinance" means this "Master Ordinance Establishing the City of Bastrop, Texas Utility System Revenue Financing Program" as may be supplemented or amended from time to time as authorized by the City and this Master Ordinance.

"Maturity" when used with respect to any Debt means the date on which the principal of such Debt or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof or by call for redemption, or otherwise.

"Net Revenues" and "Net Revenues of the City's Utility System" mean all Gross Revenues remaining after deducting the Maintenance and Operating Expenses.

"Non-Recourse Debt" means any debt secured by a lien (other than a lien on the Security), liability for which is effectively limited to the property subject to such lien with no recourse, directly or indirectly, to the Security.

"Officer's Certificate" means a certificate signed by an Authorized Representative.

"Opinion of Counsel" means a written opinion of counsel which shall be acceptable to the City.

"Outstanding" when used with respect to Parity Debt means, as of the date of determination, all Parity Debt theretofore delivered under this Master Ordinance or any Supplement, except:

(1) Parity Debt theretofore cancelled and delivered to the City or delivered to the Paying Agent or the Registrar for cancellation;

(2) Parity Debt deemed to be Defeased Debt;

(3) Parity Debt upon transfer of or in exchange for and in lieu of which other Parity Debt has been authenticated and delivered pursuant to this Master Ordinance or any Supplement; and

(4) Parity Debt under which the obligations of the City have been released, discharged, or extinguished in accordance with the terms thereof;

provided, however, that unless the same is acquired for purposes of cancellation, Parity Debt owned by the City and Parity Debt purchased with funds advanced pursuant to a Credit Agreement shall be deemed to be Outstanding as though it was owned by any other owner.

"Outstanding Principal Amount" means, as of any record date established by a Registrar in connection with a proposed amendment of this Master Ordinance or any Supplement, with respect to all Parity Debt or to a series of Parity Debt that is in the form of bonds, notes, or other similar instruments that have a stated principal amount, the outstanding and unpaid principal amount of such Parity Debt on which interest is paid on a current basis and the outstanding and unpaid principal and compounded interest on such Parity Debt paying accrued, accreted, or compounded interest only at maturity and, with respect to Credit Agreements shall total the amount, if any, then due under such Credit Agreement if it was to be terminated as of the date of calculation of Outstanding Principal Amount.

"Parity Debt" means all Debt of the City which may be issued or assumed in accordance with the terms of this Master Ordinance and a Supplement, subject to the provisions of the ordinances securing the Prior Obligations, secured by a lien on and pledge of the Security.

"Paying Agent" means each entity designated in a Supplement as the place of payment of a series or issue of Parity Debt.

"Pledged Revenues" means (1) the Net Revenues plus (2) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged by the City to the payment of the Parity Debt, and excluding those revenues excluded from Gross Revenues.

"Registrar" means the entity designated in a Supplement as the Registrar of a series or issue of Parity Debt.

"Reserve Account Obligation" means a surety bond or insurance policy deposited in any reserve account established pursuant to a Supplement whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

"Security" has the meaning assigned to that term in Section 2(a) hereof.

"Special Project" means, to the extent permitted by law, any waterworks, sanitary sewer, wastewater reuse, municipal drainage system or other similar system property, improvement or facility declared by the City not to be part of the Utility System, for which the costs of acquisition, construction and installation are paid from proceeds of a financing transaction other than the issuance of bonds payable from ad valorem taxes, Pledged Revenues or Net Revenues and for which all maintenance and operation expenses are payable from sources other than ad valorem taxes, Pledged Revenues or Net Revenues, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

"State" means the State of Texas.

"Stated Maturity" when used with respect to any Parity Debt or any installment of interest thereon means any date specified in the instrument evidencing or authorizing such Parity Debt or such installment of interest as a fixed date on which the principal of such Parity Debt or any installment thereof or the fixed date on which such installment of interest is due and payable.

"Subordinated Debt" means any Debt which expressly provides that all payments thereon shall be subordinated to the timely payment of all Parity Debt then outstanding or subsequently issued.

"Supplement" means a resolution supplemental to, and authorized and executed pursuant to the terms of, this Master Ordinance as may be supplemented or amended from time to time as authorized by the City and such Supplement.

"System Account" has the meaning assigned to that term in Section 3(b) hereof.

"Term of Issue" means with respect to any Balloon Debt a period of time equal to the greater of (i) the period of time commencing on the date of issuance of such Balloon Debt and

ending on the final maturity date of such Balloon Debt or the maximum maturity date in the case of commercial paper or (ii) twenty-five years.

"Utility System" or "System" means as currently comprised, the City's combined water and wastewater system, which includes all properties, facilities, plants, improvements, equipment, interests and rights currently owned, operated and maintained by the City for the supply, treatment, and transmission and distribution of treated potable water and collection and treatment of wastewater, and for water reuse, together with all future extensions, improvements, purchases, repairs, replacements and additions thereto, whether situated within or without the limits of the City, and all water (in any form) owned by the City; provided, however, that the City expressly retains the right to incorporate any other utility system (other than telecommunications system) as provided by the laws of the State as a part of the Utility System. The Utility System shall not include any Special Project as provided in this Master Ordinance.

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12C

TITLE:
Consider action to approve Ordinance No. 2019-09 of the City Council of the City of Bastrop, Texas, authorizing the First Supplemental Ordinance to the Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; authorizing the issuance of the City of Bastrop, Texas Water and Wastewater Utility System Revenue Bonds, Series 2019; approving an official statement, a paying agent/registrar agreement and other agreements relating to the sale and issuance of the bonds; and ordaining other matters relating to the issuance of the bonds; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

STAFF REPRESENTATIVE:
Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:
The City Council will consider action to approve a Master Ordinance establishing the Water and Wastewater Utility System Revenue Financing Program prior to consideration of this item. This program will establish that all debt issued through this Master Ordinance will be secured by net revenue of the utility system and be for (i) paying all or part of the costs of acquiring, purchasing, constructing, improving, renovating, enlarging or equipping property, buildings, structures, facilities or related infrastructure for a utility system; (ii) create debt service reserve accounts; (iii) pay interest on obligations for the period authorized by State law; (iv) refund or cancel outstanding obligations; and (v) pay the City's costs of issuance.

The City Council received a presentation from Dan Wegmiller, City's Financial Advisor, at the March 26, 2019 meeting regarding the need for a Utility System Revenue Financing Program for future issuance of Revenue Bonds to finance the Water and Wastewater Capital Improvement Projects. This initial issuance is the first of several bond issuance's that will be needed over the next several years based on the Capital Improvement Plan.

Bond Delivery Date – April 30, 2019 – City receives funds from the Purchaser of the Bonds.

POLICY EXPLANATION:
City Charter Sec. 7.01 – Powers to Issue
In keeping with state law, the City shall have the power to borrow money on the credit of the City for any public purpose not now or hereafter prohibited by state law.

Bond Council has advised that state law supersedes the City Charter in only requiring one reading for a Bond Ordinance.

RECOMMENDATION:
Consider action to approve Ordinance 2019-09 of the City Council of the City of Bastrop, Texas, authorizing the First Supplemental Ordinance to the Master Ordinance establishing the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program; authorizing the issuance of the City of Bastrop, Texas Water and Wastewater Utility System Revenue Bonds, Series 2019; approving an official statement, a paying agent/registrar agreement and other agreements relating to the sale and issuance of the bonds; and ordaining other matters relating to the issuance of the bonds; and providing for the following: findings of fact; enactment; severability; effective date; and proper notice and hearing.

ATTACHMENTS:
- Ordinance 2019-09

ORDINANCE NO. 2019-09

FIRST SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

Adopted April 9, 2019

ORDINANCE NO. 2019-09

FIRST SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

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ORDINANCE NO. 2019-09

FIRST SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF BASTROP, TEXAS WATER AND WASTEWATER UTILITY SYSTEM REVENUE FINANCING PROGRAM

THE STATE OF TEXAS §

CITY OF BASTROP §

WHEREAS, on April 9, 2019, the City Council of the City of Bastrop, Texas (the "City"), adopted a "Master Ordinance Establishing the City of Bastrop, Texas Utility System Revenue Financing Program" (referred to herein as the "Master Ordinance"); and

WHEREAS, in order to enable the City to provide for the financing of the utility system projects authorized by Chapter 1502, Texas Government Code, as amended, and any other applicable provisions of State law, the Master Ordinance establishes a revenue financing program pursuant to which the City can issue and enter into obligations, including bonds and other types of obligations, secured by and payable from a pledge of and lien on all or part of the Security, as hereinafter defined; and

WHEREAS, for such purposes, the City deems it necessary to issue Parity Debt, as hereinafter defined, pursuant to this "First Supplemental Ordinance to the Master Ordinance establishing the City of Bastrop, Texas Utility System Revenue Financing Program" (the "First Supplement"); and

WHEREAS, the City further finds and determines that all terms and conditions for the issuance of the bonds herein authorized as Parity Debt have been or can be met and satisfied; and

WHEREAS, the bonds authorized to be issued by this First Supplement are to be issued and delivered pursuant to the Enabling Act, as hereinafter defined, and other applicable State laws.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BASTROP, TEXAS THAT:

ARTICLE I
BONDS ISSUED UNDER UTILITY SYSTEM REVENUE FINANCING PROGRAM

Section 1.01. DEFINITIONS. (a) Definitions. The capitalized terms used herein (except in the FORM OF BONDS set forth in Exhibit B hereto) and not otherwise defined shall have the meanings given in the Master Ordinance or in Exhibit A to this First Supplement. The recitals to this First Supplement and the exhibits hereto are incorporated herein and made a part hereof for all purposes.

(b) Construction of Terms. If appropriate in the context of this First Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, words of the masculine, feminine, or neuter gender shall be considered to include the other genders, and words importing persons shall include firms, associations, and corporations.

Section 1.02. ESTABLISHMENT OF FINANCING PROGRAM AND ISSUANCE OF PARITY DEBT. (a) First Supplement. By adoption of the Master Ordinance, the City has established the City of Bastrop, Texas Water and Wastewater Utility System Revenue Financing Program for the purpose of enabling the City to provide for the financing of utility system projects authorized by the Enabling Act and any other applicable provisions of State law pursuant to which the City may issue and enter into obligations, including bonds and other types of obligations, secured by and payable from a pledge of and lien on all or part of the Security. This First Supplement provides for the authorization, form, characteristics, provisions of payment and redemption, and security of the Bonds. This First Supplement is subject to the terms of the Master Ordinance and the terms of the Master Ordinance are incorporated herein by reference and as such are made a part hereof for all purposes.

(b) Bonds Are Parity Debt. As required by Section 7 of the Master Ordinance governing the issuance of Parity Debt such as the Bonds, the City hereby finds that, upon the issuance of the Bonds, the Security will be sufficient to meet the financial obligations relating to the Financing Program, including Security in amounts sufficient to satisfy the Annual Debt Service Requirements of the Financing Program. The Bonds are hereby declared to be Parity Debt under the Master Ordinance.

Section 1.03. FIRST SUPPLEMENT TO CONSTITUTE A CONTRACT; EQUAL SECURITY. In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this First Supplement shall be deemed to be and shall constitute a contract between the City and the Owners from time to time of the Bonds, and the pledge made in this First Supplement by the City and the covenants and agreements set forth in this First Supplement to be performed by the City shall be for the equal and proportionate benefit, security, and protection of all Owners from time to time of the Bonds, without preference, priority, or distinction as to security or otherwise of any of the Bonds authorized hereunder over any of the other Bonds by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this First Supplement and the Master Ordinance.

Section 1.04. LIMITATION OF BENEFITS WITH RESPECT TO THIS FIRST SUPPLEMENT. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this First Supplement or the Bonds is intended or should be construed to confer upon or give to any person other than the City, the Owners, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this First Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This First Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall

be for and inure to the sole and exclusive benefit of the City, the Owners, and the Paying Agent/Registrar as herein and therein provided.

ARTICLE II
BOND AUTHORIZATION AND SPECIFICATIONS

Section 2.01. AMOUNT, PURPOSE AND DESIGNATION OF THE BONDS. The Bonds designated **"CITY OF BASTROP, TEXAS WATER AND WASTEWATER SYSTEM REVENUE BONDS, SERIES 2019"** (the "Bonds") are hereby authorized to be issued pursuant to this First Supplement in the aggregate principal amount of $_____ for the purpose of (1) paying costs of acquiring, purchasing, constructing, improving, renovating, enlarging or equipping the City's Utility System including constructing, acquiring, improving, renovating and equipping City waterworks and sewer system facilities and (2) paying the costs of issuing such Bonds. The Bonds are authorized pursuant to authority conferred by and in conformity with State law, particularly the provisions of the Enabling Act.

The Bonds will be in the form of Current Interest Bonds as provided in Section 2.02 and the FORM OF BONDS in Exhibit B to this First Supplement.

Section 2.02. DATE, DENOMINATIONS, NUMBERS, MATURITIES AND TERMS OF BONDS. (a) Terms of Bonds. The Bonds, there shall initially be issued, sold, and delivered hereunder fully registered bonds, without interest coupons, in the form of Current Interest Bonds, numbered consecutively from R-1 upward, payable to the respective initial registered owners thereof, or to the registered assignee or assignees of said bonds or any portion or portions thereof (in each case, the "Registered Owner"), in Authorized Denominations, maturing and payable serially on August 1 in each of the years and in the principal amounts respectively as forth in the following schedule:

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YEAR	AMOUNT	YEAR	AMOUNT
2020		2030	
2021		2031	
2022		2032	
2023		2033	
2024		2034	
2025		2035	
2026		2036	
2027		2037	
2028		2038	
2029		2039	

(b) In General. The Bonds (i) may and shall be redeemed prior to the respective scheduled maturity dates, (ii) may be assigned and transferred, (iii) may be exchanged for other Bonds, (iv) shall have the characteristics, and (v) shall be signed and sealed, and the principal of and interest on the Bonds shall be payable, all as provided, and in the manner required or indicated, in the FORM OF BONDS set forth in Exhibit B to this First Supplement.

(c) Interest. The Bonds shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM OF BONDS set forth in Exhibit B to this First Supplement to their respective dates of maturity or redemption at the rates per annum set forth in the following schedule:

YEAR	RATE	YEAR	RATE
2020		2030	
2021		2031	
2022		2032	
2023		2033	
2024		2034	
2025		2035	
2026		2036	
2027		2037	
2028		2038	
2029		2039	

(d) Payments on Holidays. In the event that any date for payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close. Payment on such later date will not increase the amount of interest due and will have the same force and effect as if made on the original date payment was due.

Section 2.03. PAYMENT OF BONDS; PAYING AGENT/REGISTRAR. The principal of, premium, if any, and the interest on the Bonds shall be payable, without exchange or collection charges to the Owner thereof, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

Regions Bank is hereby appointed as Paying Agent/Registrar for the Bonds. By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar acknowledges receipt of copies of the Master Ordinance and this First Supplement, and is deemed to have agreed to the provisions thereof and hereof.

The City agrees and covenants to cause to be kept and maintained at the designated office of the Paying Agent/Registrar a Security Register, all as provided herein, in accordance with the terms and provisions of the Paying Agent/Registrar Agreement and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. In addition, to the extent required by law, the City covenants to cause to be kept and maintained the Security Register or a copy thereof in the State.

The City expressly reserves the right to appoint one or more successor Paying Agent/Registrars, by filing with the Paying Agent/Registrar a certified copy of a resolution or minute order of the City making such appointment. The City further expressly reserves the right to terminate the appointment of the Paying Agent/Registrar by filing a certified copy of a resolution of the City giving notice of the City's termination of the City's agreement with such Paying Agent/Registrar and appointing a successor. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve as and perform the duties and services of Paying Agent/Registrar for the Bonds. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Security Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar, the City agrees promptly to cause a written notice thereof to be sent to each Owner by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The principal of, premium, if any, and interest on the Bonds due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the Owner thereof appearing on the Security Register, and, to the extent permitted by law, neither the City nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary.

Principal of, and premium, if any, on the Bonds shall be payable only upon the presentation and surrender of said Bonds to the Paying Agent/Registrar at its designated office. Interest on the Bonds shall be paid to the Owner whose name appears in the Security Register at the close of business on the Record Date and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar to the address of the Owner appearing in the Security Register on the Record Date or (ii) by such other

method, acceptable to the Paying Agent/Registrar, requested in writing by, and at the risk and expense of, the Owner.

In the event of a nonpayment of interest on a scheduled payment date on a Bond, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 2.04. REDEMPTION. (a) Generally. The Bonds shall be subject to redemption prior to scheduled maturity at such times and with such provisions as provided in the FORM OF BONDS.

(b) Notices of Redemption and Defeasance. (i) Unless waived by any Owner of the Bonds to be redeemed, the Chief Financial Officer shall give notice of redemption or defeasance to the Paying Agent/Registrar at least thirty-five (35) days prior to a redemption date in the case of a redemption (unless a lesser period is acceptable to the Paying Agent/Registrar) and on the defeasance date in the case of a defeasance and the Paying Agent/Registrar shall give notice of redemption or of defeasance of Bonds by mail, first-class postage prepaid at least thirty (30) days prior to a redemption date and within thirty (30) days after a defeasance date to each Owner and to the central post office or each registered securities depository and to any national information service that disseminates such notices. The Paying Agent/Registrar shall also send a notice of prepayment or redemption to the Owner of any Bond who has not sent the Bonds in for redemption sixty (60) days after the redemption date.

(ii) Each notice of redemption or defeasance shall contain a description of the Bonds to be redeemed or defeased including the complete name of the Bonds, the date of issue, the interest rate, the maturity date, the CUSIP number, the certificate numbers, the amounts called of each certificate, the publication or mailing date for the notice, the date of redemption or defeasance, the redemption price, if any, the name of the Paying Agent/Registrar, and the address at which the Bonds may be redeemed or paid, including a contact person telephone number.

(iii) All redemption payments made by the Paying Agent/Registrar to the Owners of the Bonds shall include a CUSIP number relating to each amount paid to such Owner.

The failure of any Owner of the Bonds to receive notice given as provided in this Section 2.04, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided in this Section 2.04 shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

So long as DTC is effecting book-entry transfers of the Bonds, the Paying Agent/Registrar shall provide the notices specified in this Section 2.04 only to DTC. It is expected that DTC shall, in turn, notify its participants and that the participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bonds.

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

Section 2.05. REGISTRATION; TRANSFER; EXCHANGE OF BONDS; PREDECESSOR BONDS; BOOK-ENTRY-ONLY SYSTEM; SUCCESSOR SECURITIES DEPOSITORY; PAYMENTS TO CEDE & CO. (a) Registration, Transfer, Exchange, and Predecessor Bonds. The Registrar shall obtain, record, and maintain in the Security Register the name and address of each Owner issued under and pursuant to the provisions of this First Supplement. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds in Authorized Denominations upon the Security Register by the Owner, in person or by his duly authorized agent, upon surrender of such Bond to the Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Owner or by his duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Bond at the designated office of the Registrar, there shall be registered and delivered in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City, of Authorized Denominations and having the same Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Owner, Bonds may be exchanged for other Bonds of Authorized Denominations and having the same Maturity, bearing the same rate of interest, and of like aggregate principal amount or Maturity Amount and the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the principal office of the Registrar. Whenever any Bonds are so surrendered for exchange, there shall be registered and delivered new Bonds executed on behalf of, and furnished by, the City to the Owner requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the principal office of the Registrar or sent by United States mail, first-class, postage prepaid to the Owners or the designee thereof, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under the Master Ordinance and this First Supplement, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Owner, except as otherwise herein provided, and except that the Registrar shall require payment by the Owner requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated Bond that is surrendered to the Paying Agent/Registrar or any Bond for which satisfactory evidence of the loss of which has been received by the City and the Paying Agent/Registrar and, in either case, in lieu of which a Bond or Bonds have been registered and delivered pursuant to Section 3.05 hereof.

Neither the City nor the Registrar shall be required to issue or transfer to an assignee of a Owner any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation of transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

(b) Ownership of Bonds. The entity in whose name any Bond shall be registered in the Security Register at any time shall be deemed and treated as the absolute Owner thereof for all purposes of this First Supplement, whether or not such Bond shall be overdue, and, to the extent permitted by law, the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(c) Book-Entry-Only System. The Bonds issued in exchange for the Initial Bond for issued as provided in Section 2.06 shall be issued in the form of a separate single fully-registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC, and except as provided in this subsection (c) all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have

no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Owner as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Owner as shown on the Security Register, of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this First Supplement to the contrary but to the extent permitted by law, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Security Register as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest, with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the Owners, as shown in the Security Register as provided in this First Supplement, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Owner, as shown in the Security Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this First Supplement. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this First Supplement with respect to interest checks being mailed to the Owner at the close of business on the Record Date the words "Cede & Co." in this First Supplement shall refer to such new nominee of DTC.

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

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

(f) Blanket Issuer Letter of Representations. The City heretofore has executed and delivered to DTC a "Blanket Issuer Letter of Representations" with respect to the utilization by the City of DTC's book-entry-only system and the City intends to utilize such book-entry-only system in connection with the Bonds.

Section 2.06. INITIAL BOND. The Bonds shall initially be issued as a fully registered bond, being one bond (the "Initial Bond"). The Initial Bond shall be registered in the name of the initial purchaser(s) of the Bonds. The Initial Bond shall be submitted to the Office of the Attorney General of the State for approval and registration by the Office of the Comptroller of Public Accounts of the State and delivered to the initial purchaser(s) thereof. Immediately after the delivery of the Initial Bond on the Issuance Date, the Registrar shall cancel the Initial Bond and exchange therefor Bonds in the form of a separate single fully-registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC and, except as provided in Section 2.05(d), all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

Section 2.07. FORM OF BONDS. The Bonds (including Initial Bond), the Registration Certificate of the Comptroller of Public Accounts of the State or the Authentication Certificate, and the form of Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in Exhibit B to this First Supplement with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this First Supplement, may have such letters, numbers, or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel and information regarding the issuance of any bond insurance policy) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds shall be typewritten, photocopied, printed, lithographed, engraved, or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

ARTICLE III
EXECUTION; REPLACEMENT OF BONDS; AND BOND INSURANCE

Section 3.01. EXECUTION AND REGISTRATION. The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City as of their authorization shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, Texas Government Code, as amended.

No Bond shall be entitled to any right or benefit under this First Supplement, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Exhibit B to this First Supplement, executed by the Comptroller of Public Accounts of the State or its duly authorized agent by manual signature, or the Paying Agent/Registrar's Authentication Certificate substantially in the form provided in Exhibit B to this First Supplement executed by the manual signature of an authorized officer or employee of the Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

Section 3.02. CONTROL AND CUSTODY OF BONDS. The Chief Financial Officer shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation and examination by the Attorney General of the State, including the printing and supply of printed Bonds, and shall take and have charge and control of the Initial Bond pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the initial purchaser(s).

Furthermore, each Authorized Representative is hereby authorized and directed to furnish and execute such documents relating to the Utility System, the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General, and the registration by the Comptroller of Public Accounts and, together with the City's Bond Counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the initial purchaser(s) and the initial exchange thereof for Bonds other than the Initial Bond.

Section 3.03. PRINTED OPINION. The initial purchaser(s)' obligation to accept delivery of the Bonds is subject to the initial purchaser(s) being furnished the final opinion of McCall, Parkhurst & Horton L.L.P. approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. If bond insurance is obtained for the Bonds, the Bonds may bear an appropriate insurance legend.

Section 3.04. CUSIP NUMBERS. CUSIP numbers may be printed or typed on the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the Bonds.

Section 3.05. MUTILATED, DESTROYED, LOST, AND STOLEN BONDS. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same

Maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond and the interest due thereon to the date of payment.

Upon the issuance of any new Bond under this Section, the City may require payment by the Owner of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this First Supplement equally and ratably with all other Outstanding Bonds.

Section 3.06. BOND INSURANCE. (a) Purchase of Insurance. In connection with the sale of the Bonds, the City may obtain municipal bond insurance policies from one or more Bond Insurers to guarantee the full and complete payment required to be made by or on behalf of the City on some or all of the Bonds as determined by the Chief Financial Officer. The Chief Financial Officer is hereby authorized to sign a commitment letter with a Bond Insurer and to pay the premium for the bond insurance policies at the time of the delivery of the Bonds out of the proceeds of sale of the Bonds or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as he or she may deem appropriate. Printing on Bonds covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to a Bond Insurer and the Chief Financial Officer, is hereby approved and authorized. This Ordinance may contain provisions related to the bond insurance policies, including payment provisions thereunder, and the rights of a Bond Insurer.

(b) Rights of Bond Insurer(s). As long as a Bond Insurer is not in default on the related bond insurance policy for the Bonds, the Bond Insurer shall be deemed to be the sole Owner of such Bonds insured by it for all purposes of this First Supplement or the Master Ordinance.

ARTICLE IV
PAYMENTS, REBATE FUND AND RESERVE ACCOUNT

Section 4.01. PAYMENTS. (a) Accrued and Capitalized Interest. Immediately after the delivery of the Bonds the City shall deposit any accrued interest and any sale proceeds to be used to pay capitalized interest received from the sale and delivery of such Bonds to the credit of the Interest and Sinking Account to be held to pay interest on such Bonds.

(b) Debt Service Payments. Semiannually on or before each principal or interest payment date while any of the Bonds are outstanding and unpaid, commencing on the first interest

payment date for the Bonds, the City shall make available from the Interest and Sinking Account to the Paying Agent/Registrar, money sufficient to pay such interest on and such principal of the Bonds as will accrue or mature, or be subject to mandatory redemption prior to maturity, on such principal, redemption, or interest payment date. The Paying Agent/Registrar shall cancel all paid Bonds and shall furnish the City with an appropriate certificate of cancellation.

Section 4.02. REBATE ACCOUNT. A separate and special account to be known as the Rebate Account is hereby established by the City pursuant to the requirements of Section 148(f) of the Code and the tax covenants of the City contained in Section 5.01 of this First Supplement for the benefit of the United States of America and the City, as their interests may appear pursuant to this First Supplement. Such amounts shall be deposited therein and withdrawn therefrom as is necessary to comply with the provisions of Section 5.01. Any moneys held within the Rebate Account shall not constitute Security under the Master Ordinance.

Section 4.03. RESERVE ACCOUNT. (a) To accumulate and maintain a reserve for the payment of the Bonds equal to the average Annual Debt Service Requirements of the Bonds (calculated by the City at the beginning of each Fiscal Year) (the "Required Reserve Amount"), the Reserve Account has been established and shall be maintained by the City. Earnings and income derived from the investment of amounts held for the credit of the Reserve Account shall be retained in the Reserve Account until the Reserve Account contains the Required Reserve Amount; thereafter, such earnings and income shall be deposited to the credit of the System Account. The City shall deposit and credit to the Reserve Account amounts required to maintain the balance in the Reserve Account in an amount equal to the Required Reserve Amount by making monthly deposits and credits in amounts equal to not less than 1/60th of the Required Reserve Amount or by the deposit of a Reserve Account Obligation. There shall be deposited into the Reserve Account any Reserve Account Obligations so designated by the City. All funds, investments and Reserve Account Obligations on deposit and credited to the Reserve Account shall be used solely for (i) the payment of the principal of and interest on the Bonds, when and to the extent other funds available for such purposes are insufficient, (ii) to make Reserve Account Obligation Payments and (iii) to retire the last Stated Maturity or Stated Maturities of or interest on the Bonds. The Reserve Account is solely for the benefit of this series of Bonds and is not available to pay Annual Debt Service Requirements on any other Parity Debt.

(b) When and for so long as the cash, investments and Reserve Account Obligations in the Reserve Account equal the Required Reserve Amount, no deposits need be made to the credit of the Reserve Account; but, if and when the Reserve Account at any time contains less than the Required Reserve Amount, the City covenants and agrees that the City shall cure the deficiency in the Reserve Account by resuming the deposits to such Account from the Pledged Revenues by monthly deposits and credits in amounts equal to not less than 1/60th of the Required Reserve Amount with any such deficiency payments being made on or before each interest payment date until the Required Reserve Amount has been fully restored; provided, however, that no such deposits shall be made into the Reserve Account during any six (6) month period beginning on an interest payment date until there has been deposited into the Interest and Sinking Account the full amount required to be deposited therein by the next following semi-annual payment date, as the case may be. In addition, in the event that a portion of the Required Reserve Amount is represented

by a Reserve Account Obligation, the Required Reserve Amount shall be restored as soon as possible from monthly deposits of Pledged Revenues on deposit in the System Account, but subject to making the full deposits and credits to the Interest and Sinking Account required to be made by the next following interest payment date, as the case may be. The City further covenants and agrees that, subject only to the prior deposits and credits to be made to the Interest and Sinking Account, the Pledged Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve Amount, including by paying Reserve Account Obligation Payments when due, and to cure any deficiency in such amounts as required by the terms of this First Supplement.

During such time as the Reserve Account contains the Required Reserve Amount, the obligation to maintain the Required Reserve Amount has been suspended pursuant to subsection (d) below, or any cash is replaced with a Reserve Account Obligation pursuant to subsection (c) below, the City may, at its option, withdraw all surplus funds in the Reserve Account and deposit such surplus in the Interest and Sinking Account or otherwise use such amount in any manner permitted by law unless such surplus is required to be rebated in which case such event shall be deposited into the Rebate Account.

(c) A Reserve Account Obligation issued in an amount equal to all or part of the Required Reserve Amount for the Bonds may be used in lieu of depositing cash into the Reserve Account. In addition, a Reserve Account Obligation may be substituted for monies and investments in the Reserve Account if the substitution of the Reserve Account Obligation will not, in and of itself, cause any ratings then assigned to the Bonds by any rating agency to be lowered and the ordinance authorizing the substitution of the Reserve Account Obligation for all or part of the Required Reserve Amount contains a finding that such substitution is cost effective.

(d) Notwithstanding anything to the contrary contained herein, the requirement set forth in subsection (a) above to maintain the Required Reserve Amount in the Reserve Account shall be suspended for such time as the Net Revenues for each Fiscal Year are equal to at least 1.35 times the average Annual Debt Service Requirements. In the event that the Net Revenues for any Fiscal Year are less than 1.35 times the average Annual Debt Service Requirements, the City will be required to commence making Required Reserve Account Deposits, as provided in subsection (b) above, and to continue such Required Reserve Account Deposits until the earlier of (i) such time as the Reserve Account contains the Required Reserve Amount or (ii) the Net Revenues in each of two consecutive years have been equal to not less than 1.35 times the average Annual Debt Service Requirements. Notwithstanding the provisions of Section 4.03(a) of this section, if the City commences deposits in the Reserve Account and later is authorized to suspend payments into the fund under this section any funds so accumulated may, at the discretion of the City: (i) remain in the Reserve Account or (ii) be used for any lawful purpose including additional projects or to pay debt service on the Bonds.

(e) A Reserve Account Obligation permitted under (a) above, must be in the form of a surety bond or insurance policy meeting the requirements described below.

(1) (i) A surety bond or insurance policy issued to the Paying Agent/Registrar, as agent of the Holders, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds (a "municipal bond insurer") if the claims paying ability of the issuer thereof shall be rated "A" by S&P or Moody's, or (ii) a surety bond or insurance policy issued to the Paying Agent/Registrar, as agent of the Holders, by an entity other than a municipal bond insurer, if the form and substance of such instrument and the issuer thereof shall be approved in writing by each Bond Insurer of record.

(2) The obligation to reimburse the issuer of a Reserve Account Obligation for any claims or draws upon such Reserve Account Obligation in accordance with its terms, including expenses incurred in connection with such claims or draws, to the extent permitted by law, (a Reserve Account Obligation Payment) shall be made from the deposits made to the Reserve Account as provided in this Section. The Reserve Account Obligation shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Reserve Account Obligation to reimbursement will be subordinated to the cash replenishment of the Reserve Account to an amount equal to the difference between the full original amount available under the Reserve Account Obligation and the amount then available for further draws or claims. In the event (a) the issuer of a Reserve Account Obligation becomes insolvent, or (b) the issuer of a Reserve Account Obligation defaults in its payment obligations thereunder, or (c) the claims paying ability of the issuer of the insurance policy or surety bond falls below "A" by S&P or Moody's, respectively, the obligation to reimburse the issuer of the Reserve Account Obligation shall be subordinated to the cash replenishment of the Reserve Account.

(3) In the event (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated, or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below "A" by S&P or Moody's, respectively, or (c) the issuer of the Reserve Account Obligation defaults in its payment obligations hereunder or (d) the issuer of the Reserve Account Obligation becomes insolvent, the City shall either (i) deposit into the Reserve Account, in accordance with this Section, an amount sufficient to cause the cash or investments credited to the Reserve Account to accumulate to the Required Reserve Amount, or (ii) replace such instrument with a surety bond or insurance policy meeting the requirements of 1 and 2 above, within six months of such occurrence.

(4) The Paying Agent/Registrar shall ascertain the necessity for a claim or draw upon any Reserve Account Obligation and provide notice to the issuer of the Reserve Account Obligation in accordance with its terms not later than three days (or such appropriate time period as will, when combined with the timing of required payment under the Reserve Account Obligation, ensure payment under the Reserve Account Obligation on or before the interest payment date) prior to each date upon which the principal of or interest on the Parity Obligations will be due.

It is recognized that a Reserve Account Obligation may be issued which is payable only with respect to a part of the Bonds with the remainder of the Required Reserve Amount being satisfied by monies and investments and in that case any draws upon the Reserve Account will have to be made on a pro-rata basis. Therefore, (i) draws upon one or more such Reserve Account Obligations shall be made on a pro-rata basis with cash and investments available in the Reserve Account and (ii) deposits and credits to the Reserve Account to restore it to the Required Reserve Amount shall be utilized on a pro-rata basis to pay Reserve Account Obligation Payments to reimburse the issuers of the Reserve Account Obligations, thus restoring that part of the Required Reserve Amount, and to restore with cash and investments the balance of the Required Reserve Amount.

ARTICLE V
COVENANTS REGARDING TAX EXEMPTION

Section 5.01. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE BONDS. (a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

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

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

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

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

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

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

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

(B) amounts invested in a bona fide debt service fund, within the meaning of section l.148-1(b) of the Treasury Regulations, and

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

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

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

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

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

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any). It is the understanding of the City that the covenants contained herein are

intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Chief Financial Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds. This First Supplement is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

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

Section 5.02. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR PROJECT. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this First Supplement (the "Project") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within eighteen (18) months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than sixty (60) days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 5.03. DISPOSITION OF PROJECT. The City covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the City may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to

comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE VI
AMENDMENTS AND MODIFICATIONS

Section 6.01. AMENDMENTS OR MODIFICATIONS WITHOUT CONSENT OF OWNERS OF BONDS. Subject to the provisions of the Master Ordinance, this First Supplement and the rights and obligations of the City and of the Owners of the Outstanding Bonds may be modified or amended at any time without notice to or the consent of any Owner of the Bonds or any other Parity Debt, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the City contained in this First Supplement, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the City in this First Supplement;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this First Supplement, upon receipt by the City of an Opinion of Counsel, that the same is needed for such purpose, and will more clearly express the intent of this First Supplement;

(iii) To supplement the Security for the Bonds;

(iv) To make such other changes in the provisions hereof, as the City may deem necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds;

(v) To make any changes or amendments requested by the State Attorney General's Office as a condition to the approval of the Bonds, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds; or

(vi) To make any changes or amendments requested by any bond rating agency then rating or requested to rate the Bonds, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds.

Section 6.02. AMENDMENTS OR MODIFICATIONS WITH CONSENT OF OWNERS OF BONDS. (a) Amendments. Subject to the other provisions of this First Supplement, the Master Ordinance and the consent of the Bond Insurer, the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Section 6.01 hereof, to this First Supplement that may be deemed necessary or desirable by the City, provided, however, that

nothing herein contained shall permit or be construed to permit, without the approval of the Owners of all of the Outstanding Bonds, the amendment of the terms and conditions in this First Supplement or in the Bonds so as to:

(i) Make any change in the maturity of the Outstanding Bonds;

(ii) Reduce the rate of interest borne by Outstanding Bonds;

(iii) Reduce the amount of the principal payable on Outstanding Bonds;

(iv) Modify the terms of payment of principal of or interest on the Outstanding Bonds, or impose any conditions with respect to such payment;

(v) Affect the rights of the Owners of less than all Bonds then Outstanding; or

(vi) Change the minimum percentage of the Outstanding Principal Amount of Bonds necessary for consent to such amendment.

(b) Notice. If at any time the City shall desire to amend this First Supplement pursuant to Subsection (a), the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in the City of New York, New York (including, but not limited to, The Bond Buyer or The Wall Street Journal) or in the State (including, but not limited to, The Texas Bond Reporter), once during each calendar week for at least two successive calendar weeks or disseminated by electronic means customarily used to convey notices of redemption. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all Owners of Bonds. Such publication is not required, however, if the City gives or causes to be given such notice in writing to each Owner of Bonds. A copy of such notice shall be provided in writing to each rating agency maintaining a rating on the Bonds and to the Bond Insurer.

(c) Receipt of Consents. Whenever at any time the City shall receive an instrument or instruments executed by all of the Owners or the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the City may adopt the amendatory resolution in substantially the same form.

(d) Consent Irrevocable. Any consent given by any Owner pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the date of the first publication of such notice by the Owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar and the City, but such revocation shall not be effective if the Owners of

Outstanding Bonds aggregating a majority in Outstanding Principal Amount prior to the attempted revocation consented to and approved the amendment. Notwithstanding the foregoing, any consent given at the time of and in connection with the initial purchase of Bonds shall be irrevocable.

(e) Ownership. For the purpose of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the Security Register kept by the Paying Agent/Registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.

Section 6.03. EFFECT OF AMENDMENTS. Upon the adoption by the City of any resolution to amend this First Supplement pursuant to the provisions of this Article, this First Supplement shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the City and all the Owners of Outstanding Bonds shall thereafter be determined, exercised, and enforced under the Master Ordinance and this First Supplement, as amended.

ARTICLE VII
MISCELLANEOUS

Section 7.01. DISPOSITION OF BOND PROCEEDS AND OTHER FUNDS. Proceeds from the sale of the Bonds shall, promptly upon receipt thereof, be applied by the Chief Financial Officer as follows:

(i) any underwriting discount or fees and any Credit Agreement fees for the Bonds may be retained by and/or wired directly to such parties;

(ii) any accrued interest and sale proceeds to be used to pay capitalized interest for the Bonds, if any, shall be deposited as provided in Section 4.01;

(iii) an amount sufficient to pay the remaining costs of issuance of the Bonds and the cost of acquiring, purchasing, constructing, improving, enlarging, and equipping the improvements being financed with the proceeds of the Bonds shall be deposited in the Bond Proceeds Account to be used for such purposes.

Any sale proceeds of the Bonds remaining after making all deposits and payments provided for above shall be deposited into the Interest and Sinking Account and applied to the payment of principal of and interest on the Bonds.

Section 7.02. MAILED NOTICES. Except as otherwise required herein, all notices required or authorized to be given to the City, any Bond Insurer (as defined in, and pursuant to, Section 3.06 hereof) or the Paying Agent/Registrar pursuant to this First Supplement shall be in writing and shall be sent by registered or certified mail, postage prepaid, to the following addresses or otherwise given in a manner deemed, in writing, acceptable to the party to receive the notice:

1. to the City:
   City of Bastrop, Texas
   1311 Chestnut Street
   Bastrop, Texas 78602
   Attn: City Manager
   Telephone: (512) 332-8800
   Facsimile: (512) 332-8819

2. to the Paying Agent/Registrar:
   Regions Bank
   3773 Richmond Avenue, Suite 1100
   Houston, Texas 77046
   Attn:
   Telephone:
   Facsimile:

3. to any Bond Insurer:

The address, phone number and fax number specified by the Bond Insurer or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above.

Section 7.03. DEFEASANCE OF BONDS. (a) Deemed Paid. The principal of and/or the interest and redemption premium, if any, on any Bonds shall be deemed to be Defeased Debt within the meaning of the Master Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bonds, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for the payment of its services until all Defeased Debt shall have become due and payable or (3) any combination of (1) and (2). At such time as Bonds shall be deemed to be a Defeased Debt hereunder, as aforesaid, such Bonds and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the Security as provided in the Master Ordinance and this First Supplement, and such principal and interest shall be payable solely from such money or Defeasance Securities.

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

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

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

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

Section 7.04. PAYING AGENT/REGISTRAR AGREEMENT, SALE OF BONDS, OFFICIAL STATEMENT AND VOTED AUTHORIZATION. (a) The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar is hereby

approved and the Mayor is hereby authorized to execute, and deliver such Paying Agent/Registrar Agreement.

(b) The Bonds are hereby initially sold and shall be delivered to _____, (the "Purchaser") at the price and in accordance with the terms and provisions of the winning bid form, which the Mayor of the City is hereby authorized and directed to execute and deliver and the City Secretary or Deputy City Secretary is further authorized and directed to attest. It is hereby officially found, determined, and declared that the bid received by the Purchaser is the best bid in accordance with the Notice of Sale and Preliminary Official Statement dated April 1, 2019. The Initial Bond shall be registered in the name of Cede & Co. The true interest cost of the Bonds is _____%.

(c) The City hereby approves the form and content of the Official Statement relating to the Bonds and any addenda, supplement or amendment thereto, and approves the distribution of such Official Statement in the reoffering of the Bonds by the Underwriters in final form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The distribution and use of the Notice of Sale and Preliminary Official Statement dated April 1, 2019, prior to the date hereof is ratified and confirmed. The City Council of the City hereby finds and determines that the Preliminary Official Statement and the Official Statement were and are "deemed final" (as that term is defined in 17 C.F.R. Section 240.15c-12) as of their respective dates.

(d) The $_____ premium received in connection with the sale of the Bonds will be used as follows: $_____ for costs of issuance and $_____ deposited into the Bond Proceeds Account for project costs.

Section 7.05. FURTHER PROCEDURES. Each Authorized Representative is hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this First Supplement, the Bonds, the sale and delivery of the Bonds, and fixing all details in connection therewith, and the Paying Agent/Registrar Agreement. In connection with the issuance and delivery of each the Bonds, the above-stated officers, with the advice of the City Attorney and Bond Counsel to the City, are hereby authorized to approve, subsequent to the date of the adoption of this First Supplement, any amendments to the above named documents, and any technical amendments to this First Supplement as permitted by Section 6.01 (v) or (vi) and a Authorized Representative is hereby authorized to execute this First Supplement to evidence approval of such changes.

Section 7.06. NONPRESENTMENT OF BONDS. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise if moneys sufficient to pay such Bond shall have been deposited with the Paying Agent/Registrar, it shall be the duty of the Paying Agent/Registrar to hold such moneys, without liability to the City, any Owner, or any other person for interest thereon, for the benefit of the Owner of such Bond.

Any moneys so deposited with and held by the Paying Agent/Registrar due to nonpresentment of Bonds must be retained by the Paying Agent/Registrar for a period of at least two years after the final maturity date of the Bonds or advance refunding date, if applicable. Thereafter, to the extent permitted by the unclaimed property laws of the State, such amounts shall be paid by the Paying Agent/Registrar to the City, free from the trusts created by this First Supplement and Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Paying Agent/Registrar.

Section 7.07. EFFECT OF SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS. Whenever this First Supplement requires any action to be taken on a Saturday, Sunday, or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this First Supplement the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 7.08. PARTIAL INVALIDITY. If any one or more of the covenants or agreements or portions thereof provided in this First Supplement on the part of the City should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this First Supplement and the invalidity thereof shall in no way affect the validity of the other provisions of this First Supplement or of the Bonds, but the Owners of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

Section 7.09. CONTINUING DISCLOSURE UNDERTAKING. (a) Annual Reports. The City shall provide annually to the MSRB, (1) within six months after the end of each fiscal year of the City ending in or after 2019, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 7.04 of this First Supplement, being information of the type described in Exhibit C hereto, including financial statements of the City if audited financial statements of the City are then available, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit C hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the Official Statement, and (ii) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the City shall file unaudited financial statements within such twelve (12) month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

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

(b) Event Notices. The City shall file notice of any of the following events with respect to the Bonds with the MSRB in a timely manner and not more than ten (10) business days after the occurrence of the event:

(1) Principal and interest payment delinquencies;

(2) Non-payment related defaults, if material;

(3) Unscheduled draws on debt service reserves reflecting financial difficulties;

(4) Unscheduled draws on credit enhancements reflecting financial difficulties;

(5) Substitution of credit or liquidity providers, or their failure to perform;

(6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

(7) Modifications to rights of holders of the Bonds, if material;

(8) Bond calls, if material, and tender offers;

(9) Defeasances;

(10) Release, substitution, or sale of property securing repayment of the Bonds, if material;

(11) Rating changes;

(12) Bankruptcy, insolvency, receivership, or similar event of the City;

(13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

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

For these purposes, any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the City in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall file notice with the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection.

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

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City makes

no representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

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

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

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

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment as well as such changed circumstances, and (2) either (a) the holders of a majority in aggregate principal amount of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the holders and beneficial owners of the Bonds. The City may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds, giving effect to (i) such provisions as so amended and (ii) any amendments or interpretations of the Rule. If the City so amends the provisions of this Section, the City shall include with any amended financial information or operating data next provided in accordance with this subsection (a) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

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

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

Section 7.10. CREDIT AGREEMENT. To the extent permitted by law, the City reserves the right to enter into Credit Agreements in connection with the Bonds, upon the written opinion of the Chief Financial Officer that such Credit Agreements are in the best interest of the City given the market conditions at the time. The Credit Agreements will constitute a Credit Agreement as defined in the Master Ordinance. Credit Agreements and the obligations thereunder may, pursuant to their terms, constitute (i) Parity Debt secured by a pledge of the Security on parity with the Bonds and other Parity Debt, (ii) Subordinated Debt secured by a pledge of the Security subordinate to the Bonds and other Parity Debt or (iii) partially Parity Debt and partially Subordinated Debt.

Section 7.11. DEFAULT AND REMEDIES. (a) Events of Default. Each of the following occurrences or events for the purpose of this First Supplement is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Registered Owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this First Supplement, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the City.

(b) Remedies for Default.

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the Registered Owners under this First Supplement, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Bonds then outstanding.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this First Supplement, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this First Supplement.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of a Bond authorized under this First Supplement, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this First Supplement do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the City or the City Council.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the Registered Owners with any liability, or be held personally liable to the Registered Owners under any term or provision of this First Supplement, or because of any Event of Default or alleged Event of Default under this First Supplement.

Section 7.12. RULES OF INTERPRETATION. For purposes of this First Supplement, except as otherwise expressly provided or the context otherwise requires:

(a) The words "herein," "hereof" and "hereunder" and other similar words refer to this First Supplement as a whole and not to any particular Article, Section, or other subsection.

(b) The definitions in an Article are applicable whether the terms defined are used in the singular or the plural.

(c) All accounting terms that are not defined in this First Supplement have the meanings assigned to them in accordance with then applicable accounting principles.

(d) Any pronouns used in this First Supplement include both the singular and the plural and cover both genders.

(e) Any terms defined elsewhere in this First Supplement have the meanings attributed to them where defined.

(f) The captions or headings are for convenience only and in no way define, limit or describe the scope or intent, or control or affect the meaning or construction, of any provisions or sections hereof.

(g) Any references to Section numbers are to Sections of this First Supplement unless stated otherwise.

Section 7.13. INDIVIDUALS NOT LIABLE. All covenants, stipulations, obligations, and agreements of the City contained in this First Supplement shall be deemed to be covenants, stipulations, obligations, and agreements of the Financing Program, the Utility System and the City to the full extent authorized or permitted by State law. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council or agent or employee of the City in his or her individual capacity and neither the members of the City Council, nor any officer, employee, or agent of the City shall be liable personally on the Bonds when issued, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.14. PAYMENT OF ATTORNEY GENERAL FEE. The City hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) $9,500, provided that such fee shall not be less than $750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The Authorized Representative is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds of each Series.

IN ACCORDANCE WITH SECTION 1201.028, Texas Government Code, finally passed, approved and effective this 9th day of April, 2019.

_____
Connie Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

[CITY SEAL]

The City has caused this First Supplement to be executed by an Authorized Representative.

CITY OF BASTROP, TEXAS

By: _____
Authorized Representative

EXHIBIT A
DEFINITIONS

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

"Authorized Denominations" - Means $5,000 or any integral multiple thereof.

"Authorized Representative" - Means the City Manager, any Assistant City Manager, Chief Financial Officer or such other individuals so designated by the City to perform the duties of an Authorized Representative under this First Supplement.

"Bonds" - The Bonds issued pursuant to and governed by this First Supplement, as described in Article II hereof.

"Bond Insurer" - One or more companies, if any, insuring all or any portion of the Bonds (or any portion thereof) or any successor thereof or assignee thereof.

"Chief Financial Officer" - Means the Finance Director or such other officer or employee of the City or such other individual so designated by the City to perform the duties of Chief Financial Officer under this First Supplement.

"Current Interest Bonds" - The Bonds paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in this Ordinance.

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

"DTC" - The Depository Trust Company, New York, New York, or any successor securities depository.

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

"Federal Securities" - Direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America.

"First Supplement" - This First Supplemental Ordinance, which was adopted pursuant to authority reserved by the City under the Master Ordinance.

"Issuance Date" - The date of delivery of the Bonds to the initial purchaser(s) thereof against payment therefor.

"Master Ordinance" - The "Master Ordinance Establishing the Water and Wastewater Utility System Revenue Financing Program," adopted by the City on April 9, 2019, as may be amended or supplemented from time to time.

"Maturity" - When used with respect to the Bonds, the scheduled maturity of the Bonds.

"Maximum Rate" - A net effective interest rate (as defined in and calculated in accordance with the provisions of the Chapter 1204, Texas Government Code, as amended not to exceed fifteen percent (15%)).

"MSRB" - The Municipal Securities Rulemaking Board.

"Owner" - The registered owners of the Bonds as shown on the Security Register and to the extent set forth in a Credit Agreement relating to the Bonds, the party contracting with the City under a Credit Agreement.

"Paying Agent" - The agent selected and appointed by the City for purposes of paying the principal of, premium, if any, and interest on the Bonds to the Owners thereof, as identified in Section 2.03 hereof and any successor to such agent.

"Paying Agent/Registrar" - Collectively, the Paying Agent and the Registrar designated in Section 2.03 of this First Supplement or any successor to such agent.

"Paying Agent/Registrar Agreement" - The agreement having such name executed by and between the City and the Paying Agent/Registrar.

"Predecessor Bonds" - Predecessor Bonds as defined in Section 2.05(a) hereof.

"Rebate Account" - The account by that name described in Section 4.02 hereof.

"Record Date" - With respect to each interest payment date of a Bond, the last business day of the next preceding month.

"Registrar" - The agent selected and appointed by the City for purposes of keeping and maintaining books and records relating to the registration, transfer, exchange, and payment of the Bonds and interest thereon, as identified in Section 2.03 hereof and any successor to such agent.

"Reserve Account" - The account that was described in Section 4.03 hereof.

"Reserve Account Obligation" - Means a surety bond or insurance policy deposited in the Reserve Account to satisfy the Required Reserve Amount whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

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

"SEC" - The United States Securities and Exchange Commission.

"Section" - Unless the context clearly requires otherwise, refers to a Section of this First Supplement.

"Security Register" - The books and records kept and maintained by the Registrar relating to the registration, transfer, exchange, and payment of the Bonds and the interest thereon.

EXHIBIT B

FORM OF BONDS

UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF BASTROP
CITY OF BASTROP, TEXAS
WATER AND WASTEWATER UTILITY SYSTEM REVENUE BONDS, SERIES 2019

No. R-_____ **$_____**

BOND DATE:	INTEREST RATE:	MATURITY DATE:	CUSIP:
April 30, 2019	_____	_____	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: **DOLLARS**

The City of Bastrop, Texas (the "City") hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the Registered Owner named above, or the registered assigns thereof, the Principal Amount specified above on the Maturity Date specified above and to pay interest on the unpaid principal amount hereof from the Bond Date specified above at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on August 1 and February 1 of each year, commencing August 1, 2019. Principal of this Bond shall be payable to the Registered Owner hereof, upon presentation and surrender, at the designated office of the Paying Agent/Registrar named in the registration certificate appearing hereon, or its successor. Interest shall be payable to the Registered Owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteen day of the next preceding month. All payments of principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America, without exchange or collection charges, and interest payments shall be made by the Paying Agent/Registrar by check sent on or before the appropriate date of payment, by United States mail, first-class postage prepaid, to the Registered Owner hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner hereof.

This Bond is one of a duly authorized issue of bonds designated as "City of Bastrop, Texas Water and Wastewater System Revenue Bonds, Series 2019" (the "Bonds"), in the aggregate

principal amount of $_____ issued pursuant to the laws of the State of Texas, including specifically the Enabling Act (the "Act"), and initially under and pursuant to an ordinance of the City adopted on April 9, 2019, and entitled First Supplemental Ordinance to the Master Ordinance establishing the City of Bastrop, Texas Utility System Revenue Financing Program (the "First Supplement") for the purpose of (i) paying costs for water and wastewater system improvements and (ii) paying the costs of issuing such Bonds. The Bonds are secured by a first lien on and pledge of the Security as defined in the Master Ordinance adopted on April 9, 2019 (the "Master Ordinance"), on a parity with all other Parity Debt (as defined in the Master Ordinance and the First Supplement).

The Master Ordinance, as supplemented by the First Supplement, is referred to in this Bond as the "Ordinance." Terms used herein and not otherwise defined shall have the meanings given in the Ordinance.

The Bonds are issued as "Current Interest Bonds," which total in principal amount $_____, and which pay accrued interest at stated intervals to the Registered Owners.

Redemption Provisions

The City reserves the right, at its option, to redeem Bonds having stated maturities on and after August 1, 2028, in whole or from time to time in part in principal amounts of $5,000 or any integral multiple thereof, on August 1, 2027, or any date thereafter, at the par value thereof plus accrued interest to the date of redemption. If the Bonds are redeemed, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, and if less than all of a maturity is to be redeemed the Paying Agent/Registrar shall determine by lot the Bonds, or portions thereof within such maturity to be redeemed (provided that a portion of a Bond may be redeemed only in integral multiples of $5,000 of principal amount).

THE BONDS maturing on _____, 20__ (the "Term Bonds") are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts, on the following dates and at a price of par plus accrued interest to the redemption date.

Bonds Maturing _____, 20__

Redemption Date	**Principal Amount**
*	*

*Final Maturity

THE PRINCIPAL AMOUNT of the Term Bonds required to be redeemed pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option

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

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

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

Notice of redemption shall be given at the times and in the manner provided in the First Supplement.

If this Bond is in a denomination in excess of $5,000, portions of the principal sum hereof in principal amount of $5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Registered Owner hereof, upon the surrender of this Bond at the principal office of the Paying Agent/Registrar, a new Bond or Bonds of like maturity, series and interest rate in any authorized denominations provided by the Resolution for the then unredeemed balance of the principal amount hereof. If this Bond is selected for redemption, in whole or in part, neither the City nor the Paying Agent/Registrar shall be required to transfer this Bond to an assignee of the Registered Owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to any exchange by the Registered Owner of the unredeemed balance hereof in the event of its redemption in part.

The Bonds are special obligations of the City payable solely from and equally secured by a lien on and pledge of the Security. The Bonds do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the City, except with respect to the Security.

The pledge of the Security and the other obligations of the City under the Ordinance may be discharged at or prior to the maturity of the Bonds upon the making of provision for their payment on the terms and conditions set forth in the Ordinance.

Subject to satisfying the terms and conditions stated in the Ordinance, the City has reserved the right to issue additional Parity Debt payable solely from and equally and ratably secured by a parity lien on and pledge of the Security and other moneys and securities pledged under the Ordinance to the payment of the Bonds.

Reference is hereby made to the Ordinance, a copy of which is on file in the designated office of the Paying Agent/Registrar, and to all of the provisions of which any Registered Owner of this Bond by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the Security; the nature and extent and manner of enforcement of the pledge; the terms and conditions for the issuance of additional Parity Debt; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners of the Bonds; the rights and remedies of the Registered Owner hereof with respect hereto and thereto; the rights, duties and obligations of the City; the terms and provisions upon which the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity or redemption of this Bond and this Bond thereafter no longer to be secured by the Ordinance or be deemed to be outstanding thereunder; and for the other terms and provisions thereof.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred only upon its presentation and surrender at the designated office of the Paying Agent/Registrar named below, or its successor with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Registered Owner hereof, or his duly authorized agent, and such transfer is noted on the

Security Register by the Paying Agent/Registrar. When a transfer occurs, one or more new fully-registered Bonds of the same Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Registered Owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Security Register at the close of business on the 15th day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a duly organized and legally existing home-rule city, organized under and by virtue of the Constitution and laws of the State of Texas; that the issuance of this Bond and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas and the Ordinance; that this series of bonds does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of this Bond and the Series of which it is a part as aforestated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas. The holder of this Bond is not entitled to demand payment of this Bond out of any money raised by taxation.

IN TESTIMONY WHEREOF, the City has caused its seal to be impressed or a facsimile thereof to be printed hereon and this Bond to be executed in the name of and on behalf of the City with the manual or facsimile signatures of its Mayor, and attested by the City Secretary.

CITY OF BASTROP, TEXAS

By: _____ By: _____
City Secretary Mayor
(SEAL)

[INSERTIONS FOR THE INITIAL BOND]

The Initial Bond shall be in the form set forth in this exhibit, except that:

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

B. The first paragraph of the Bond shall be deleted and the following will be inserted (with all blanks and bracketed items to be completed with information contained in this Ordinance):

"The City of Bastrop, Texas (the "City") hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the Registered Owner named above, or the registered assigns thereof, on August 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

Amount	Year	Rate
(Information from Section 2.02 to be inserted)		

The City promises to pay interest on the unpaid principal amount hereof from the Bond Date specified above at the respective per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on August 1 and February 1 of each year, commencing August 1, 2019. Principal of this Bond shall be payable to the Registered Owner hereof, upon presentation and surrender, at the principal office of the Paying Agent/Registrar named in the registration certificate appearing hereon, or its successor. Interest shall be payable to the Registered Owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last business day of the next preceding month. All payments of principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America, without exchange or collection charges, and interest payments shall be made by the Paying Agent/Registrar by check sent on or before the appropriate date of payment, by United States mail, first-class postage prepaid, to the Registered Owner hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner hereof."

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

Form of Registration Certificate of Comptroller of Public Accounts
to Appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	**§**	
OF PUBLIC ACCOUNTS	**§**	
THE STATE OF TEXAS	**§**	**REGISTER NO. _____**

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

WITNESS my signature and seal of office this _____.

_____
Comptroller of Public Accounts
of the State of Texas

(SEAL)

AUTHENTICATION CERTIFICATE OF
PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered under the provisions of the within-mentioned Resolution; the bond or bonds of the above titled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Regions Bank

as Paying Agent/Registrar

Registered this date:

_____
By: _____

Authorized Signature

Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

_____

(Please insert Social Security or Taxpayer Identification Number of Transferee)

(Please print or typewrite name and address, including zip code, of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney, to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed by:

_____

NOTICE: The signature on this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Bond in every particular.

EXHIBIT "C"

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 7.09 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

(1) Table 1 - Water Usage;
(2) Table 2 – Ten Largest Water Customers;
(3) Table 3 - Monthly Water Rates;
(4) Table 4 – Volumetric Water Rates;
(5) Table 5 – Daily Flow;
(6) Table 6 - Monthly Wastewater Rates;
(7) Table 7 – Ten Largest Wastewater Customers
(8) Table 8 – Monthly Electric Rates;
(9) Table 9 – Ten Largest electric Customers;
(10) Table 10 – Pro-Forma Utility System Revenue Debt Service Requirements;
(11) Table 11 – Utility System Condensed Statement of Operations;
(12) Table 12 – Coverage and Fund Balances;
(13) Table 13 – City's Equity in Utility System; and
(13) Appendix B.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12D

TITLE:
Consider action to approve Resolution No. R-2019-35 of the City Council of the City of Bastrop, Texas adopting a Purpose Statement for the International Code Review Process; and establishing for an effective date.

STAFF REPRESENTATIVE:
Matt Jones, Director of Planning and Development

BACKGROUND/HISTORY:
Building Bastrop launched on August 15, 2018 to create a new set of tools that will support the community in a responsible manner for generations to come. When looking at the Policy Statement adopted by City Council on February 26, 2019, a key component is that the codes be fiscally sustainable. The Building Bastrop Codes focus on the public realm (first 15' of a property), infrastructure, and life safety. The International Code Council (ICC) Building Codes (I-Codes) will regulate life safety. The I-Codes are standards used in the design, build, and compliance process to construct safe, sustainable, affordable, and resilient structures.

It is not uncommon for cities to update their codes every few years. Bastrop last updated these codes in 2012 when the 2009 I-Codes were adopted. There have been several updates to the I-Codes since 2009 and with the release of the 2018 I-Codes, we are now two (2) code updates behind and our building codes are over ten (10) years old.

The Construction Standards Board (CSB) has two main responsibilities. The first is to hear appeals of a decision made by the Building Official, and the second is to review and make recommendations to City Council regarding building codes. The CSB and Staff will review the 2018 I-Codes using the following proposed purpose statement as amended by City Council on March 26, 2019 for the basis of the code review:

> ***"Review national best practices and establish locally amended life safety expectations that protect our public and ensure the asset meets or exceeds its useful life."***

The I-Code review process provides the CSB, Staff, and the community a chance to evaluate the codes for opportunities to make local amendments. Adopting localized amendments will ensure that the I-Codes as amended are fiscally sustainable, authentic Bastrop, and protect life safety.

Staff is committed to improve the development and permitting process. A part of that commitment will involve resolving conflicting language in different sections of the codes as part of this review. To decrease the chance of conflicting language in the future, the I-Codes will be referenced in the Building Bastrop Codes, but will be located in the Technical Manual. The Technical Manual will be a comprehensive manual serving as a single location for all technical criteria required to

develop or build in Bastrop. Having the codes located in one location will discourage the possibility of conflicting codes in different sections of the code.

Staff has established a set of review criteria that will serve as a guide when evaluating the codes. The evaluation criteria are listed below:

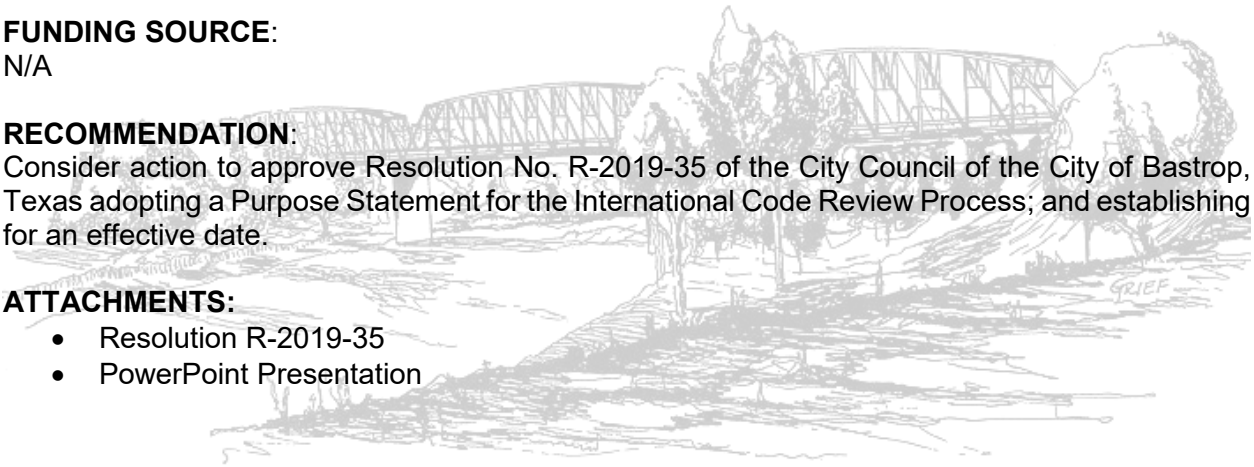
- Does it meet our purpose statement?
- Remember who the customer is.
- Does it make common sense?
- Can we legally enforce it?
- Does the code need to be inspected annually or another routine basis?

POLICY EXPLANATION:
Using Council's Purpose Statement for Building Bastrop as a guide, Staff developed a Purpose Statement for the I-Code update for use by the Construction Standards Board and Staff related to all code review. The proposed statement was reviewed and revised by City Council at their March 26th meeting.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Consider action to approve Resolution No. R-2019-35 of the City Council of the City of Bastrop, Texas adopting a Purpose Statement for the International Code Review Process; and establishing for an effective date.

ATTACHMENTS:
- Resolution R-2019-35
- PowerPoint Presentation



RESOLUTION NO. R-2019-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PURPOSE STATEMENT FOR THE INTERNATIONAL CODE REVIEW PROCESS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, *Building Bastrop* launched on August 15, 2018 to create a new set of tools that will support the community in a responsible manner for generations to come; and

WHEREAS, when looking at the Policy Statement adopted by City Council on February 26, 2019, a key component is that the building codes be fiscally sustainable; and

WHEREAS, the Building Bastrop Codes focus on the public realm (first 15' of a property), infrastructure, and life safety; and

WHEREAS, The International Code Council Building Codes will regulate life safety; and

WHEREAS, the International Code Council Building Codes are standards used in the design, build, and compliance process to construct safe, sustainable, affordable, and resilient structures; and

WHEREAS, building codes must be fiscally sustainable, geographically sensitive, and authentic Bastrop.

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

Section 1: That the City Council hereby approves a Purpose Statement for the International Code Review Process as follows:

"Review national best practices and establish locally amended life safety expectations that protect our public and ensure the asset meets or exceeds its useful life."

Section 2: That this Resolution shall take effect immediately from and after its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of April 2019.

APPROVED:

_____

Connie B. Schroeder, Mayor

ATTEST:

_____

Tracy Chavez, Deputy City Secretary

APPROVED AS TO FORM:

_____

Alan Bojorquez, City Attorney



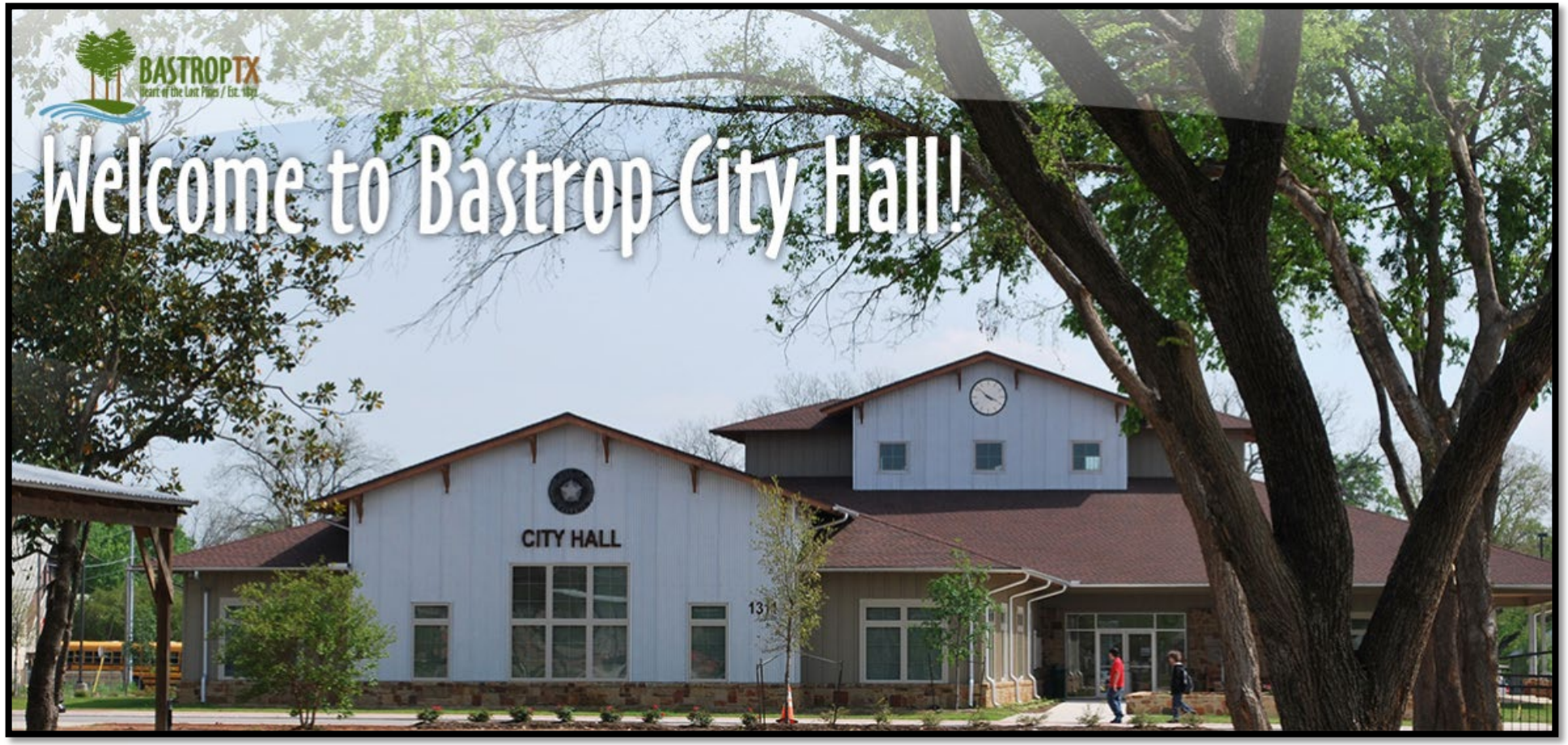
BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

What is the goal?

BASTROPTX
Heart of the Lost Pines / Est. 1832

Life Safety



BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

BASTROPTX
Heart of the Lost Pines / Est. 1832

Adopt building codes that:

1. Protect Public Safety
2. Financially Sustainable
3. Geographically Sensitive
4. Authentic Bastrop

BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

BASTROPTX
Heart of the Lost Pines / Est. 1832

Proposed Purpose Statement*:

"Review national best practices and establish locally amended life safety expectations that protect our public and ensure the asset meets or exceeds its useful life."

**As amended by City Council on March 26, 2019.*

BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

BASTROPTX
Heart of the Lost Pines / Est. 1832

Process and Timeline:

- Review purpose and timeline with Council
- Send codes to Construction Standards Board (CSB)
- Internal Staff and CSB review
- Development Community input
- Present recommendations to Council
- Public Hearings and adoption – Nov. 2019

BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

BASTROPTX
Heart of the Lost Pines / Est. 1832



BUILDING BASTROP

HONORING OUR AUTHENTIC PAST.
PLANNING FOR OUR SUSTAINABLE FUTURE.

Questions or Comments?

BASTROPTX
Heart of the Lost Pines / Est. 1832

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12E

TITLE:
Hold public hearing and consider action to approve the first reading of Ordinance No. 2019-06 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit to allow a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, an area zoned SF-9, Single Family 9, within the city limits of Bastrop, Texas; as shown in Exhibits A and B; setting out conditions; including a severability clause; establishing an effective date, and move to include on the April 23, 2019 Consent Agenda for second reading.

STAFF REPRESENTATIVE:
Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

ITEM DETAILS:

Site Address:	149 Mahalo Court (Attachment 1)
Total Acreage:	0.71 acres
Legal Description:	Tahitian Village, Unit 1, Block 19, Lots 598, 599, 600
Property Owner:	Mike Kilburn
Existing Use:	Single-Family Residential
Existing Zoning:	SF-9, Single-Family 9
Future Land Use:	Neighborhood Residential

BACKGROUND/HISTORY:
The applicant is applying for a Conditional Use Permit to build an accessory unit up to 400 square feet in size. When an accessory building is greater than 240 square feet in the Single-Family 9 zoning district, the owner is required to receive a Conditional Use Permit.

The property has an existing single-family home on the lot. The structure will be located behind the front façade of primary building and within all of the required setbacks (Exhibit A).

The proposed accessory structure has a 16 feet by 24 feet (384 square feet) footprint, a height of 11 feet 2 inches, and includes a pitched roof and engineered wood siding.

Proposed Structure

(Exhibit B)



POLICY EXPLANATION:
The purpose of conditional uses is to allow certain uses in districts that under some circumstances would not be compatible with other permitted uses but may be compatible if certain conditions and development restrictions are met. A Conditional Use Permit (CUP) is adopted by Ordinance, similar to a standard zoning request, with public hearings at Planning & Zoning Commission and City Council, as well as two ordinance readings at separate City Council meetings.

Section 33.2 of the Zoning Ordinance states that the Planning and Zoning Commission may consider the following criteria when approving a CUP:

i. The use is harmonious and compatible with surrounding existing uses or proposed uses;
The surrounding land use is single-family residential. The Future Land Use Plan designates this area a Neighborhood Residential.

ii. The activities requested by the applicant are normally associated with the permitted uses in the base district;
Single-family uses are one of the primary uses of the Single-Family 9 zoning district.

iii. The nature of the use is reasonable;
The requested use for an accessory structure is allowed as secondary structure to a primary structure and is a complementary use for a single-family use.

iv. Any negative impact on the surrounding area has been mitigated;

The proposed structure will be located behind the front façade line (not in front of the structure) and within all required setbacks on the property.

v. Any additional conditions specified [to] ensure that the intent of the district purposes are being upheld.

No other conditions other than the standard are recommended by staff.

Compliance with Emergency Ordinance 2018-1-A and 2018-2-A
The owner of the property held a Pre-Submission meeting with staff and then received an Exemption from City Council on February 12, 2019. The requested Conditional Use Permit contains the same plans presented in the exemption application.

PUBLIC COMMENTS:
Property owner notifications were mailed to four adjacent property owners on March 11, 2019. At the time of this report, two responses were received, both with a response of no objection (Attachment 3).

PLANNING & ZONING COMMISSION REPORT:
The Planning & Zoning Commission held a public hearing and considered this item at the March 28, 2019 regular meeting. The Commission voted 9 - 0 to recommend approval of the Conditional Use Permit with the standard listed conditions.

RECOMMENDATION:
Hold public hearing and consider action to approve the first reading of Ordinance 2019-06 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit to allow a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, an area zoned SF-9, Single Family 9, within the city limits of Bastrop, Texas; as shown in Exhibits A and B; setting out conditions; including a severability clause; establishing an effective date, and forward to the April 23, 2019 Consent Agenda for second reading.

Standard Conditions from Section 33.2:

1. Construction and permits submitted shall be in conformance with the City of Bastrop regulations.
2. All necessary permits for the proposed development shall be acquired prior to construction on the subject property.
3. A Building Permit shall be applied for and secured within one (1) year from the date the conditional use permit is granted (second reading of the ordinance).

ATTACHMENTS:
- Ordinance 2019-06
- Exhibit A: Property Site Plan
- Exhibit B: Proposed Building Plans
- Attachment 1: Location and Zoning Map
- Attachment 2: Letter of Intent
- Attachment 3: Property Owner Responses

ORDINANCE 2019-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, GRANTING A CONDITIONAL USE PERMIT TO ALLOW A 400 SQUARE FOOT ACCESSORY STRUCTURE ON TAHITIAN VILLAGE, UNIT 1, BLOCK 19, LOT 598, 599, AND 600, LOCATED AT 149 MAHALO COURT, AN AREA ZONED SF-9, SINGLE FAMILY 9, WITHIN THE CITY LIMITS OF BASTROP, TEXAS; AS SHOWN IN EXHIBITS A AND B; SETTING OUT CONDITIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mike Kilburn (the "Owner") submitted a request for a Conditional Use Permit (CUP) for up to a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, within the city limits of Bastrop, Texas, hereinafter referred to as "the Property"; and

WHEREAS, a property site plan is attached hereto as Exhibit "A" (the "Property); and

WHEREAS, the Property is currently zoned as Single Family 9 (SF-9); and

WHEREAS, pursuant to Section 10.4 of the City's Zoning Ordinance, notice of the CUP was given to all property owners located within two hundred (200) feet of the Property, and the Planning and Zoning Commission of the City of Bastrop held a public hearing on the CUP request on March 28, 2019; and

WHEREAS, the owner's proposed development, with the stated conditions, meets the intent of the Zoning Ordinance, Section 33.2, Conditional Use Permit criteria; and

WHEREAS, after notice and hearing, the Planning and Zoning Commission recommended approval of the proposed request, subject to certain conditions set forth herein; and

WHEREAS, after consideration of public input received at the hearing, the information provided by the Applicant, and all other information presented, City Council finds by a majority vote of all members that it is in the public interest to approve the CUP.

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

Section 1: A Conditional Use Permit for a 400 square foot accessory structure, situated on Tahitian Village, Unit 1, Block 19, Lot 598, 599 & 600, located at 149 Mahalo

Court, within the city limits of Bastrop, Texas as more particularly shown on Exhibits "A" and "B", shall be and is hereby approved with the following conditions:

a. Construction and permits submitted shall be in conformance with the City of Bastrop regulations.
b. All necessary permits for the proposed development shall be acquired prior to construction on the subject property.
c. A Building Permit shall be applied for and secured within one (1) year from the date the conditional use permit is granted (second reading of the ordinance).

Section 2: If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 3: This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

READ and APPROVED on First Reading on the 9th day of April 2019.

READ and ADOPTED on the Second Reading on the 23th day of April 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

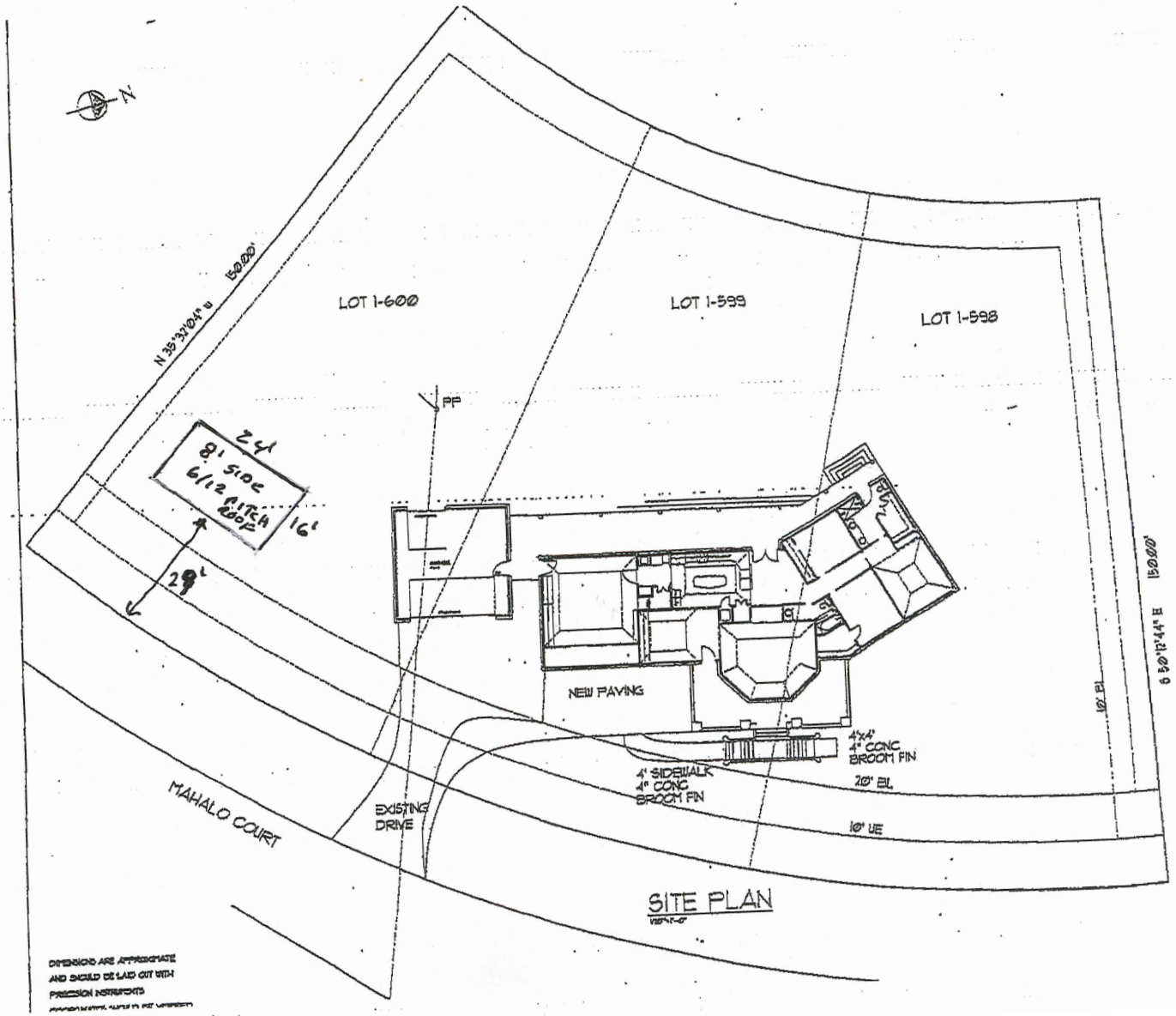
ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

Exhibit A



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General Site Notes:

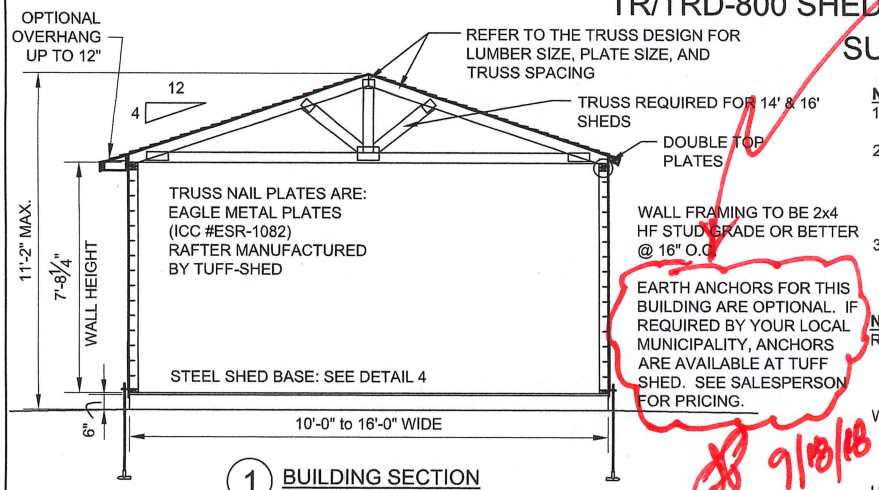
1. Before starting any work, it is the contractors responsibility to verify all field conditions, existing and new, affecting the work to be done, including, but not limited to, exact location of all construction, all railroads, all signals, restrictions or requirements, location, size and depth of all utilities, existing trees, existing and conditions relevant to the work to be done. Owner will be notified immediately regarding changes or discrepancies for specific instructions to contractor.
2. Grade contours or elevations are taken from available data and are schematic only and must be verified on the job site. Finish grades must be verified and checked as to their relationship to the job necessary adjustments shall be made prior to billing item. It is critical and general contractor will be responsible for a complete job based upon plans condition.
3. Contractor to provide positive drainage away from construction at all times.
4. Verify available utility connections and buried underground electrical service. Verify site

Lots 1-598, 1-599 AND 1-600 Blo
TANITIAN VILLAGE, UNIT 1
Bastrop, Texas

Exhibit B

Need From Tuff Shed
anchors and Rating Capacity

TR/TRD-800 SHED 10' to16' WIDE x UP TO 24' LONG
SUNDANCE SERIES



1 BUILDING SECTION
SCALE: N.T.S.

NOTES:

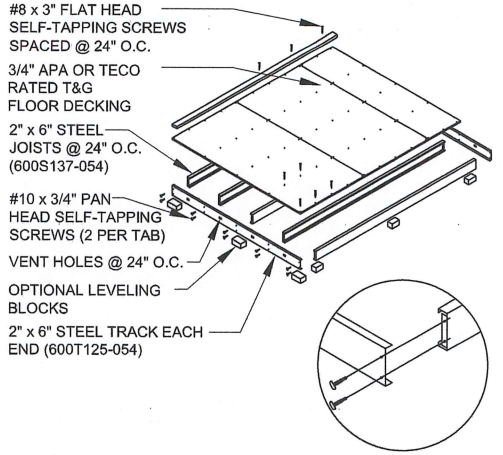
1. BUILDING CODE: 2015 IBC AND 2015 IRC
2. DESIGN LOADING:
   WIND SPEED & EXPOSURE: 115C
   ROOF LIVE LOAD: 40 PSF
   ROOF DEAD LOAD: 10 PSF
3. FOR SHEDS WHICH OTHERWISE MEET THE PRESCRIPTIVE REQUIREMENTS OF THE 2015 IBC AND 2015 IRC ALL SHEDS CONSTRUCTED ACCORDING TO STANDARD CONVENTIONAL CONSTRUCTION METHODS.

NAILING:

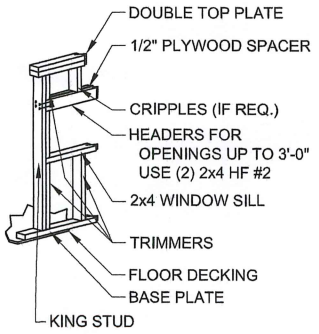
ROOF:
ATTACH 7/16" OSB SHEATHING TO TRUSSES WITH:
8d NAILS @ 4" O.C. AT EDGES
8d NAILS @ 12" O.C. IN FIELD

WALLS:
ATTACH 3/8" SMARTSIDE TO WALL FRAMING WITH:
8d NAILS @ 4" O.C. AT EDGES.
8d NAILS @ 12" O.C. IN FIELD

HEADER:
ATTACH HEADER TO STUD WITH:
4-8d TOENAIL OR 4-16d END NAIL DOUBLED HEADER-16d @ 16" STAGGERED FACE NAIL

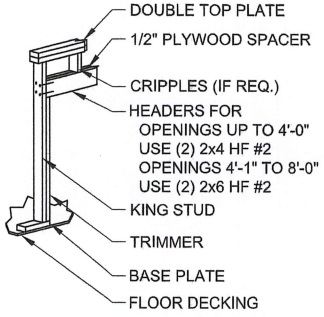


1. STEEL SHED FOUNDATION:
   2" x 6"-16 GAUGE STEEL TRACKS G140 ZINC COATED
   2" x 6"-16 GAUGE STEEL JOISTS G140 ZINC COATED @ 24" O.C.
   (SUPPLIER: ALLIED STUDCO (JOIST: 600S137-054 / TRACK: 600T125-054) ICC ER-4943P.
2. 3/4" APA OR TECO RATED TONGUE AND GROOVE FLOOR DECKING. 24" MAX PANEL SPAN. STAGGER PANEL LAYOUT.
3. FASTEN FLOOR DECKING TO JOIST & TRACKS USING #8 x 1-5/8" MINIMUM LONG SELF-DRILLING SCREWS @ 12" O.C. NO BLOCKING REQUIRED. ALL EDGES SHALL LIE ON FLOOR JOISTS. STAGGER PANEL LAYOUT PER APA CONDITION 1.
4. FASTEN SOLE PLATE THROUGH FLOOR DECKING INTO JOISTS OR TRACKS WITH #8 x 3" GALVANIZED SELF-DRILLING SCREWS @ 24" O.C.
5. ALLOWABLE FLOOR LIVE LOAD: 75 PSF FOR STEEL JOISTS CONTINUOUSLY SUPPORTED. 50 PSF FOR JOISTS ON BLOCKS AS SHOWN.
6. USE OPTIONAL CONCRETE BLOCKS AS REQUIRED TO LEVEL BUILDING:
   SUGGESTED SIZES: 2" x 8" x 16", 4" x 8" x 16", OR 8" x 8" x 16".
   BLOCKS UNDER JOISTS SPACED @ 8'-0" O.C. MAXIMUM.
   BLOCKS UNDER TRACK SPACED @ 4'-0" O.C. MAXIMUM.



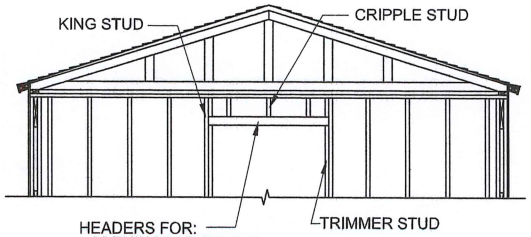
FOR WINDOW OPENINGS UP TO 3'-0" ON SUNDANCE SERIES SIDE WALLS

2A WINDOW HEADER DETAIL FOR LOAD BEARING WALLS
SCALE: N.T.S.



FOR OPENINGS UP TO 8'-0" ON SUNDANCE SERIES SIDE WALLS

2B DOOR HEADER DETAIL FOR LOAD BEARING WALLS
SCALE: N.T.S.



3 HEADER DETAIL FOR NON-LOAD BEARING WALLS
SCALE: N.T.S.

4 SHED BASE DETAIL
SCALE: N.T.S.

TUFF SHED
Storage Buildings & Garages
TUFF SHED, INC.

Order #.
Customer:
Site Address:
Building Size: WIDTH - LENGTH - HEIGHT - SQ. FT. AREA

P.O. #
Drawn By: SJ
Date: 5/1/17
Checked By:
Date:
Scale: N.T.S.

THESE DRAWINGS AND THE DESIGN ARE THE PROPERTY OF TUFF SHED, INC. THESE DRAWINGS ARE FOR A BUILDING TO BE SUPPLIED AND BUILT BY TUFF SHED. ANY OTHER USE IS FORBIDDEN BY TUFF SHED INC & THE ENGINEER OF RECORD.

DRAWINGS BY:
TUFF SHED, INC.
IN HOUSE DRAFTING DEPARTMENT
1777 S. HARRISON STREET
DENVER, COLORADO 80210
(303) 753-TUFF

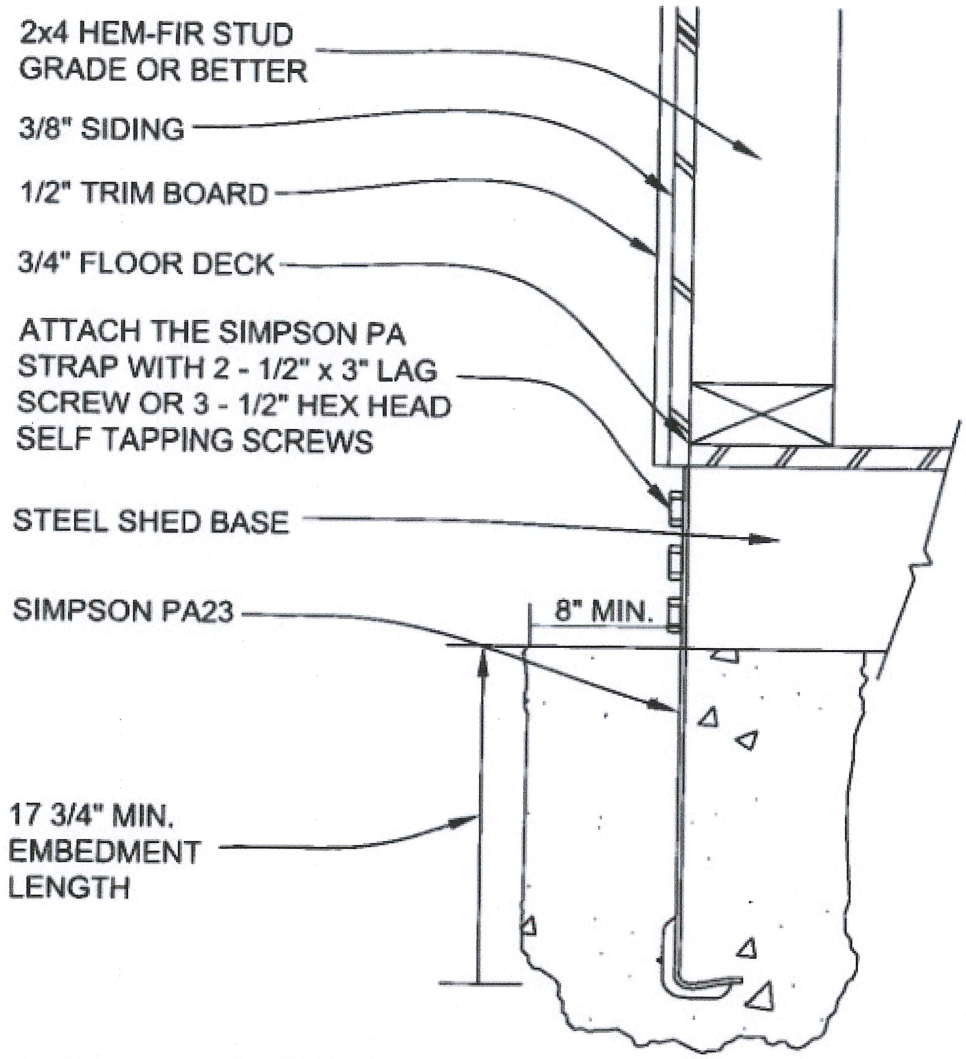
TUFF SHED INC. ASSUMES ALL RESPONSIBILITY FOR THE CONTENT OF THESE DRAWINGS AND THE CONSTRUCTION OF THE BUILDINGS SHOWN HEREIN.

TITLE
BUILDING SECTIONS
SHED BASE DETAILS
HEADER FRAMING DETAILS
NOTES - 2015 IBC & IRC - 115C

DRAWING NO. TR/TRD800-02
REV. LEVEL 01
SHEET 1
PAGE 1 OF 1

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Exhibit B



PA INSTALLATION

NOT TO SCALE

NOTES:
1) INSTALL PA ANCHORS IN A 18" x 18" x 24" SPOT FOOTING.
2) INSTALL PA ANCHORS A MINIMUM OF 8" FROM ALL CONCRETE EDGES.

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By

Scale: NTS CUSTOMERS NAME: Tuff Shed P.O.#:

TUFF SHED® Storage Buildings & Garages

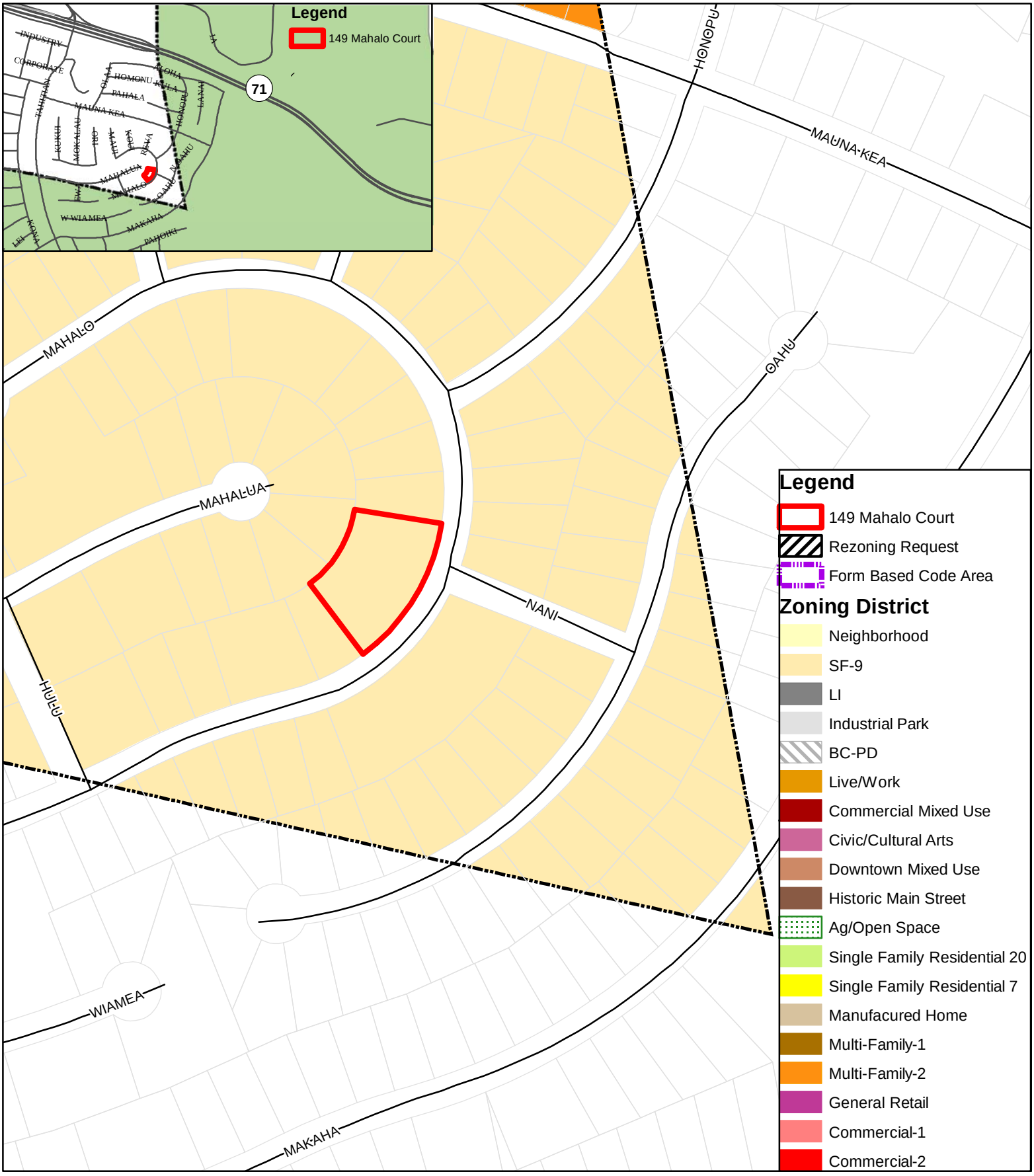
Title: SIMPSON PA23 ANCHOR INSTALLATION DETAIL 2012 IBC/IRC 105 MPH

Drawn By: SJ
Date Drawn: 1/16/15
Checked By:
Date Revised:

Exhibit B

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Heart of the Lost Pines
Est. 1832

1 inch = 215 feet

Attachment 1
Location and Zoning Map
CUP Request
for a 400 sq. ft. Accessory Structure

Date: 3/11/2019

N

The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefullness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

Attachment 2

Project Description Letter For Waiver and CUP

- **Type of improvement.**
  Install a 16x24 storage shed from Home Depot.

- **Scope of improvement.**
  Shed will be built on site by Home Depot. See included site plan for location.

- **How the project will affect areas within the scope of work .**
  Shed will be placed on concrete blocks with anchors. See included plans for details of concrete block placement and anchors. Drainage will not be affected. See included engineers report.

- **Why CUP is needed.**
  Shed is 384 sqft.

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By

PROPERTY OWNER'S RESPONSE

Attachment 3

As a property owner within 200': (please check one)

- ☐ I am in favor of the request.
- ☐ I am opposed to the request.
- ☒ I have no objection to the request.

Property Owner Name: Brian Walker
Property Address: 163 Mahalo Ct, Bastrop TX
Phone (optional): _____
Mailing Address: 163 Mahalo Ct, Bastrop TX
Email (optional): _____
Property Owner's Signature: _____

Comments: (Optional)

Please provide reply to the address below, via fax (512) 332-8829, or email:
plan@cityofbastrop.org

RE:149 Mahalo Court CUP

From: Carroll Frushay
To: Planning Dept
Subject: 149 Mahalo Court CUP
Date: Monday, April 1, 2019 10:28:26 AM

Hi, this is Carroll Frushay at 159 Mahalua Ln, Bastrop, TX 78602. I have no objection to the request regarding 149 Mahalo Ct.

Regards,
Carroll Frushay

WARNING EXTERNAL EMAIL: This email is from an external source. Do not click links or open attachments without positive sender verification of purpose. Never enter Username, Password or sensitive information on linked pages from this email. If you are unsure about the message, please contact the IT Department for assistance.

149 Mahalo Court CUP

Public hearing and consider action to approve the first reading of Ordinance 2019-06 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit to allow a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, an area zoned SF-9, Single Family 9, within the city limits of Bastrop, Texas; as shown in Exhibits A and B; setting out conditions; including a severability clause; establishing an effective date, and forward to the April 23, 2019 Consent Agenda for second reading.

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Request

- Place a 384 square foot accessory structure at 149 Mahalo Court.
- The Zoning Ordinance requires accessory structures over 240 square feet in size in SF-9 zoning to obtain a Conditional Use Permit.

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Location

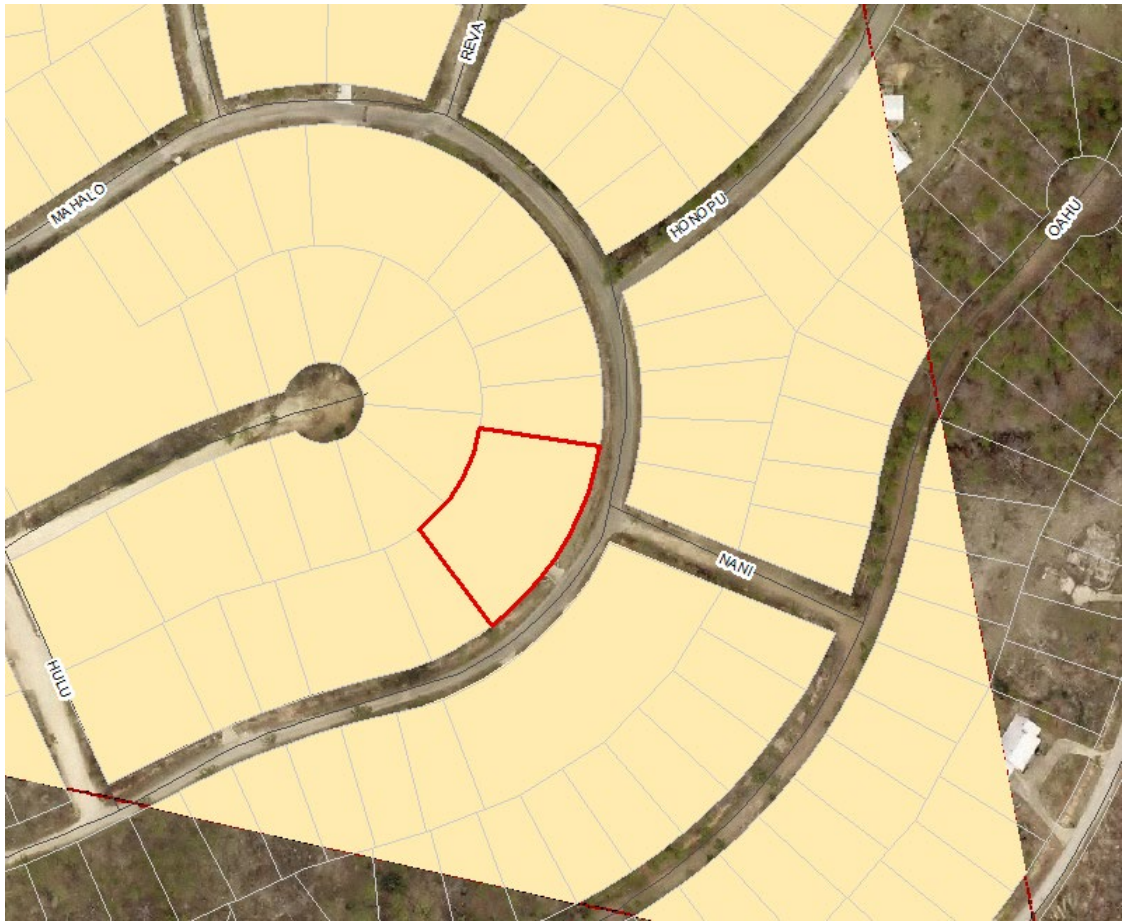
- 149 Mahalo Court



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Zoning

- SF-9, Single Family 9



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Proposed Structure

- 384 square foot shed

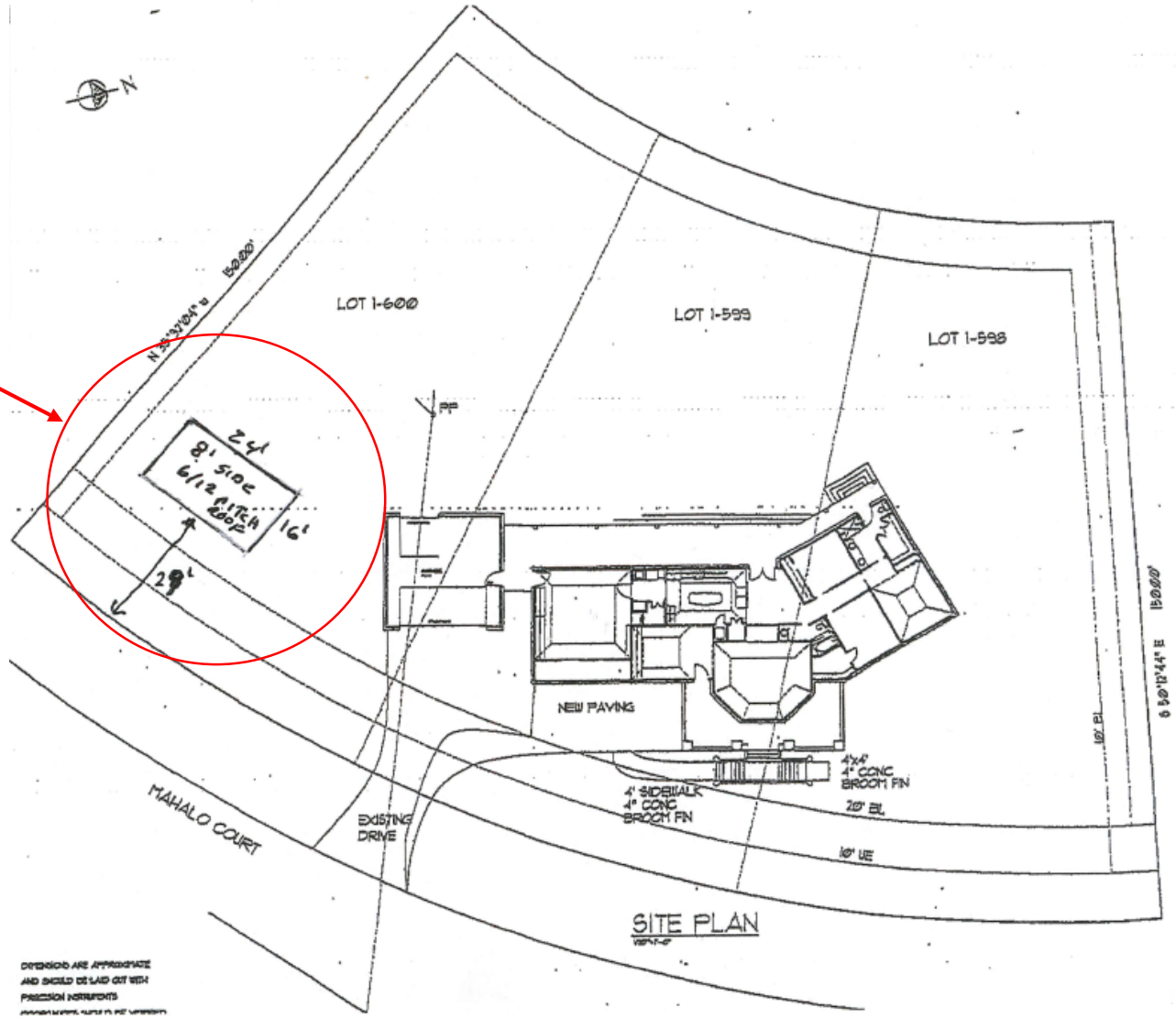


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Site Layout

16’ x 24’ Shed Location

Behind the front façade line



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Section 33.2 of the Zoning Ordinance CUP Criteria

i. The use is harmonious and compatible with surrounding existing uses or proposed uses;

The surrounding land use is single-family residential. The Future Land Use Plan designates this area a Neighborhood Residential.

ii. The activities requested by the applicant are normally associated with the permitted uses in the base district;

Single-family uses are one of the primary uses of the Single-Family 9 zoning district.

iii. The nature of the use is reasonable;

The requested use for an accessory structure is allowed as secondary structure to a primary structure and is a complementary use for a single-family use.

iv. Any negative impact on the surrounding area has been mitigated;

The proposed structure will be located behind the front façade line (not in front of the structure) and within all required setbacks on the property.

v. Any additional conditions specified [to] ensure that the intent of the district purposes are being upheld.

No other conditions are recommended by staff.

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Compliance with the Moratorium

- An Exception was received for this project from City Council on February 12, 2019.

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Heart of the Lost Pines / Est. 1832

Planning & Zoning Commission Report

- By a vote of 9 - 0, the P&Z recommended granting the CUP with the conditions in the staff report.

Recommendation

Hold public hearing and consider action to approve the first reading of Ordinance 2019-06 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit to allow a 400 square foot accessory structure on Tahitian Village, Unit 1, Block 19, Lot 598, 599, and 600, located at 149 Mahalo Court, an area zoned SF-9, Single Family 9, within the city limits of Bastrop, Texas; as shown in Exhibits A and B; setting out conditions; including a severability clause; establishing an effective date, and forward to the April 23, 2019 Consent Agenda for second reading.

Standard Conditions per Section 33.2:

1. Construction and permits submitted shall be in conformance with the City of Bastrop regulations.
2. All necessary permits for the proposed development shall be acquired prior to construction on the subject property.
3. A Building Permit shall be applied for and secured within one (1) year from the date the conditional use permit is granted (second reading of the ordinance).

BASTROPTX
Heart of the Lost Pines / Est. 1832

Questions?

BASTROPTX
Heart of the Lost Pines / Est. 1832

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12F

TITLE:
Consider action to approve Resolution No. R-2019-31 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3E Final Plat, being 3.787 acres out of the Mozea Rousseau Survey, Abstract 56, located west of the extension of Trailside Lane, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:
Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

ITEM DETAILS:

Site Address:	West of the extension of Trailside Lane (Attachment 1)
Total Acreage:	3.787 acres
Legal Description:	3.787 acres out of the Mozea Rousseau Survey, Abstract 56
Property Owner:	Ranch Road Development, LLC/Scott Miller
Agent Contact:	Carlson, Brigance, & Doering/Christine Methvin
Existing Use:	Vacant/Undeveloped
Existing Zoning:	Pecan Park Residential Planned Development
Planned Development District:	Single-Family Select (PD SFS)
Future Land Use:	Neighborhood Residential

BACKGROUND/HISTORY:
The applicant has submitted a Final Plat for the Pecan Park, Sections 3E. The Preliminary Plat that includes this section was approved on July 10, 2018 as Pecan Park, Sections 3B-3E. Section 3E section contains 16 single-family detached lots allowed under the Single-Family Select district of the Pecan Park Residential Planned Development. The minimum lot width is 50 feet and the minimum lot area is 6,000 square feet. 191 linear feet of street will be dedicated with Watercourse Way, a 50-foot right-of-way that terminates in a cul-de-sac.

Traffic Impact and Streets
The Final Plat proposes to extend Watercourse Way, a local street, with a paved width of 30 feet curb-to-curb. Sidewalks will be installed along all proposed streets, and will connect to the proposed neighborhood trail system. The Public Improvement Construction Plans have been reviewed and have been tentatively approved, pending City Council approval of the Final Plat.

Utilities
Water service (domestic and fire) will be provided by the City via water line extensions from existing infrastructure located on Trailside Lane. These lines will be designed according to the City's construction standards, as well as the Texas Commission on Environmental Quality's (TCEQ) requirements.

Wastewater collection and treatment will also be provided by the City, and will require the installation of lines that will ultimately connect to a wastewater lift station that was installed with Section 3B.

Drainage
The Public Improvement Construction Plans that were reviewed with the Final Plat proposes to install an underground storm sewer system designed to drain runoff generated from the development into an existing system located adjacent to Section 6B and through a future system routed through future Sections 2 and 7. The existing system was designed to accommodate this increase in peak flows, and ultimately connects to the Colorado River.

The proposed drainage system will be designed with a sufficient capacity to route flows from a 100-year design storm to the Colorado River. Due to the property's close proximity to the river, stormwater detention is not required.

PUBLIC COMMENTS:
Notifications to adjacent property owners within 200 feet were mailed on March 29, 2019 (Attachment 3).

POLICY EXPLANATION:
All Final Plats are forwarded to City Council for approval.

Compliance with 2036 Comprehensive Plan:

- Future Land Use Plan - Neighborhood Residential: The Neighborhood Residential character area is for single-family residential subdivision development, associated amenities such as parks, trails, open spaces and public uses such as schools, fire stations, and more.

  This final plat complies with the Future Land Use Plan. The plat includes 16 single-family lots that will provide single-family detached units. This section is part of the Pecan Park development, in which the total development includes multiple phases that include parks, trails, and recreation facilities.

- Objective 2.4.1: Invest in waste water system expansion in areas that promote infill and contiguous development.

  This development is within the City's wastewater service area and is vacant land immediately adjacent to existing development. This subdivision connects to existing wastewater lines and continues the system in an efficient manner

- Goal 4.1.1 Provide a greater diversity of housing options in Bastrop while protecting the character of the City's existing neighborhoods.

  The Pecan Park Development includes six different residential lot standards. This plat utilizes the Single Family Select district, which allows a minimum of 6,000 square foot lots

with reduced rear and side setbacks to allow various single-family product types and with varied 20 and 25-foot front setbacks to provide visual appeal.

Local Government Code

- Sec. 212.002. Rules.

  After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

  Bastrop adopted subdivision regulations in 1981. The Code of Ordinances, Chapter 10 – Subdivisions outlines the requirements for plats within the Bastrop city limits and Extra Territorial Jurisdiction (ETJ).

  Section 212.004 Plat Required

  (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.

  The applicant has proposed dividing an undeveloped 3.787 acre tract into 16 single-family lots. Public improvements within the subdivision (streets, drainage, and other utilities) will be dedicated to the City upon their completion.

- Sec. 212.010. Standards for Approval

  (a) The municipal authority responsible for approving plats shall approve a plat if:

  (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;

  The final plat conforms to the Future Land Use Plan, which is designated Neighborhood Residential for this area.

  (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;

  The plat conforms to the adopted Transportation Master Plan. The extension of Watercourse Way will be dedicated with this plat. The plat also conforms to the Capital Improvement Plan and will install public extensions of the water and wastewater infrastructure.

  (3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

  Required improvements and bonds will be furnished before the approval of the Final Plat.

(4) it conforms to any rules adopted under Section 212.002.

The final plat complies with the requirements of the adopted Subdivision Ordinance.

Code of Ordinances Chapter 10 – Subdivisions

- Section 4.20 – Standard Procedure – Final Plat

4.20.1 Submission

C. The final plat shall be filed with the Director of Planning and Development at least fifteen (15) days prior to the meeting at which approval is requested. Prior to the plat being placed before the Council for consideration, the plat must be accepted as administratively complete by the Director of Planning and Development. A plat that contains the information set forth in paragraph 4.20.2 is considered complete.

Planning and Engineering staff have reviewed the Pecan Park Section 3E Final Plat for compliance with subdivision and utility standards, have deemed the plat administratively complete and that it meets all of the Subdivision Ordinance requirements.

D. The Director of Planning and Development will mail a notice to each property owner named as required by Section 4.10.1A hereof each and every time that a subdivision proposal is pending before the City Planning and Zoning Commission or City Council which notice shall include the date, place and time of each subdivision, consideration.

A mailed notice was sent to all property owners within 200 feet on March 29, 2019.

RECOMMENDATION:

Consider action to approve Resolution No. R-2019-31 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3E Final Plat, being 3.787 acres out of the Mozea Rousseau Survey, Abstract 56, located west of the extension of Trailside Lane, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2019-31
- Exhibit A: Final Plat
- Attachment 1: Location Map
- Attachment 2: Surrounding Property Owner Notification

RESOLUTION NO. R-2019-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE PECAN PARK, SECTION 3E FINAL PLAT, BEING 3.787 ACRES OUT OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT 56, LOCATED WEST OF THE EXTENSION OF TRAILSIDE LANE, WITHIN THE CITY LIMITS OF BASTROP, TEXAS, AS SHOWN IN EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Texas Local Government Code Section 212 and the City of Bastrop Subdivision Ordinance, the City Council is required to take action regarding certain plats; and

WHEREAS, Ranch Road Development L.L.C. ("the Applicant") has submitted a Final Plat for Pecan Park Section 3E, a residential subdivision; and

WHEREAS, the Final Plat is consistent with the Comprehensive Plan designation of Neighborhood Residential and requirements of the Pecan Park Residential Planned Development (Ord # 2017-14); and

WHEREAS, the Preliminary Plat for Pecan Park Section 3B, 3C, 3D, & 3E was recommended for approval by the Planning & Zoning Commission on June 28, 2018 and City Council on July 10, 2018; and

WHEREAS, the Bastrop Planning and Development Department has reviewed the above-referenced Final Plat and found it is in compliance with the Subdivision Ordinance, and the Pecan Park Planned Development (Ord # 2017-14) standards; and

WHEREAS, notice of the subdivision was sent in accordance with the Subdivision Ordinance to notify the public.

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

Section 1: The Final Plat known as the Pecan Park Section 3E, being 3.787 acres of the Mozea Rousseau Survey, Abstract 56, located west of the extension of Trailside Lane**,** within the city limits of Bastrop, Texas is hereby approved, a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

Section 2: All orders, ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: This ordinance shall take effect upon passage and in accordance with the laws of the State of Texas.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of April, 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

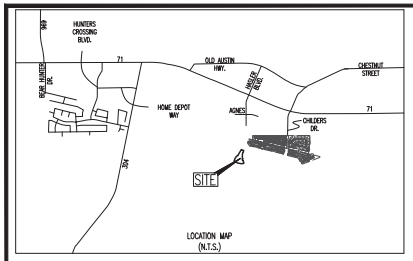
_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

THE FINAL PLAT OF

PECAN PARK SECTION 3E



SCALE: 1" = 100'

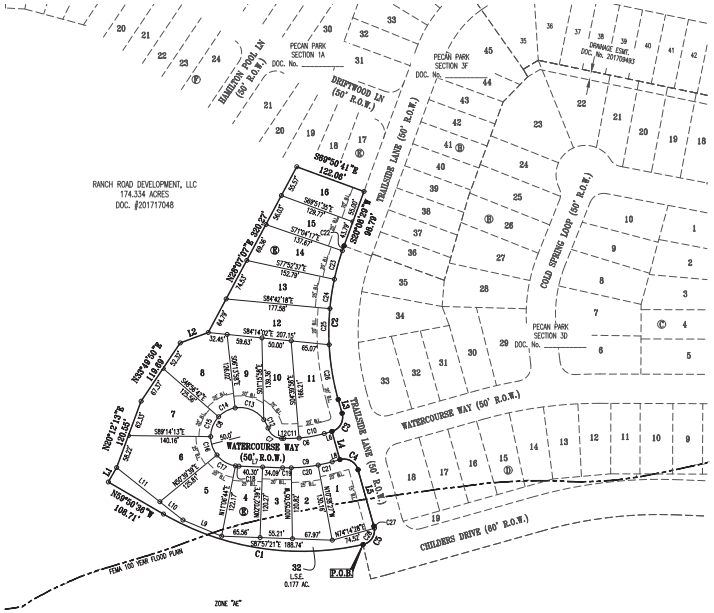
GRAPHIC SCALE

100 0 50 100 200 400

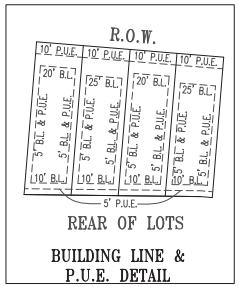
(IN FEET)
1 inch = 100 ft.

LEGEND

○	1/2" CAPPED IRON ROD SET
●	CAPPED IRON ROD FOUND (UNLESS OTHERWISE NOTED)
2	LOT NUMBER
Ⓐ	BLOCK LETTER
L.S.E.	LANDSCAPE EASEMENT
	APPROXIMATE FEMA 100 YEAR FLOODPLAIN
B.L.	BUILDING LINE



LOT ELEVATIONS			
LOT NO.	BLOCK	B.F.E.	MIN. F.F.E.
1	E	350.0	352.0
2	E	350.0	352.0
3	E	350.0	352.0
4	E	350.0	352.0
5	E	350.0	352.0



Line Table		
Line #	Length	Direction
L1	28.32	N30°09'24"E
L2	50.99	N69°41'58"E
L3	24.48	S15°45'28"E
L4	50.00	S15°46'18"E
L5	99.97	S15°45'28"E
L6	13.74	S74°15'22"W
L7	74.38	N87°56'27"W
L8	13.77	S74°15'22"W
L9	71.50	S87°20'37"E
L10	50.16	S51°39'11"E
L11	93.85	S51°39'11"E
L12	3.67	N87°56'27"W

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	352.38	470.00	N81°19'18"W	344.18	184.93	42°57'25"
C2	266.29	425.00	S02°11'30"W	261.95	137.68	35°53'57"
C3	39.28	25.00	S29°14'57"W	35.36	25.01	90°00'00"
C4	39.26	25.00	S60°45'03"E	35.35	24.99	89°59'10"
C5	40.56	25.00	S30°43'16"W	36.26	26.32	92°57'27"
C6	69.91	225.00	N83°09'28"E	69.63	35.24	17°48'11"
C7	30.77	25.00	S02°40'35"E	28.87	17.68	70°31'44"
C8	218.63	50.00	S37°15'24"W	81.65	70.71	250°31'44"
C9	85.45	275.00	N83°09'28"E	85.10	43.07	17°48'11"
C10	43.51	225.00	N79°47'46"E	43.44	21.82	11°04'48"
C11	26.40	225.00	N88°41'51"E	26.39	13.22	6°43'25"
C12	16.09	50.00	N26°37'57"W	16.02	8.12	18°26'28"
C13	55.49	50.00	N67°36'37"W	52.68	30.99	63°34'53"
C14	32.58	50.00	S61°53'46"W	32.01	16.89	37°20'20"

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C15	37.34	50.00	S21°50'05"W	36.47	19.59	42°47'01"
C16	33.64	50.00	S18°48'47"E	33.01	17.48	38°32'44"
C17	37.47	50.00	S59°34'10"E	36.60	19.66	42°56'01"
C18	6.03	50.00	S84°29'20"E	6.02	3.02	6°54'19"
C19	14.89	275.00	S89°29'31"E	14.89	7.45	3°06'08"
C20	46.12	275.00	N84°09'08"E	46.07	23.11	9°36'33"
C21	24.44	275.00	N76°48'07"E	24.43	12.23	5°05'30"
C22	8.79	425.00	S19°32'57"W	8.79	4.39	1°11'04"
C23	50.48	425.00	S15°53'16"W	50.45	25.27	6°48'18"
C24	50.65	425.00	S08°44'17"W	50.62	25.35	6°49'40"
C25	61.64	425.00	S01°10'11"W	61.58	30.87	8°18'33"
C26	94.74	425.00	S09°22'17"E	94.55	47.57	12°46'22"
C27	3.59	25.00	N11°38'52"W	3.58	1.80	8°13'13"
C28	36.97	25.00	N34°49'52"E	33.69	22.80	84°44'14"

LINEAR FOOTAGE OF RIGHT-OF-WAY			
WATERCOURSE WAY	50' R.O.W.	191 FT	LOCAL
TOTAL		191 FT	

DATE: FEBRUARY 25, 2019

OWNER:
RANCH ROAD DEVELOPMENT, LLC.
3140 DYER STREET, SUITE 624
DALLAS, TEXAS 75275

ENGINEER & SURVEYOR:
CARLSON, BRIGANCE & DOERING, Inc.
5501 WEST WILLIAM CANNON
AUSTIN, TX 78749
(512) 280-5160
(512) 280-5165 fax

TOTAL ACREAGE: 3.787 ACRES
SURVEY: MOZEA ROUSSEAU SURVEY, ABSTRACT No. 56

RESIDENTIAL LOTS: 16 TOTAL: 3.283 ACRES

LANDSCAPE EASEMENT LOTS: 1 TOTAL: 0.177 ACRES

NO. OF BLOCKS: 3
R.O.W.: TOTAL: 0.327 ACRES

F.E.M.A. MAP NO. 48021 C 0355E
BASTROP COUNTY, TEXAS DATED: JANUARY 19, 2006

SHEET NO. 1 OF 2

RANCH ROAD DEVELOPMENT

Carlson, Brigance & Doering, Inc.
FIRM ID #F3791 ◆ REG. # 10024900
Civil Engineering ◆ Surveying
5501 West William Cannon ◆ Austin, Texas 78749
Phone No. (512) 280-5160 ◆ Fax No. (512) 280-5165

PATH–J: \AC2004LP\4958\SURVEY\FINAL PLAT–PECAN PARK SEC. 3E.DWG

Exhibit A

THE FINAL PLAT OF
PECAN PARK SECTION 3E

NOTES:
1. WATER SERVICE IS PROVIDED BY THE CITY OF BASTROP.
2. WASTEWATER SERVICE IS PROVIDED BY THE CITY OF BASTROP.
3. ELECTRIC SERVICE IS PROVIDED BY THE BLUEBONNET ELECTRIC.
4. ALL EASEMENTS OF RECORD AS INDICATED ON THE MOST RECENT TITLE RUN DATED: SEPTEMBER 6, 2017, CONDUCTED BY CHICAGO TITLE INSURANCE COMPANY, TITLE COMMITMENT GF. NO. 1736054–BCP ISSUED BY CHICAGO TITLE INSURANCE COMPANY FOR THIS PROPERTY ARE SHOWN ON THIS PLAT.
5. ALL SUBDIVISION PERMITS SHALL CONFORM TO THE CITY OF BASTROP CODE OF ORDINANCES, CONSTRUCTION STANDARDS, AND GENERALLY ACCEPTED ENGINEERING PRACTICES.
6. CONSTRUCTION PLANS AND SPECIFICATIONS FOR ALL SUBDIVISION IMPROVEMENTS SHALL BE REVIEWED AND ACCEPTED BY THE CITY OF BASTROP PRIOR TO ANY CONSTRUCTION WITHIN THE SUBDIVISION.
7. THE OWNER OF THIS SUBDIVISION, AND HIS OR HER SUCCESSORS AND ASSIGNS, ASSUMES SOLE RESPONSIBILITY FOR PLANS FOR CONSTRUCTION OF SUBDIVISION IMPROVEMENTS WHICH COMPLY WITH APPLICABLE CODES AND REQUIREMENTS OF THE CITY OF BASTROP. THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT PLAT VACATION OR RE–PLATTING MAY BE REQUIRED, AT THE OWNER'S SOLE EXPENSE, IF PLANS TO CONSTRUCT THIS SUBDIVISION DO NOT COMPLY WITH SUCH CODES AND REQUIREMENTS.
8. BY APPROVING THIS PLAT, THE CITY OF BASTROP ASSUMES NO OBLIGATION TO CONSTRUCT ANY INFRASTRUCTURE IN CONNECTION WITH THIS SUBDIVISION. ANY SUBDIVISION INFRASTRUCTURE REQUIRED FOR THE DEVELOPMENT OF THE LOTS IN THIS SUBDIVISION IS THE SOLE RESPONSIBILITY OF THE DEVELOPER AND/OR THE OWNERS OF THE LOTS. FAILURE TO CONSTRUCT ANY REQUIRED INFRASTRUCTURE TO CITY STANDARDS MAY BE JUST CAUSE FOR THE CITY TO DENY APPLICATIONS FOR CERTAIN DEVELOPMENT PERMITS INCLUDING BUILDING PERMITS, SITE PLAN APPROVALS AND/OR CERTIFICATES OF OCCUPANCY.
9. FISCAL SURETY FOR SUBDIVISION CONSTRUCTION, IN A FORM ACCEPTABLE TO THE CITY OF BASTROP, SHALL BE PROVIDED PRIOR TO PLAT APPROVAL BY THE CITY.
10. NO LOT IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO THE APPROVED WATER DISTRIBUTION AND WASTEWATER COLLECTION FACILITIES.
11. WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
12. ALL UTILITIES WILL BE UNDERGROUND.
13. IMPACT FEES SHALL BE ASSESSED IN ACCORDANCE WITH THE ORDINANCE #2017–13.
14. DEVELOPER SHALL BE SOLELY RESPONSIBLE FOR ALL RELOCATION AND MODIFICATIONS TO EXISTING UTILITIES.
15. A PORTION OF THIS TRACT LIES WITHIN A DESIGNATED FLOOD HAZARD AREA, THIS TRACT LIES IN ZONE A, AS SHOWN ON THE FEDERAL FLOOD INSURANCE ADMINISTRATION RATE MAP NO. 48021 C 0355E, FOR BASTROP COUNTY TEXAS, DATED JANUARY 19, 2006. COMMUNITY NUMBER 481193.
16. ON–SITE STORM WATER DETENTION FACILITIES WILL BE PROVIDED TO REDUCE POST–DEVELOPMENT PEAK RATES OF DISCHARGE OF THE 5, 10, 25, 50 AND 100–YEAR STORM EVENTS.
17. TEMPORARY AND PERMANENT EASEMENTS TO BE PROVIDED, AS REQUIRED AT THE CITY'S SOLE DISCRETION FOR OFF–SITE WATER, WASTEWATER AND DRAINAGE IMPROVEMENTS.
18. AS SHOWN IN DETAIL PAGE 1, A TEN (10) FOOT WIDE PUBLIC UTILITY EASEMENT (P.U.E.) IS HEREBY DEDICATED ADJACENT TO STREET RIGHTS–OF–WAY ON ALL LOTS. A FIVE (5) FOOT WIDE P.U.E. IS HEREBY DEDICATED ALONG EACH SIDE AND REAR LOT LINE.
19. PROPERTY OWNER SHALL PROVIDE FOR ACCESS TO ALL EASEMENTS AS MAY BE NECESSARY AND SHALL NOT PROHIBIT ACCESS BY GOVERNMENTAL AUTHORITIES.
20. NO BUILDINGS, FENCES, LANDSCAPING OR OTHER STRUCTURES ARE PERMITTED WITHIN DRAINAGE EASEMENTS SHOWN, EXCEPT AS APPROVED BY THE CITY OF BASTROP AND/OR BASTROP COUNTY.
21. ALL EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR HIS OR HER ASSIGNEES.
22. NO LOT OR STRUCTURE SHALL BE OCCUPIED PRIOR TO THE APPLICANT SUBMITTING TO THE CITY OF BASTROP DOCUMENTATION OF SUBDIVISION/SITE REGISTRATION WITH THE TEXAS DEPARTMENT OF LICENSING AND REGULATIONS (TDLR) AND PROVIDE DOCUMENTATION OF REVIEW AND COMPLIANCE OF THE SUBDIVISION CONSTRUCTION PLANS WITH TEXAS ARCHITECTURAL BARRIERS ACT (TABA).
23. EROSION AND SEDIMENTATION CONTROLS CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE CITY OF BASTROP ARE REQUIRED FOR ALL CONSTRUCTION ON EACH LOT, INCLUDING SINGLE FAMILY AND DUPLEX CONSTRUCTION.
24. IT IS THE RESPONSIBILITY OF EACH BUILDER TO DESIGN AND CONSTRUCT A SUITABLE GRADING AND DRAINAGE SCHEME WHICH WILL CONVEY SURFACE WATER, WITHOUT PONDING IN THE LOT OR UNDER THE STRUCTURE, FROM HIS STRUCTURE TO THE DRAINAGE SYSTEM CONSTRUCTED BY THE SUBDIVISION DEVELOPER.
25. PUBLIC UTILITY AND DRAINAGE EASEMENTS WHERE SHOWN AND/OR DESCRIBED HEREON ARE INTENDED TO INDICATE AN EASEMENT FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF PUBLIC UTILITIES AND DRAINAGE WAYS; INCLUDING, BUT NOT LIMITED TO, SANITARY SEWERS, FORCE MAINS, WATER LINES, TELEPHONE SIGNAL CONDUITS, ELECTRIC CONDUCTORS, DRAINAGE PIPES, AND NATURAL GAS LINES.
26. SIDEWALKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE CITY OF BASTROP.
27. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOTS IN THIS SUBDIVISION, BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF BASTROP.
28. BUILDING SETBACKS NOT SHOWN SHALL BE IN ACCORDANCE WITH CITY OF BASTROP ZONING ORDINANCE 2017–14.
29. A CITY OF BASTROP BUILDING PERMIT IS REQUIRED PRIOR TO ANY SITE DEVELOPMENT.
30. THE ELECTRIC UTILITY HAS THE RIGHT TO PRUNE AND/OR REMOVE TREES, SHRUBBERY VEGETATION AND OTHER OBSTRUCTIONS TO THE EXTENT NECESSARY TO KEEP THE EASEMENTS CLEAR. THE OWNER/DEVELOPER OF THIS SUBDIVISION/LOT SHALL PROVIDE THE CITY OF BASTROP ELECTRIC UTILITY DEPARTMENT WITH ANY EASEMENT AND/OR ACCESS REQUIRED, IN ADDITION TO THOSE INDICATED, FOR THE INSTALLATION AND ONGOING MAINTENANCE OF OVERHEAD AND UNDERGROUND ELECTRIC FACILITIES.
31. THE OWNER SHALL BE RESPONSIBLE FOR INSTALLATION OF TEMPORARY EROSION CONTROL, RE–VEGETATION AND TREE PROTECTION FOR ELECTRIC UTILITY WORK REQUIRED TO PROVIDE ELECTRIC SERVICE TO THIS PROJECT.
32. THIS PROJECT IS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING DATED 12–12–2013; ZONING ORDINANCE 2015–15; AMENDED ZONING ORDINANCE 2017–14; AND IS SUBJECT TO THE PECAN PARK TRAFFIC IMPACT ANALYSIS DATED 9–22–2015 PREPARED BY ALLIANCE TRANSPORTATION GROUP.
33. THIS PLAT IS SUBJECT TO THE CITY OF BASTROP ORDINANCE 2015–15 & 2017–14 & IS IN DISTRICT PD–SFS.

FLOOD PLAIN NOTE:

A PORTION OF THIS TRACT LIES WITHIN A DESIGNATED FLOOD HAZARD AREA, THIS TRACT LIES IN ZONE AE, AS SHOWN ON THE FEDERAL FLOOD INSURANCE ADMINISTRATION RATE MAP NO. 48021 C 0355E, FOR BASTROP COUNTY TEXAS, DATED JANUARY 19, 2006. COMMUNITY NUMBER 481193, AS MODIFIED BY CLOMR CASE # 06–06–B025R, DATED JULY 31, 2006.

BENCHMARK INFORMATION:
BM #1: COTTON SPINDLE SET IN THE SOUTHWEST EDGE OF PAVEMENT OF TRAILSIDE LANE, +/– 160' SOUTHWEST OF INTERSECTION OF DEERFOOT TRAIL. ELEVATION (NAVD88) = 358.31'

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

THAT, RANCH ROAD DEVELOPMENT LLC., _____ ACTING HEREIN BY AND THROUGH AND BEING THE OWNER OF THAT CERTAIN 174.334 ACRE TRACT OF LAND AS CONVEYED TO RANCH ROAD DEVELOPMENT, LLC., IN DOCUMENT NUMBER 201717048, OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS, OUT OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT NUMBER 56, SITUATED IN BASTROP COUNTY, TEXAS, DOES HEREBY SUBDIVIDE 3.787 ACRES OF LAND, IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT, TO BE KNOWN AS:

"THE FINAL PLAT OF PECAN PARK, SECTION 3E"

AND DOES HEREBY DEDICATE TO THE PUBLIC, THE USE OF THE EASEMENTS SHOWN HEREON, SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED.

WITNESS MY HAND, THIS THE ____ DAY OF _____, 20___, A.D.

_____
RANCH ROAD DEVELOPMENT, LLC.
3140 DYER STREET, SUITE 624
DALLAS, TEXAS 75275

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 20___, A.D.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

I, ROSE PIETSCH, CLERK OF BASTROP COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE ____ DAY OF _____, 20___, A.D., IN THE PLAT RECORDS OF SAID COUNTY AND STATE IN PLAT CABINET _____, PAGE(s)_____. FILED FOR RECORD AT _____ O'CLOCK ___M., THIS _____ DAY OF _____, 20___, A.D.,

WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY CLERK, THE ____ DAY OF _____, 20___, A.D.

_____, COUNTY CLERK, BASTROP COUNTY, TEXAS

_____
BY: DEPUTY

APPROVED AND ACCEPTED THIS
THE _____ DAY OF _____, 20_____, BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS.

APPROVED AND ACCEPTED:

_____
CONNIE SCHROEDER,
MAYOR OF THE CITY OF BASTROP, TEXAS

ATTEST:
_____
CITY SECRETARY, CITY OF BASTROP, TEXAS

STATE OF TEXAS)(
COUNTY OF TRAVIS)(
KNOW ALL MEN BY THESE PRESENTS:

I, CHARLES R. BRIGANCE, JR., P.E. DO HEREBY CERTIFY THAT THE STREETS AND DRAINAGE DESIGN, AS SHOWN HEREON, COMPLIES WITH THE SUBDIVISION REGULATIONS FOR THE CITY OF BASTROP, AND THAT THE 100 YEAR FLOOD PLAIN IS AS SHOWN AND WILL BE CONTAINED WITHIN THE DRAINAGE EASEMENT AND OR DRAINAGE RIGHT–OF–WAY, AS SHOWN HEREON.

ENGINEERING BY: _____ DATE _____
CHARLES R. BRIGANCE, JR., P.E. NO. 64346
CARLSON, BRIGANCE & DOERING, INC.
5501 WEST WILLIAM CANNON DRIVE
AUSTIN, TEXAS 78749



STATE OF TEXAS)(
COUNTY OF TRAVIS)(
KNOW ALL MEN BY THESE PRESENTS:

THAT I, AARON V. THOMASON, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE ON–THE–GROUND SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATION OF THE CITY OF BASTROP, BASTROP COUNTY, TEXAS. ALL EASEMENTS OF RECORD HAVE BEEN IDENTIFIED ON THIS PLAT TO THE BEST OF MY KNOWLEDGE.

SURVEYED BY: _____ DATE _____
AARON V. THOMASON – R.P.L.S. NO. 6214
CARLSON, BRIGANCE & DOERING, INC.
5501 WEST WILLIAM CANNON DRIVE
AUSTIN, TEXAS 78749



THIS FLOOD STATEMENT, AS DETERMINED BY A H.U.D.–F.I.A. FLOOD INSURANCE RATE MAP, DOES NOT IMPLY THAT THE PROPERTY OR THE IMPROVEMENTS THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR, AND FLOOD HEIGHTS MAY INCREASE BY MAN–MADE OR NATURAL CAUSES.

THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF ENGINEER OR SURVEYOR.

FIELD NOTES

BEING ALL THAT CERTAIN 3.787 ACRE TRACT OR PARCEL OF LAND OUT OF AND A PART OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT NUMBER 56, SITUATED IN BASTROP COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS A PORTION OF THE REMAINDER OF THAT CERTAIN 174.334 ACRE TRACT OF LAND, CONVEYED TO RANCH ROAD DEVELOPMENT, LLC, IN DOCUMENT NUMBER 201717048, OFFICIAL PUBLIC RECORDS, BASTROP COUNTY, TEXAS, SAID 3.787 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a capped ½" iron rod found Stamped "CBD SEITSTONE", at the point of curvature for a curve to the right, also being the northwest corner of Children Drive (60' R.O.W.) of Pecan Park Section 3D recorded in Document Number _____, Official Public Records, Bastrop County Texas, and also being a point in an eastern boundary line of said remainder of 174.334 acre tract, for the southeast corner and the POINT OF BEGINNING of the herein described tract,

THENCE, over and across said remainder of 174.334 acre tract the following eight (8) courses and distances, numbered 1 through 8,

1. With said curve to the right, having a radius of 470.00 feet, an arc length of 352.38 feet, and whose chord bears N81°19'18"W, a distance of 344.18 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
2. N59°50'36"W, a distance of 108.71 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
3. N30°09'24"E, a distance of 28.32 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
4. N20°12'13"E, a distance of 120.55 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
5. N33°49'50"E, a distance of 119.69 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
6. N59°41'58"E, a distance of 50.99 feet to a capped ½" iron rod set stamped "CBD SEITSTONE",
7. N28°07'07"E, a distance of 320.27 feet to a capped ½" iron rod set stamped "CBD SEITSTONE", and
8. S69°50'41"E, a distance of 122.06 feet to a capped ½" iron rod set stamped "CBD SEITSTONE", being in the west right–of–way line of Trailside Lane (50' R.O.W.) of Pecan Park Section 3F recorded in Document Number _____, Official Public Records, Bastrop County, Texas, also being an eastern boundary line of said remainder of 174.334 acre tract,

THENCE, with the common boundary line of said 174.334 acre tract, said Pecan Park Section 3F, and said Pecan Park Section 3D, the following eight (8) courses and distances, numbered 1 through 8,

1. S20°08'29"W, a distance of 98.79 feet to a capped ½" iron rod found, at a point of curvature for a curve to the left, being the southwest corner of said Pecan Park Section 3F, also being the northwest corner of said Pecan Park Section 3D,
2. With said curve to the left, having a radius of 425.00 feet, an arc length of 266.29 feet, and whose chord bears S02°11'30"W, a distance of 261.95 feet to a capped ½" iron rod found stamped "CBD SEITSTONE",
3. S15°45'28"E, a distance of 24.48 feet to a capped ½" iron rod found stamped "CBD SEITSTONE", at a point of curvature for a curve to the right,
4. With said curve to the right, having a radius of 25.00 feet, an arc length of 39.28 feet, and whose chord bears S29°14'57"W, a distance of 35.36 feet to a capped ½" iron rod found stamp "CBD SEITSTONE",
5. S15°46'18"E, a distance of 50.00 feet to a capped ½" iron rod found stamped "CBD SEITSTONE", at a point of curvature for a curve to the right,
6. With said curve to the right, having a radius of 25.00, an arc length of 39.26 feet, and whose chord bears S60°45'03"E, a distance of 35.35 to a capped ½" iron rod found stamped "CBD SEITSTONE",
7. S15°45'28"E, a distance of 99.97 feet to a capped ½" iron rod found stamped "CBD SEITSTONE", at a point of curvature for a curve to the right, and
8. With said curve to the right, having a radius of 25.00 feet, an arc length of 40.56 feet, and whose chord bears S30°43'16"W, a distance of 36.26 feet to the POINT OF BEGINNING and containing 3.787 acres of land.

BLOCK	LOT	SQ. FT.
E	1	8,747
E	2	7,059
E	3	6,269
E	4	6,732
E	5	9,563
E	6	12,338
E	7	10,648
E	8	10,954
E	9	6,770
E	10	8,911
E	11	10,771
E	12	11,614
E	13	9,934
E	14	8,535
E	15	7,217
E	16	6,927
E	32	7,721

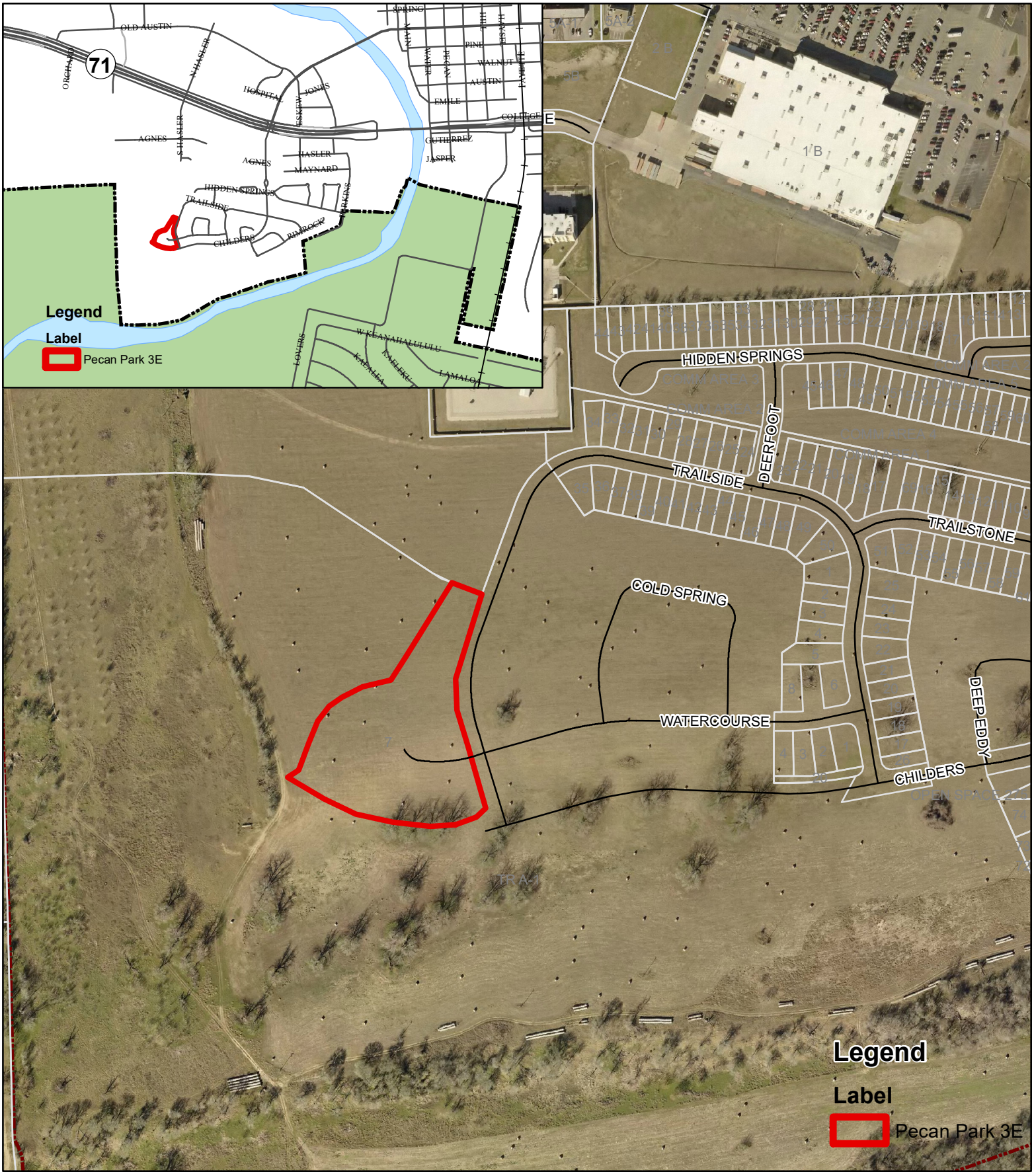
SHEET NO. 2 OF 2

RANCH ROAD DEVELOPMENT

Carlson, Brigance & Doering, Inc.
FIRM ID #F3791 ◆ REG. # 10024900
Civil Engineering ◆ Surveying
5501 West William Cannon ◆ Austin, Texas 78749
Phone No. (512) 280-5160 ◆ Fax No. (512) 280-5165

PATH–J:\AC2004LP\4958\SURVEY\FINAL PLAT–PECAN PARK SEC. 3E.DWG

Exhibit A



BASTROPTX
Heart of the Lost Pines
Est. 1832

0 85 170 340 Feet

Location Map
Pecan Park 3E Final Plat

N

Date: 3/14/2019

The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefullness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

Notice of Pending Final Plat Approval
City of Bastrop
City Council

Dear Property Owner:

The **City Council** will conduct a public meeting **Tuesday, April 9, 2019 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** to consider the approval of a final plat for Pecan Park Section 3E being 3.787 acres out of the Mozea Rousseau Survey, Abstract 56, located on the west of the extension of Trailside Lane within the city limits of Bastrop, Texas.

Applicant/Owner:	Ranch Road Development LLC
Location/Address:	West of the extension of Trailside Lane
Legal Description:	Mozea Rousseau Survey, Abstract No. 56, being 3.787 acres
Number of Lots:	16 residential lots

The site location map and a copy of the plat is attached for reference.

As a property owner within 200 feet of the above referenced property, you are being notified of the upcoming meetings per the Bastrop Code of Ordinances. For more information on this project, you can contact the Planning & Development offices at (512) 332-8840, plan@cityofbastrop.org, or visit the office at 1311 Chestnut Street, Bastrop, Texas.

For additional information, please visit or call the Planning & Development offices.

Please provide reply to the address below, via fax (512) 332-8829, or email: plan@cityofbastrop.org

For: Final Plat Pecan Park Section 3E

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12G

TITLE:
Consider action to approve Resolution No. R-2019-30 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3D Final Plat, being 13.336 acres out of the Mozea Rousseau Survey, Abstract 56, located north of the extension of Childers Drive, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:
Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

ITEM DETAILS:

Site Address:	North of the extension of Childers Drive (Attachment 1)
Total Acreage:	13.336 acres
Legal Description:	13.336 acres out of the Mozea Rousseau Survey, Abstract 56
Property Owner:	Ranch Road Development, LLC/Scott Miller
Agent Contact:	Carlson, Brigance, & Doering/Christine Methvin
Existing Use:	Vacant/Undeveloped
Existing Zoning:	Pecan Park Residential Planned Development
Planned Development District:	Single-Family Select (PD SFS)
Future Land Use:	Neighborhood Residential

BACKGROUND/HISTORY:
The applicant has submitted a Final Plat for the Pecan Park, Sections 3D. The Preliminary Plat that includes this section was approved on July 10, 2018 as Pecan Park, Sections 3B-3E. Section 3D contains 51 single-family detached lots, which are allowed under the Single-Family Select district of the Pecan Park Residential Planned Development. The minimum width is 50 feet and the minimum lot area is 6,000 square feet. 3,364 linear feet of street will be dedicated with the following street right-of-way:

- Childers Drive (60 foot width): 1006 feet
- Trailside Lane (50 foot width): 531 feet
- Watercourse Way (50 foot width): 834 feet
- Cold Spring Loop (50 foot width): 933 feet

Traffic Impact and Streets
The Final Plat proposes to extend Childers Drive, a local collector street, with a paved width of 32 feet curb to curb. This is the main street that connects from State Highway 71 and will continue

with future sections to Sterling Drive to the west to provide two points of ingress and egress for the neighborhood. Sidewalks will be installed along all proposed streets, and will connect to the proposed neighborhood trail system. The Public Improvement Construction Plans have been reviewed and have been tentatively approved, pending City Council approval of the Final Plat.

Utilities

Water service (domestic and fire) will be provided by the City via water line extensions from existing infrastructure located on Childers Drive and Trailside Lane. These lines will be designed according to the City's construction standards, as well as the Texas Commission on Environmental Quality's (TCEQ) requirements.

Wastewater collection and treatment will also be provided by the City, and will require the installation of lines that will ultimately connect to a wastewater lift station that was installed with Section 3B.

Drainage

The Public Improvement Construction Plans that were reviewed with the Final Plat proposes to install an underground storm sewer system designed to drain runoff generated from the development into an existing system located adjacent to Section 6B and through future system through Sections 2 and 7. The existing system was designed to accommodate this increase in peak flows, and ultimately connects to the Colorado River.

The proposed drainage system will be designed with a sufficient capacity to route flows from a 100-year design storm to the Colorado River. Due to the property's close proximity to the river, stormwater detention is not required.

PUBLIC COMMENTS:

Notifications to adjacent property owners within 200 feet were mailed on March 29, 2019 (Attachment 3).

POLICY EXPLANATION:

All Final Plats are forwarded to City Council for approval.

Compliance with 2036 Comprehensive Plan:

- Future Land Use Plan - Neighborhood Residential: The Neighborhood Residential character area is for single-family residential subdivision development, associated amenities such as parks, trails, open spaces and public uses such as schools, fire stations, and more.

  This final plat complies with the Future Land Use Plan. The plat includes 51 single-family lots that will provide single-family detached units. This section is part of the Pecan Park development, in which the total development includes multiple phases that include parks, trails, and recreation facilities.

- Objective 2.4.1: Invest in waste water system expansion in areas that promote infill and contiguous development.

  This development is within the City's wastewater service area and is vacant land immediately adjacent to existing development. This subdivision connects to existing wastewater lines and continues the system in an efficient manner

- Goal 4.1.1 Provide a greater diversity of housing options in Bastrop while protecting the character of the City's existing neighborhoods.

  The Pecan Park Development includes six different residential lot standards. This plat utilizes the Single Family Select district, which allows a minimum of 6,000 square foot lots with reduced rear and side setbacks to allow various single-family product types and with varied 20 and 25-foot front setbacks to provide visual appeal.

Local Government Code

- Sec. 212.002. Rules.

  After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

  Bastrop adopted subdivision regulations in 1981. The Code of Ordinances, Chapter 10 – Subdivisions outlines the requirements for plats within the Bastrop city limits and Extra Territorial Jurisdiction (ETJ).

  Section 212.004 Plat Required

  (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.

  The applicant has proposed dividing an undeveloped 13.336 acre tract into 51 single-family lots. Public improvements within the subdivision (streets, drainage, and other utilities) will be dedicated to the City upon their completion.

- Sec. 212.010. Standards for Approval

  (a) The municipal authority responsible for approving plats shall approve a plat if:

  (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;

  The final plat conforms to the Future Land Use Plan, which is designated Neighborhood Residential for this area.

  (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;

  The plat conforms to the adopted Transportation Master Plan. The extension of Childers Drive, Trailside Lane, Watercourse Way and Cold Spring Loop, will be dedicated with this plat. The plat also conforms to the Capital Improvement Plan and will install public extensions of the water and wastewater infrastructure.

(3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

Required improvements and bonds will be furnished before the approval of the Final Plat.

(4) it conforms to any rules adopted under Section 212.002.

The final plat complies with the requirements of the adopted Subdivision Ordinance.

Code of Ordinances Chapter 10 – Subdivisions

- Section 4.20 – Standard Procedure – Final Plat

4.20.1 Submission

C. The final plat shall be filed with the Director of Planning and Development at least fifteen (15) days prior to the meeting at which approval is requested. Prior to the plat being placed before the Council for consideration, the plat must be accepted as administratively complete by the Director of Planning and Development. A plat that contains the information set forth in paragraph 4.20.2 is considered complete.

Planning and Engineering staff have reviewed the Pecan Park Section 3D Final Plat for compliance with subdivision and utility standards, have deemed the plat administratively complete and that it meets all of the Subdivision Ordinance requirements.

D. The Director of Planning and Development will mail a notice to each property owner named as required by Section 4.10.1A hereof each and every time that a subdivision proposal is pending before the City Planning and Zoning Commission or City Council which notice shall include the date, place and time of each subdivision, consideration.

A mailed notice was sent to all property owners within 200 feet on March 29, 2019.

RECOMMENDATION:

Consider action to approve Resolution No. R-2019-30 of the City Council of the City of Bastrop, Texas, approving the Pecan Park, Section 3D Final Plat, being 13.336 acres out of the Mozea Rousseau Survey, Abstract 56, located north of the extension of Childers Drive, within the city limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2019-30
- Exhibit A: Final Plat
- Attachment 1: Location Map
- Attachment 2: Surrounding Property Owner Notification

RESOLUTION NO. R-2019-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE PECAN PARK, SECTION 3D FINAL PLAT, BEING 13.336 ACRES OUT OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT 56, LOCATED NORTH OF THE EXTENSION OF CHILDERS DRIVE, WITHIN THE CITY LIMITS OF BASTROP, TEXAS, AS SHOWN IN EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Texas Local Government Code Section 212 and the City of Bastrop Subdivision Ordinance, the City Council is required to take action regarding certain plats; and

WHEREAS, Ranch Road Development L.L.C. ("the Applicant") has submitted a Final Plat for Pecan Park Section 3D, a residential subdivision; and

WHEREAS, the Final Plat is consistent with the Comprehensive Plan designation of Neighborhood Residential and requirements of the Pecan Park Planned Development (Ord # 2017-14); and

WHEREAS, the Preliminary Plat for Pecan Park Section 3B, 3C, 3D, & 3E (Section 3F is a portion of Section 3E) was recommended for approval by the Planning & Zoning Commission on June 28, 2018 and City Council on July 10, 2018; and

WHEREAS, the Bastrop Planning and Development Department has reviewed the above-referenced Final Plat and found it is in compliance with the Subdivision Ordinance, and the Pecan Park Residential Planned Development (Ord # 2017-14) standards; and

WHEREAS, notice of the subdivision was sent in accordance with the Subdivision Ordinance to notify the public.

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

Section 1: The Final Plat known as the Pecan Park Section 3D, being 13.336 acres of the Mozea Rousseau Survey, Abstract 56, located north of the extension of Childers Drive**,** within the city limits of Bastrop, Texas is hereby approved, a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

Section 2: All orders, ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: This ordinance shall take effect upon passage and in accordance with the laws of the State of Texas.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of April, 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

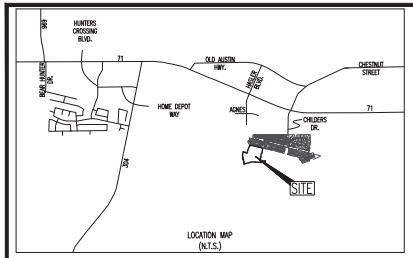
_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

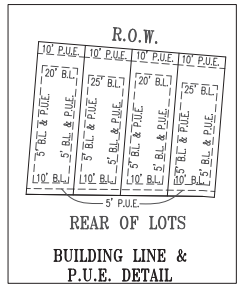
_____
Alan Bojorquez, City Attorney

THE FINAL PLAT OF

PECAN PARK SECTION 3D







SCALE: 1" = 100'

GRAPHIC SCALE

100 0 50 100 200 400

(IN FEET)
1 inch = 100 ft.

LEGEND

○	1/2" CAPPED IRON ROD SET
●	CAPPED IRON ROD FOUND (UNLESS OTHERWISE NOTED)
2	LOT NUMBER
Ⓐ	BLOCK LETTER
L.S.E.	LANDSCAPE EASEMENT
	APPROXIMATE FEMA 100 YEAR FLOODPLAIN
B.L.	BUILDING LINE
P.U.E.	PUBLIC UTILITY EASEMENT
D.E.	DRAINAGE EASEMENT

DATE: FEBRUARY 25, 2019

OWNER:
RANCH ROAD DEVELOPMENT, LLC.
3140 DYER STREET, SUITE 624
DALLAS, TEXAS 75275

ENGINEER & SURVEYOR:
CARLSON, BRIGANCE & DOERING, Inc.
5501 WEST WILLIAM CANNON
AUSTIN, TX 78749
(512) 280-5160
(512) 280-5165 fax

TOTAL ACREAGE: 13.336 ACRES
SURVEY: MOZEA ROUSSEAU SURVEY, ABSTRACT No. 56

RESIDENTIAL LOTS:	51	TOTAL: 8.965 ACRES
LANDSCAPE EASEMENT LOTS:	1	TOTAL: 0.260 ACRES
NO. OF BLOCKS:	3	
R.O.W.:		TOTAL: 4.110 ACRES

FLOOD PLAIN NOTE:

A PORTION OF THIS TRACT LIES WITHIN A DESIGNATED FLOOD HAZARD AREA, AND A PORTION OF THIS TRACT LIES IN ZONE AE, AS SHOWN ON THE FEDERAL FLOOD INSURANCE ADMINISTRATION RATE MAP NO. 48021 C 0355E, FOR BASTROP COUNTY TEXAS, DATED JANUARY 19, 2006. COMMUNITY NUMBER 481193, AS MODIFIED BY CLOMR CASE # 06-06-B025R, DATED JULY 31, 2006.

LINEAR FOOTAGE OF RIGHT-OF-WAY

CHILDERS DRIVE	60' R.O.W.	1006 FT	LOCAL
TRAILSIDE LANE	50' R.O.W.	531 FT	LOCAL
WATERCOURSE WAY	50' R.O.W.	834 FT	LOCAL
COLD SPRING LOOP	50' R.O.W.	993 FT	LOCAL
TOTAL		3,364 FT	

Line Table

Line #	Length	Direction
L1	29.82	N59°05'56"E
L2	61.27	S49°47'56"E
L3	46.55	S01°49'24"W
L4	45.62	S55°24'56"W
L5	20.05	N89°48'33"W
L6	8.00	N70°27'47"E
L7	60.00	S10°32'13"E
L8	8.00	S70°27'47"W
L9	60.00	N12°48'08"W
L10	50.00	N15°46'18"W
L11	24.48	N15°45'28"W
L12	50.00	S69°51'31"E
L13	3.86	N00°08'29"E
L14	130.58	S69°51'48"E

Line Table

Line #	Length	Direction
L15	59.06	N44°31'50"E
L16	14.99	N32°54'48"W
L17	78.17	N89°48'33"W
L18	39.51	N10°46'22"E
L19	54.80	S06°30'19"E
L20	24.50	S15°45'28"E
L21	54.80	S06°30'19"E
L22	45.41	N10°46'22"E
L23	353.41	N89°48'33"W
L24	99.03	S84°54'57"W
L25	264.86	S74°14'28"W
L26	44.91	S04°45'02"W
L27	34.53	N00°35'19"W

Curve Table

Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	209.19	970.00	N85°38'28"E	208.78	105.00	12°21'22"
C2	228.07	1030.00	S85°48'23"W	227.60	114.50	12°41'12"
C3	225.01	720.00	S87°11'48"W	224.09	113.43	17°54'20"
C4	27.34	530.00	S75°43'18"W	27.34	13.67	2°57'20"
C5	40.56	25.00	N30°43'16"E	36.26	26.32	92°57'27"
C6	39.26	25.00	N60°45'03"W	35.35	24.99	89°59'10"
C7	39.28	25.00	N29°14'57"E	35.36	25.01	90°00'50"
C8	268.29	425.00	N02°11'30"E	261.95	137.68	35°53'57"
C9	39.27	25.00	S44°48'33"E	35.36	25.00	90°00'00"
C10	60.02	325.00	S05°28'54"W	59.94	30.10	10°34'54"
C11	21.03	25.00	S34°52'03"W	20.41	11.18	48°11'23"
C12	162.65	50.00	N34°13'38"W	99.85	897.21	186°22'46"
C13	21.03	25.00	N76°40'40"E	20.41	11.18	48°11'23"
C14	21.03	25.00	S55°07'57"E	20.41	11.18	48°11'23"
C15	153.10	50.00	S61°14'27"W	99.92	1256.71	175°26'36"
C16	21.03	25.00	N02°23'10"W	20.41	11.18	48°11'23"
C17	135.42	275.00	S07°36'06"W	134.05	69.11	28°12'51"
C18	37.71	25.00	N36°41'11"E	34.23	23.48	86°25'00"
C19	76.49	775.00	S77°05'01"W	76.46	38.28	5°39'18"
C20	39.26	25.00	S60°45'03"E	35.35	24.99	89°59'10"
C21	234.96	375.00	S02°11'30"W	231.13	121.48	35°53'57"
C22	5.59	970.00	S88°00'56"E	5.59	2.80	0°19'50"
C23	243.76	780.00	S87°11'48"W	242.77	122.88	17°54'20"

Curve Table

Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C24	39.27	25.00	S60°45'25"E	35.35	25.00	89°59'54"
C25	39.28	25.00	S29°14'57"W	35.36	25.01	90°00'50"
C26	201.63	725.00	S82°13'25"W	200.98	101.47	15°56'05"
C27	42.11	775.00	S88°38'04"W	42.10	21.06	3°06'47"
C28	37.71	25.00	S49°43'49"E	34.23	23.48	86°25'00"
C29	110.80	225.00	S07°36'06"W	109.68	56.55	28°12'51"
C30	34.50	25.00	S61°14'27"W	31.83	20.63	79°03'50"
C31	39.27	25.00	N34°13'38"W	35.36	25.00	90°00'00"
C32	69.26	375.00	S05°28'54"W	69.16	34.73	10°34'54"
C33	39.27	25.00	N45°11'22"E	35.36	25.00	90°00'00"
C34	48.35	325.00	S04°27'09"W	48.30	24.22	8°31'23"
C35	11.68	325.00	S09°44'36"W	11.68	5.84	2°03'32"
C36	2.40	25.00	S13°31'26"W	2.40	1.20	5°30'10"
C37	18.63	25.00	S37°37'08"W	18.20	9.77	42°41'13"
C38	38.55	50.00	N36°52'24"E	37.60	20.29	44°10'41"
C39	36.64	50.00	N06°12'26"W	35.82	19.18	41°58'58"
C40	37.36	50.00	N48°36'21"W	36.50	19.60	42°48'30"
C41	50.09	50.00	S81°17'05"W	48.03	27.38	57°24'13"
C42	2.14	25.00	N05°01'48"E	2.13	1.07	4°53'39"
C43	18.89	25.00	N79°07'29"E	18.45	9.92	43°17'44"
C44	32.21	50.00	N49°29'24"W	31.65	16.68	36°54'18"
C45	39.63	50.00	S89°10'37"W	38.88	21.10	45°48'36"
C46	36.88	50.00	S45°10'06"W	36.05	19.32	42°15'22"

Curve Table

Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C47	44.09	50.00	S01°13'13"E	42.67	23.59	50°31'16"
C48	15.03	25.00	N09°15'40"W	14.80	7.75	34°26'23"
C49	6.00	25.00	N14°50'02"E	5.99	3.01	13°45'00"
C50	45.48	275.00	S16°58'17"W	45.42	22.79	9°28'30"
C51	48.56	275.00	S07°10'31"W	48.50	24.34	10°07'02"
C52	41.38	275.00	S02°11'40"E	41.34	20.73	8°37'19"
C53	38.97	775.00	S78°28'15"W	38.97	19.49	2°52'52"
C54	37.52	775.00	S75°38'38"W	37.52	18.77	2°46'27"
C55	84.95	375.00	S09°16'05"E	84.77	42.66	12°58'47"
C56	87.01	375.00	S03°52'07"W	86.81	43.70	13°17'37"
C57	63.00	375.00	S15°19'42"W	62.93	31.57	9°37'33"
C58	34.53	25.00	S66°11'14"E	31.85	20.66	79°06'16"
C59	4.74	25.00	S21°11'17"E	4.73	2.38	10°51'37"
C60	45.76	725.00	S76°03'52"W	45.75	22.89	3°36'59"
C61	59.19	725.00	S80°12'41"W	59.17	29.61	4°40'40"
C62	59.19	725.00	S84°53'21"W	59.17	29.61	4°40'39"
C63	37.49	725.00	S88°42'34"W	37.49	18.75	2°57'46"
C64	74.99	225.00	S03°03'32"W	74.64	37.84	19°05'42"
C65	35.81	225.00	S17°08'57"W	35.77	17.94	9°07'09"
C66	37.67	375.00	S07°53'41"W	37.65	18.85	5°45'20"
C67	31.59	375.00	S02°36'14"W	31.58	15.80	4°49'34"

LOT ELEVATIONS

LOT NO.	BLOCK	B.F.E.	MIN. F.F.E.
5	D	350.0'	352.0'
6	D	350.0'	352.0'
7	D	350.0'	352.0'
8	D	350.0'	352.0'
9	D	350.0'	352.0'
10	D	350.0'	352.0'
14	D	350.0'	352.0'
15	D	350.0'	352.0'
16	D	350.0'	352.0'
17	D	350.0'	352.0'
18	D	350.0'	352.0'

SHEET NO. 1 OF 2

RANCH ROAD DEVELOPMENT

Carlson, Brigance & Doering, Inc.
FIRM ID #F3791 ◆ REG. # 10024900
Civil Engineering ◆ Surveying
5501 West William Cannon ◆ Austin, Texas 78749
Phone No. (512) 280-5160 ◆ Fax No. (512) 280-5165

PATH–J:\4958\SURVEY\FINAL PLAT–PECAN PARK SEC. 3D.DWG

Exhibit A

THE FINAL PLAT OF
PECAN PARK SECTION 3D

NOTES:
1. WATER SERVICE IS PROVIDED BY THE CITY OF BASTROP.
2. WASTEWATER SERVICE IS PROVIDED BY THE CITY OF BASTROP.
3. ELECTRIC SERVICE IS PROVIDED BY THE BLUEBONNET ELECTRIC.
4. ALL EASEMENTS OF RECORD AS INDICATED ON THE MOST RECENT TITLE RUN DATED: SEPTEMBER 6, 2017, CONDUCTED BY CHICAGO TITLE INSURANCE COMPANY, TITLE COMMITMENT GF. NO. 1736054–BCP ISSUED BY CHICAGO TITLE INSURANCE COMPANY FOR THIS PROPERTY ARE SHOWN ON THIS PLAT.
5. ALL SUBDIVISION PERMITS SHALL CONFORM TO THE CITY OF BASTROP CODE OF ORDINANCES, CONSTRUCTION STANDARDS, AND GENERALLY ACCEPTED ENGINEERING PRACTICES.
6. CONSTRUCTION PLANS AND SPECIFICATIONS FOR ALL SUBDIVISION IMPROVEMENTS SHALL BE REVIEWED AND ACCEPTED BY THE CITY OF BASTROP PRIOR TO ANY CONSTRUCTION WITHIN THE SUBDIVISION.
7. THE OWNER OF THIS SUBDIVISION, AND HIS OR HER SUCCESSORS AND ASSIGNS, ASSUMES SOLE RESPONSIBILITY FOR PLANS FOR CONSTRUCTION OF SUBDIVISION IMPROVEMENTS WHICH COMPLY WITH APPLICABLE CODES AND REQUIREMENTS OF THE CITY OF BASTROP. THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT PLAT VACATION OR RE–PLATTING MAY BE REQUIRED, AT THE OWNER'S SOLE EXPENSE, IF PLANS TO CONSTRUCT THIS SUBDIVISION DO NOT COMPLY WITH SUCH CODES AND REQUIREMENTS.
8. BY APPROVING THIS PLAT, THE CITY OF BASTROP ASSUMES NO OBLIGATION TO CONSTRUCT ANY INFRASTRUCTURE IN CONNECTION WITH THIS SUBDIVISION. ANY SUBDIVISION INFRASTRUCTURE REQUIRED FOR THE DEVELOPMENT OF THE LOTS IN THIS SUBDIVISION IS THE SOLE RESPONSIBILITY OF THE DEVELOPER AND/OR THE OWNERS OF THE LOTS. FAILURE TO CONSTRUCT ANY REQUIRED INFRASTRUCTURE TO CITY STANDARDS MAY BE JUST CAUSE FOR THE CITY TO DENY APPLICATIONS FOR CERTAIN DEVELOPMENT PERMITS INCLUDING BUILDING PERMITS, SITE PLAN APPROVALS AND/OR CERTIFICATES OF OCCUPANCY.
9. FISCAL SURETY FOR SUBDIVISION CONSTRUCTION, IN A FORM ACCEPTABLE TO THE CITY OF BASTROP, SHALL BE PROVIDED PRIOR TO PLAT APPROVAL BY THE CITY.
10. NO LOT IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO THE APPROVED WATER DISTRIBUTION AND WASTEWATER COLLECTION FACILITIES.
11. WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
12. ALL UTILITIES WILL BE UNDERGROUND.
13. IMPACT FEES SHALL BE ASSESSED IN ACCORDANCE WITH THE ORDINANCE #2017–13.
14. DEVELOPER SHALL BE SOLELY RESPONSIBLE FOR ALL RELOCATION AND MODIFICATIONS TO EXISTING UTILITIES.
15. A PORTION OF THIS TRACT LIES WITHIN A DESIGNATED FLOOD HAZARD AREA, THIS TRACT LIES IN ZONE A, AS SHOWN ON THE FEDERAL FLOOD INSURANCE ADMINISTRATION RATE MAP NO. 48021 C 0335E, FOR BASTROP COUNTY TEXAS, DATED JANUARY 19, 2006. COMMUNITY NUMBER 481193.
16. ON–SITE STORM WATER DETENTION FACILITIES WILL BE PROVIDED TO REDUCE POST–DEVELOPMENT PEAK RATES OF DISCHARGE OF THE 5, 10, 25, 50 AND 100–YEAR STORM EVENTS.
17. TEMPORARY AND PERMANENT EASEMENTS TO BE PROVIDED, AS REQUIRED AT THE CITY'S SOLE DISCRETION FOR OFF–SITE WATER, WASTEWATER AND DRAINAGE IMPROVEMENTS.
18. AS SHOWN IN DETAIL PAGE 1, A TEN (10) FOOT WIDE PUBLIC UTILITY EASEMENT (P.U.E.) IS HEREBY DEDICATED ADJACENT TO STREET RIGHTS–OF–WAY ON ALL LOTS. A FIVE (5) FOOT WIDE P.U.E. IS HEREBY DEDICATED ALONG EACH SIDE AND REAR LOT LINE.
19. PROPERTY OWNER SHALL PROVIDE FOR ACCESS TO ALL EASEMENTS AS MAY BE NECESSARY AND SHALL NOT PROHIBIT ACCESS BY GOVERNMENTAL AUTHORITIES.
20. NO BUILDINGS, FENCES, LANDSCAPING OR OTHER STRUCTURES ARE PERMITTED WITHIN DRAINAGE EASEMENTS SHOWN, EXCEPT AS APPROVED BY THE CITY OF BASTROP AND/OR BASTROP COUNTY.
21. ALL EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR HIS OR HER ASSIGNEES.
22. NO LOT OR STRUCTURE SHALL BE OCCUPIED PRIOR TO THE APPLICANT SUBMITTING TO THE CITY OF BASTROP DOCUMENTATION OF SUBDIVISION/SITE REGISTRATION WITH THE TEXAS DEPARTMENT OF LICENSING AND REGULATIONS (TDLR) AND PROVIDE DOCUMENTATION OF REVIEW AND COMPLIANCE OF THE SUBDIVISION CONSTRUCTION PLANS WITH TEXAS ARCHITECTURAL BARRIERS ACT (TABA).
23. EROSION AND SEDIMENTATION CONTROLS CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE CITY OF BASTROP ARE REQUIRED FOR ALL CONSTRUCTION ON EACH LOT, INCLUDING SINGLE FAMILY AND DUPLEX CONSTRUCTION.
24. IT IS THE RESPONSIBILITY OF EACH BUILDER TO DESIGN AND CONSTRUCT A SUITABLE GRADING AND DRAINAGE SCHEME WHICH WILL CONVEY SURFACE WATER, WITHOUT PONDING IN THE LOT OR UNDER THE STRUCTURE, FROM HIS STRUCTURE TO THE DRAINAGE SYSTEM CONSTRUCTED BY THE SUBDIVISION DEVELOPER.
25. PUBLIC UTILITY AND DRAINAGE EASEMENTS WHERE SHOWN AND/OR DESCRIBED HEREON ARE INTENDED TO INDICATE AN EASEMENT FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF PUBLIC UTILITIES AND DRAINAGE WAYS; INCLUDING, BUT NOT LIMITED TO, SANITARY SEWERS, FORCE MAINS, WATER LINES, TELEPHONE SIGNAL CONDUITS, ELECTRIC CONDUCTORS, DRAINAGE PIPES, AND NATURAL GAS LINES.
26. SIDEWALKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF THE CITY OF BASTROP.
27. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOTS IN THIS SUBDIVISION, BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF BASTROP.
28. BUILDING SETBACKS NOT SHOWN SHALL BE IN ACCORDANCE WITH CITY OF BASTROP ZONING ORDINANCE 2015–15 AND 2017–14.
29. A CITY OF BASTROP BUILDING PERMIT IS REQUIRED PRIOR TO ANY SITE DEVELOPMENT.
30. THE ELECTRIC UTILITY HAS THE RIGHT TO PRUNE AND/OR REMOVE TREES, SHRUBBERY VEGETATION AND OTHER OBSTRUCTIONS TO THE EXTENT NECESSARY TO KEEP THE EASEMENTS CLEAR. THE OWNER/DEVELOPER OF THIS SUBDIVISION/LOT SHALL PROVIDE THE CITY OF BASTROP ELECTRIC UTILITY DEPARTMENT WITH ANY EASEMENT AND/OR ACCESS REQUIRED, IN ADDITION TO THOSE INDICATED, FOR THE INSTALLATION AND ONGOING MAINTENANCE OF OVERHEAD AND UNDERGROUND ELECTRIC FACILITIES.
31. THE OWNER SHALL BE RESPONSIBLE FOR INSTALLATION OF TEMPORARY EROSION CONTROL, RE–VEGETATION AND TREE PROTECTION FOR ELECTRIC UTILITY WORK REQUIRED TO PROVIDE ELECTRIC SERVICE TO THIS PROJECT.
32. THIS PROJECT IS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING DATED 12–12–2013; ZONING ORDINANCE 2015–15; AMENDED ZONING ORDINANCE 2017–14; AND IS SUBJECT TO THE PECAN PARK TRAFFIC IMPACT ANALYSIS DATED 9–22–2015 PREPARED BY ALLIANCE TRANSPORTATION GROUP.
33. THIS PLAT IS SUBJECT TO THE CITY OF BASTROP ORDINANCE 2015–15 & 2017–14 & IS IN DISTRICT PD–SFS.
34. NO FENCES SHALL BE BUILT IN THE DRAINAGE EASEMENT ALONG THE REAR OF LOTS 14–23, BLOCK B.

FLOOD PLAIN NOTE:

A PORTION OF THIS TRACT LIES WITHIN A DESIGNATED FLOOD HAZARD AREA, THIS TRACT LIES IN ZONE AE, AS SHOWN ON THE FEDERAL FLOOD INSURANCE ADMINISTRATION RATE MAP NO. 48021 C 0335E, FOR BASTROP COUNTY TEXAS, DATED JANUARY 19, 2006. COMMUNITY NUMBER 481193, AS MODIFIED BY CLOMR CASE # 06–06–B025R, DATED JULY 31, 2006.

BENCHMARK INFORMATION:
BM #1: COTTON SPINDLE SET IN THE SOUTHWEST EDGE OF PAVEMENT OF TRAILSIDE LANE, +/– 160' SOUTHWEST OF INTERSECTION OF DEERFOOT TRAIL. ELEVATION (NAVD88) = 358.31'

BLOCK	LOT	SQ. FT.	BLOCK	LOT	SQ. FT.
B	9	7,873	C	1	7,532
B	10	6,160	C	2	7,281
B	11	6,246	C	3	7,811
B	12	7,274	C	4	7,462
B	13	6,829	C	5	6,823
B	14	11,563	C	6	9,119
B	15	12,241	C	7	9,968
B	16	6,995	C	8	8,591
B	17	7,263	C	9	7,139
B	18	7,333	C	10	7,808
B	19	7,375			
B	20	7,416	D	5	5,324
B	21	6,909	D	6	6,051
B	22	10,661	D	7	6,123
B	23	12,892	D	8	6,130
B	24	6,896	D	9	6,124
B	25	7,660	D	10	6,682
B	26	7,507	D	11	6,000
B	27	8,455	D	12	6,488
B	28	8,837	D	13	6,717
B	29	9,062	D	14	6,849
B	30	7,500	D	15	6,913
B	31	6,089	D	16	6,641
B	32	6,316	D	17	6,642
B	33	8,338	D	18	8,332
B	34	8,824	D	19	11,306
B	35	7,522			

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

THAT, RANCH ROAD DEVELOPMENT LLC., _____ ACTING HEREIN BY AND THROUGH AND BEING THE OWNER OF THAT CERTAIN 174.334 ACRE TRACT OF LAND AS CONVEYED TO RANCH ROAD DEVELOPMENT, LLC., IN DOCUMENT NUMBER 201717048, OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS, OUT OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT NUMBER 56, SITUATED IN BASTROP COUNTY, TEXAS, DOES HEREBY SUBDIVIDE 13.336 ACRES OF LAND, IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT, TO BE KNOWN AS:

"THE FINAL PLAT OF PECAN PARK, SECTION 3D"

AND DOES HEREBY DEDICATE TO THE PUBLIC, THE USE OF THE EASEMENTS SHOWN HEREON, SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED.

WITNESS MY HAND, THIS THE ____ DAY OF _____, 20___, A.D.

_____
RANCH ROAD DEVELOPMENT, LLC.
3140 DYER STREET, SUITE 624
DALLAS, TEXAS 75275

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT OF WRITING, AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, 20___, A.D.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

STATE OF TEXAS §
COUNTY OF BASTROP §
KNOW ALL MEN BY THESE PRESENTS:

I, ROSE PIETSCH, CLERK OF BASTROP COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE ___ DAY OF _____, 20___, A.D., IN THE PLAT RECORDS OF SAID COUNTY AND STATE IN PLAT CABINET _____, PAGE(s)_____. FILED FOR RECORD AT _____ O'CLOCK __.M., THIS ____ DAY OF _____, 20___, A.D.,

WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY CLERK, THE ___ DAY OF _____, 20___, A.D.

_____, COUNTY CLERK, BASTROP COUNTY, TEXAS

_____
BY: DEPUTY

APPROVED AND ACCEPTED THIS
THE _____ DAY OF _____, 20_____, BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS.

APPROVED AND ACCEPTED:

_____
CONNIE SCHROEDER,
MAYOR OF THE CITY OF BASTROP, TEXAS

ATTEST:

_____
CITY SECRETARY, CITY OF BASTROP, TEXAS

STATE OF TEXAS)(
COUNTY OF TRAVIS)(
KNOW ALL MEN BY THESE PRESENTS:

I, CHARLES R. BRIGANCE, JR., P.E. DO HEREBY CERTIFY THAT THE STREETS AND DRAINAGE DESIGN, AS SHOWN HEREON, COMPLIES WITH THE SUBDIVISION REGULATIONS FOR THE CITY OF BASTROP, AND THAT THE 100 YEAR FLOOD PLAIN IS AS SHOWN AND WILL BE CONTAINED WITHIN THE DRAINAGE EASEMENT AND OR DRAINAGE RIGHT–OF–WAY, AS SHOWN HEREON.

ENGINEERING BY: _____ DATE _____
CHARLES R. BRIGANCE, JR., P.E. NO. 64346
CARLSON, BRIGANCE & DOERING, INC.
5501 WEST WILLIAM CANNON DRIVE
AUSTIN, TEXAS 78749



STATE OF TEXAS)(
COUNTY OF TRAVIS)(
KNOW ALL MEN BY THESE PRESENTS:

THAT I, AARON V. THOMASON, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE ON–THE–GROUND SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATION OF THE CITY OF BASTROP, BASTROP COUNTY, TEXAS. ALL EASEMENTS OF RECORD HAVE BEEN IDENTIFIED ON THIS PLAT TO THE BEST OF MY KNOWLEDGE.

SURVEYED BY: _____ DATE _____
AARON V. THOMASON – R.P.L.S. NO. 6214
CARLSON, BRIGANCE & DOERING, INC.
5501 WEST WILLIAM CANNON DRIVE
AUSTIN, TEXAS 78749



THIS FLOOD STATEMENT, AS DETERMINED BY A H.U.D.–F.I.A. FLOOD INSURANCE RATE MAP, DOES NOT IMPLY THAT THE PROPERTY OR THE IMPROVEMENTS THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR, AND FLOOD HEIGHTS MAY INCREASE BY MAN–MADE OR NATURAL CAUSES.

THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF ENGINEER OR SURVEYOR.

FIELD NOTES

BEING ALL THAT CERTAIN 13.336 ACRE TRACT OR PARCEL OF LAND OUT OF AND A PART OF THE MOZEA ROUSSEAU SURVEY, ABSTRACT NUMBER 56, SITUATED IN BASTROP COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS A PORTION OF THE REMAINDER OF THAT CERTAIN 174.334 ACRE TRACT OF LAND, CONVEYED TO RANCH ROAD DEVELOPMENT, LLC, IN DOCUMENT NUMBER 201717048, OFFICIAL PUBLIC RECORDS, BASTROP COUNTY, TEXAS, SAID 13.336 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a capped iron rod found at the south corner of Lot 35, Pecan Park Residential Section 3A, recorded in Cabinet 6, Slide 62–A, Plat Records, Bastrop County, Texas, same being on the northeast line of Lot 45, Block "B", of Pecan Park Section 3F, a subdivision recorded in Document Number _____, Official Public Records, Bastrop County, Texas, and also being on a north line of said 174.334 acre tract, for the northwest corner and the POINT OF BEGINNING of the herein described tract,

THENCE, with the north line of said 174.334 acre tract of land, and the south line of said Pecan Park Residential Section 3A, the following three (3) courses and distances, numbered 1 through 3,

1. N59°05'56"E, with the southeast line of said Lot 35, a distance of 29.82 feet to a capped iron rod found at the southeast corner of said Lot 35, same being the southwest corner of Lot 36 of said Pecan Park Residential Section 3A,
2. S78°16'57"E, a distance of 521.73 feet to a capped iron rod found at the southeast corner of Lot 48 of said Pecan Park Residential, same being the southwest corner of Lot 49 of said Pecan Park Residential Section 3A, and
3. S69°47'56"E, a distance of 61.27 feet to a capped iron rod found, being the southern corner of Lot 50 of said Pecan Park Residential Section 3A, same being the northwest of Lot 1, Pecan Park Section 3 a subdivision recorded in Document Number _____, Official Public Records, Bastrop County, Texas, also being an exterior corner of said 174.334 acre tract,

THENCE, with the common boundary line of said 174.334 acre tract and said Pecan Park Section 3C, the following nine (9) courses and distances, numbered 1 through 9,

1. S01°49'24"W, a distance of 46.55 feet to a ½" iron rod found stamped "CBD SETSTONE",
2. S07°20'59"W, a distance of 162.48 feet to a ½" iron rod found stamped "CBD SETSTONE",
3. S55°24'56"W, a distance of 45.62 feet to a capped ½" iron rod found stamped "CBD SETSTONE",
4. S00°10'33"W, a distance of 156.95 feet to a capped ½" iron rod found stamped "CBD SETSTONE",
5. N89°48'33"W, a distance of 20.05 feet to a capped ½" iron rod found stamped "CBD SETSTONE",
6. S00°10'49"W, a distance of 187.89 feet to a capped ½" iron rod found stamped "CBD SETSTONE", at a point of curvature for a curve to the left,
7. With said curve to the left, having a radius of 970.00 feet, an arc length of 209.19 feet, and whose chord bears N85°38'28"E, a distance of 208.78 feet to a capped ½" iron rod found stamped "CBD SETSTONE",
8. N79°37'47"E, a distance of 8.00 feet to a capped ½" iron rod found stamped "CBD SETSTONE", and
9. S10°32'13"E, a distance of 60.00 feet to a capped ½" iron rod found stamped "CBD SETSTONE", being the southernmost corner of said Pecan Park Section 3C,

THENCE, over and across said 174.334 acre tract the following twelve (12) courses and distances, numbered 1 through 12,

1. S79°27'47"W, a distance of 8.00 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the right,
2. With said curve to the right, having a radius of 1030.00 feet, an arc length of 228.07 feet, and whose chord bears S85°48'23"W, a distance of 227.60 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
3. N57°51'01"W, a distance of 236.61 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the left,
4. With said curve to the left, having a radius of 720.00 feet, an arc length of 225.01 feet, and whose chord bears S83°11'48"W, a distance of 224.09 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
5. S74°14'38"W, a distance of 279.32 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature to the right,
6. With said curve to the right, having a radius of 530.00 feet, an arc length of 27.34 feet, and whose chord bears S75°43'18"W, a distance of 27.34 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
7. N12°48'08"W, a distance of 40.00 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the left,
8. With said curve to the left, having a radius of 25.00 feet, an arc length of 40.56 feet, and whose chord bears N30°43'16"E, a distance of 36.26 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
9. N15°45'28"W, a distance of 99.97 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the left,
10. With said curve to the left, having a radius of 25.00 feet, an arc length of 39.26 feet, and whose chord bears N60°45'03"E, a distance of 35.35 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
11. N15°46'18"W, a distance of 50.00 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the left,
12. With said curve to the left, having a radius of 25.00 feet, an arc length of 39.28 feet, and whose chord bears N29°14'57"E, a distance of 35.36 feet to a capped ½" iron rod set stamped "CBD SETSTONE",
13. N15°45'28"W, a distance of 24.48 feet to a capped ½" iron rod set stamped "CBD SETSTONE", at a point of curvature for a curve to the right, and
14. With said curve to the right, having a radius of 425.00 feet, an arc length of 266.29 feet, and whose chord bears N02°11'30"E, a distance of 261.95 feet to a capped ½" iron rod set stamped "CBD SETSTONE", being in the western right–of–way line of Trailside Lane (50' R.O.W.), also being the westernmost corner of said Pecan Park Section,

THENCE, with the common boundary line of said 174.334 acre tract and said Pecan Park Section 3F, the following seven (7) courses and distances, numbered 1 through 7,

1. S69°51'31"E, a distance of 50.00 feet to a capped ½" iron rod found stamped "CBD SETSTONE",
2. N20°08'29"E, a distance of 3.86 feet to a capped ½" iron rod found stamped "CBD SETSTONE", being in the east right–of–way line of said Trailside Lane, also being the west corner of Lot 36, Block "B" of said Pecan Park Section 3F,
3. S69°51'48"E, a distance of 130.58 feet to a capped ½" iron rod found stamped "CBD SETSTONE", being the south corner of Lot 36, Block "B",
4. N16°07'43"E, a distance of 150.37 feet to a capped ½" iron rod found stamped "CBD SETSTONE", being a point on the southeast corner of Lot 39, Block "B" of said Pecan Park Section 3F,
5. N20°08'34"E, a distance of 169.99 feet to a capped ½" iron rod found stamped "CBD SETSTONE", being the east corner of Lot 43, Block "B" of said Pecan Park Section 3F,
6. N44°31'50"E, a distance of 58.96 feet to a capped iron rod found, and
7. N30°54'48"W, a distance of 14.99 feet to the POINT OF BEGINNING and containing 13.336 acres of land.

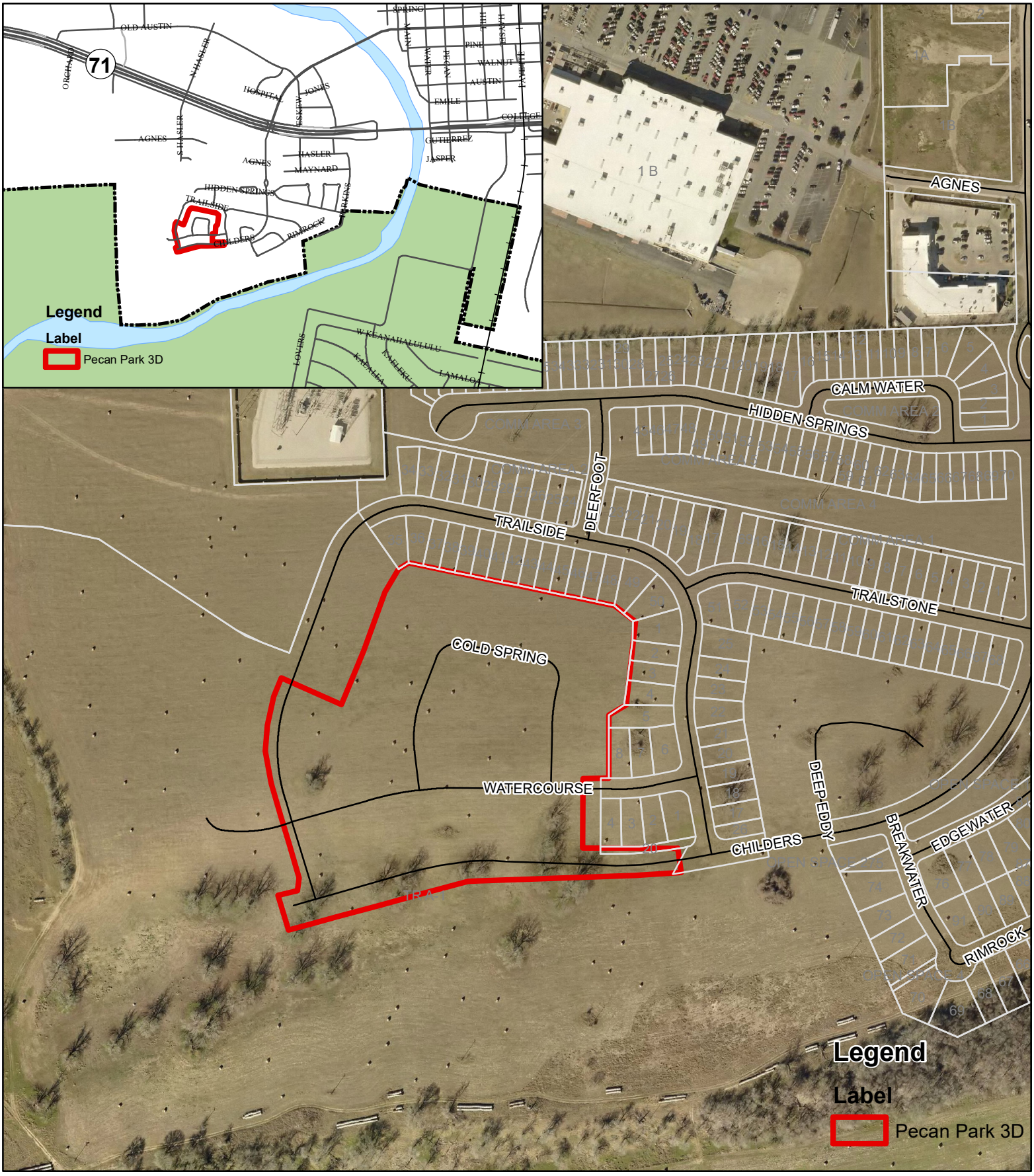
Exhibit A

SHEET NO. 2 OF 2

RANCH ROAD DEVELOPMENT

Carlson, Brigance & Doering, Inc.
FIRM ID #F3791 ◆ REG. # 10024900
Civil Engineering ◆ Surveying
5501 West William Cannon ◆ Austin, Texas 78749
Phone No. (512) 280-5160 ◆ Fax No. (512) 280-5165

PATH–J: \4958\SURVEY\FINAL PLAT–PECAN PARK SEC. 3D.DWG



BASTROPTX
Heart of the Lost Pines
Est. 1832

0 80 160 320 Feet

Location Map
Pecan Park 3D Final Plat

N

Date: 3/14/2019

The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefullness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

Notice of Pending Final Plat Approval
City of Bastrop
City Council

Dear Property Owner:

The **City Council** will conduct a public meeting **Tuesday, April 9, 2019 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** to consider the approval of a final plat for Pecan Park Section 3D being 13.336 acres out of the Mozea Rousseau Survey, Abstract 56, located on the north extension of Childers Drive within the city limits of Bastrop, Texas.

Applicant/Owner:	Ranch Road Development LLC
Location/Address:	North of the extension of Childers Drive
Legal Description:	Mozea Rousseau Survey, Abstract No. 56, being 13.336 acres
Number of Lots:	51 residential lots

The site location map and a copy of the plat is attached for reference.

As a property owner within 200 feet of the above referenced property, you are being notified of the upcoming meetings per the Bastrop Code of Ordinances. For more information on this project, you can contact the Planning & Development offices at (512) 332-8840, plan@cityofbastrop.org, or visit the office at 1311 Chestnut Street, Bastrop, Texas.

For additional information, please visit or call the Planning & Development offices.

Please provide reply to the address below, via fax (512) 332-8829, or email.

For: Final Plat Pecan Park Section 3D

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12H

TITLE:
Consider action to approve the first reading of Ordinance 2019-07 of the City of Bastrop, Texas ("City") implementing a Pilot Program to authorize the sale of food from Mobile Food Vendors within the city limits and to establish a Mobile Food Vendor Permit process for the Pilot Program; providing for findings of fact, purpose, expiration date; enactment, variance, repealer, severability, effective date, proper notice and meeting, and forward to the April 23, 2019 Consent Agenda for second reading.

STAFF REPRESENTATIVE:
Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

BACKGROUND/HISTORY:
The City of Bastrop currently has regulations for temporary and mobile vendors as part of Chapter 4 - Business Regulation's, Article 4.04 – "Peddlers, Solicitors and Vendors". This section regulates and provides a process to issue permits for temporary and seasonal business. The City Secretary issues these permits.

Mobile food vending has been a popular business model and incubator for new restaurant businesses within the Central Texas region. The current regulations do not address mobile food vehicles well and is not clear where the use should be allowed. Despite the large interest, the code does not clearly define and allow mobile food vehicles, so they generally have not been permitted to locate within the city limits.

Staff has researched mobile food vendor regulations in other parts of Texas and drafted a Mobile Food Vendor Pilot Program that would be adopted as a pilot program for a period of six months and permitting would be processed by the Planning and Development Department. Mobile vendors would be allowed in any zoning district that allows a restaurant use or on active construction sites for temporary periods of time.

Planning and Development Staff has worked with stakeholders from the Fire Department, Main Street Program, and the Bastrop County Health district for the Pilot Program. The draft regulations address safety concerns regarding the location and mechanics of the units and the health of the public concerning the operation of the units throughout the community. Feedback from experiences of the pilot program will be incorporated into the development of the new *Building Bastrop* codes.

The pilot program defines a Mobile Food Vendor as any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.

Mobile Food Vending Unit includes three types of mobile vehicles:

- Mobile Food Trucks (self-propelled)



- Mobile Concession Trailers
  (non-motorized, pulled by a car or truck)



- Mobile Food Carts/Concession Carts
  (moved by non-motorized means)



The permit is issued to the Vendor as a person or legal entity that is responsible for the business. The Vending Unit is the place from which the food is prepared and sold.

<u>Requirements Applicable to all Mobile Food Vendors</u>

- Operate between 8:00 am and 10:00 pm
- Must display city permit and health district permit
- Shall not operate within a public park, public right-of-way, publicly owned property or site without written permission from the City Manager or the City Manager's designee.
- Follow all adopted fire and building codes for health and safety
- Employees must have food handler’s permits
- Provide proof of regular maintenance and contract with an approved commissary
- When required, be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression
- Provide separation from buildings or other vehicles
- Cannot block fire lanes or required parking of a primary business
- Comply with the Noise Standards and Outdoor Lighting Standards

- Restroom facilities for vendors in one location for more than four hours

Staff is proposing to allow three categories of mobile food venues.

- Mobile Food Vendors on Private Property – Individual Units: allows a single vendor to locate on private property that has an occupied primary business.

- Mobile Food Vendors on Private Property – Food Courts: a site designed for the operation of one or more Mobile Food Vendors as the primary use.

- Mobile Food Vendors on Construction Sites: property in any zoning district that are actively under construction and have not yet been issued a Certificate of Occupancy, a Mobile Food Vendor may operate for less than one (1) hour.

The application for a Mobile Food Vendor permit shall include contact information, property owner approval and restroom agreements, health inspection certificate, food handler's permits, sketch plan or concept plan, and an application fee of $400.

The proposed timeline for the program would be as follows:

- March 26th – Work Session with City Council - Complete
- April 9th – 1st reading on Ordinance
- April 23rd – 2nd reading on Ordinance
- May 1st – Beginning of 6-month Pilot Program
- May 1st – August 1st – Observe Pilot Program and provide feedback to Council
- October 31st – End of Pilot Program

During the six-month Pilot Program, Staff will have the opportunity to observe the program and give feedback to Council. Council will need to provide policy direction to Staff on incorporating Mobile Food Vehicles in the Building Bastrop Codes. It is anticipated that the timeline for the Building Bastrop Code adoption will align with the end of the Mobile Food Vehicle Pilot Program. Appropriate language will be added to the new Building Bastrop Codes to reflect the policy direction of Council.

A Work Session was held at the March 26, 2019 City Council meeting. During the Work Session, Council gave feedback to Staff regarding amendments to the proposed Pilot Program. As a result, Staff has made the following amendments (in red) to the Ordinance:

1. *When required*, units shall be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression.
2. Changed separation requirement from 12' to 10' to reflect the 2018 International Fire Code.
3. The Mobile Food Vending Unit and any parking areas used by the Mobile Food Vendor or its customers, *should be located on a paved surface, or an alternative all-weather surface as approved by the City Engineer or their designee. Where providing paved or all-weather surface would be impractical or not provide a public benefit, alternative methods may be approved with a concept plan. Alternative methods may include but are not limited to portable spill berms, environmentally sensitive materials, and other methods to mitigate property damage and environmental hazards.*
4. Any permanent structure will require a building permit and be subject to any applicable regulations.

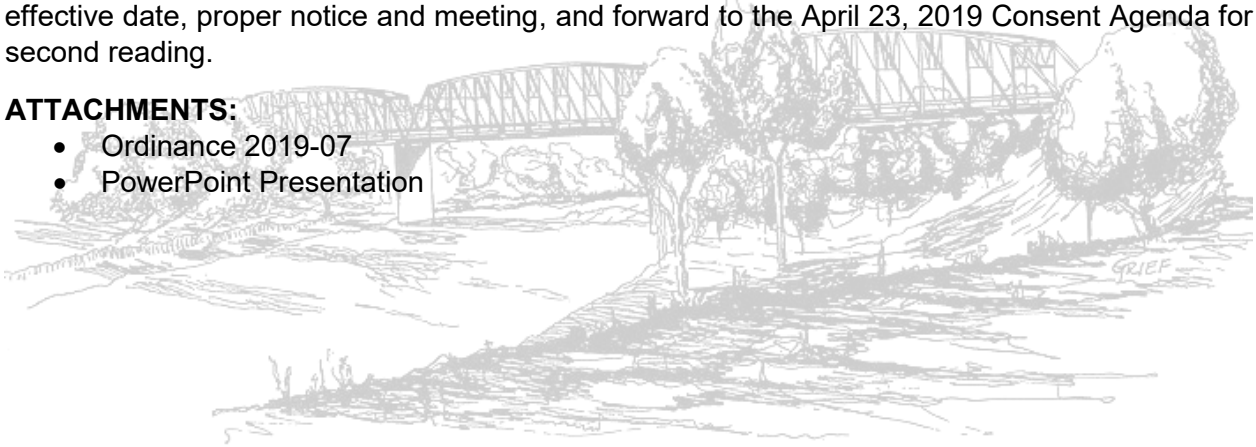
5. *Two* sandwich board signs may be used on-site during business hours. All other signage must be on the truck or trailer and mounted flush to the surface of the unit.
6. Only required to provide a covered garbage receptacle if stationary for more than 4 hours.
7. Created a Concept Plan defined as: *A diagramed plan that includes property lines, adjacent rights-of-way, location of all Mobile Food Vending Units, parking areas and surface material, maneuvering areas and surface material, seating areas, and any other information reasonably required by the Director of Planning and Development. Concept plans will be approved by the Director of Planning and Development.*
8. The following will trigger a Concept Plan:
    1. *Alternative parking surface*
    2. *Increased storage, display, or serving areas – detached*
    3. *Mobile Food Vendor Court – primary use*

RECOMMENDATION:

Consider action to approve the first reading of Ordinance 2019-07 of the City of Bastrop, Texas ("City") implementing a Pilot Program to authorize the sale of food from Mobile Food Vendors within the city limits and to establish a Mobile Food Vendor Permit process for the Pilot Program; providing for findings of fact, purpose, expiration date; enactment, variance, repealer, severability, effective date, proper notice and meeting, and forward to the April 23, 2019 Consent Agenda for second reading.

ATTACHMENTS:

- Ordinance 2019-07
- PowerPoint Presentation



CITY OF BASTROP, TX

ORDINANCE NO. 2019-07

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS ("CITY") IMPLEMENTING A PILOT PROGRAM TO AUTHORIZE THE SALE OF FOOD FROM MOBILE FOOD VENDORS WITHIN THE CITY LIMITS AND TO ESTABLISH A MOBILE FOOD VENDOR PERMIT PROCESS FOR THE PILOT PROGRAM; PROVIDING FOR FINDINGS OF FACT, PURPOSE, EXPIRATION DATE; ENACTMENT, VARIANCE, REPEALER, SEVERABILITY, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Bastrop, Texas, is a Home Rule city incorporated in and operating under the laws of the State of Texas; and

WHEREAS, the City Council seeks to protect the public health, safety, and welfare through a comprehensive regulatory program that includes food safety standards; and

WHEREAS, with these regulations, the City Council addresses potential health risks posed by Mobile Food Vendors and the applicability of certain state and local health codes; and

WHEREAS, the City Council has assessed potential traffic safety threats, the utility needs of Mobile Stores in terms of water, wastewater, electricity, gas, and telecommunications, and how those demands correspond to the community's utility plans and infrastructure; and

WHEREAS, the City Council is authorized to regulate Mobile Food Vendors by virtue of the Texas Constitution, the Texas Health and Safety Code, the Texas Administrative Code, the city's police power and by Chapters 51, 54, 211, 212, 214, 216, and 217 of the Texas Local Government Code; and

WHEREAS, the City Council now adopts the appropriate administrative and regulatory amendments, rules and procedures.

NOW, THEREFORE, **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:**

SECTION 1. FINDINGS OF FACT: The foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. DEFINITIONS: As used in this ordinance, these terms shall be defined as follows. Terms appearing in this ordinance but not defined herein shall have

the meanings provided in the city's code of ordinances, or if not defined by the city then the common meanings in accordance with ordinary usage.

A) **Concept Plan:** means a diagramed plan that includes property lines, adjacent rights-of-way, location of all Mobile Food Vending Units, parking areas and surface material, maneuvering areas and surface material, seating areas, and any other information reasonably required by the Director of Planning and Development. Concept plans will be approved by the Director of Planning and Development.

B) **Commissary:** means a central preparation facility or other fixed food establishment that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption to mobile, temporary and portable food vendors.

C) **Health Authority:** means the Bastrop County Environmental and Sanitation Services, or its designee, or any other agency charged with enforcement of regulations applicable to establishments regulated under this ordinance.

D) **Mobile Concession Trailer:** means a vending unit selling items defined as edible goods, which is pulled by a motorized unit and has no power to move on its own.

E) **Mobile Food Cart or Concession Cart:** means a mobile vending unit, selling items defined as edible goods, that must be moved by non-motorized means.

F) **Mobile Food Truck:** means a self-contained motorized unit selling items defined as edible goods.

G) **Mobile Food Vending Unit:** means a Mobile Food Truck, Mobile Food Cart, Concession Cart, or Mobile Concession Trailer.

H) **Mobile Food Vendors:** shall mean any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.

I) **Mobile Food Vendor Food Court:** means a site designed for the operation of one or more Mobile Food Vendors as the primary use.

J) **Texas Food Establishment Rules or the Rules:** means 25 Texas Administrative Code chapter 228, as amended.

SECTION 3. PURPOSE: This ordinance establishes a pilot program for Mobile Food Vendors. The purpose of the program is to ensure for the public safety, convenience, and protection of the City and the citizens of the City while allowing City Council, city staff, mobile food vendors, and citizens the opportunity to experience the pilot program and improve on it if the City Council chooses to make the program permanent.

SECTION 4. EXPIRATION DATE: This ordinance will expire on October 31, 2019.

SECTION 5. ENACTMENT: The City of Bastrop hereby enacts this ordinance implementing a pilot program to authorize the sale of food from mobile food vendors within the city limits and to establish a mobile food vendor permit process for the pilot program:

A) Requirements Applicable to all Mobile Food Vendors.

1. No person shall act as a Mobile Food Vendor in the City without a permit issued by the City.

2. Each Mobile Food Vendor shall display at all times in a conspicuous place where it can be read by the general public the City of Bastrop permit under this article and permit number.

3. Mobile Food Vendors shall not operate within a public park, public right-of-way, publicly owned property or site without written permission from the City Manager or the City Manager's designee.

4. Mobile Food Vendors must meet all applicable state and local laws and regulations, including but not limited to the Rules.

5. Mobile Food Vendors must meet all applicable laws regarding Mobile Food Vendors as described in the International Fire Code (IFC), 2018 edition.

6. Mobile Food Vendors must operate from an approved commissary in good standing as defined in and required by the Texas Food Establishment Rules. An existing food establishment may serve as a commissary if approved by the City. The commissary shall have an approved vehicle storage facility, approved potable water hookups, approved wastewater drainage facilities, approved grease interceptor hookup(s) and size, and any other accommodations as determined necessary by the City to ensure compliance with all regulatory codes, including but not limited to the local health authority. The commissary shall comply with all Food Establishment Rules and hold all current licenses and permits as required by the Rules. Valid copies of the commissary's current licenses and permits used under the Food Establishment Rules and most recent health inspection report must be kept on file with the City. Mobile Food Vendors shall provide documentation of each visit to or service by the commissary and shall have that documentation immediately available for inspection by the City.

7. The Mobile Food Vendor shall secure and display at all times in a conspicuous place where it can be read by the general public a health permit from Bastrop County.

8. All employees of the permit holder must have a valid food handler's training certificate.

9. When required, Mobile Food Vending Units must be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression for eating establishments, as established under the City's adopted building codes. All equipment on the vehicle is to be NSF International (formerly National Sanitation Foundation) approved, American National Standards Institute (ANSI) approved, or of commercial grade.

10. Any Mobile Food Vendor that will be in one location for more than four (4) hours shall provide covered garbage and storage facilities for employee and customer use of sufficient size that refuse is fully contained in a manner that prevents litter and remains insect- and rodent-proof.

11. The Mobile Food Vending Unit must meet the following plumbing standards:

    a. All liquid waste shall be discharged to an approved sanitary sewage disposal system at the commissary or through an authorized service provider. All used fats, oil, or grease shall be discharged to an approved grease interceptor at the commissary or through an authorized service provider. Used fats, oils or grease shall not be discharged to any unauthorized food establishment grease interceptor.

    b. Liquid waste shall not be discharged from the retention tank when the Mobile Food Vending Unit is open to the public or in the process of preparing food.

    c. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

    d. Connections to a water or sewage system on site is prohibited.

12. The Mobile Food Vendor shall display at all times in a conspicuous place where it can be read by the general public a copy of a Texas sales tax and use certificate.

13. Mobile Food Vending Units shall be separated from existing buildings and other mobile food vehicles by a minimum of ten (10) feet. Food Vendors shall not set up in fire lanes or parking spaces that are required for the use of an existing business.

14. The Mobile Food Vending Unit and any parking areas used by the Mobile Food Vendor or its customers, should be located on a paved surface, or an alternative all-weather surface as approved by the City Engineer or their designee. Where providing paved or all-weather surface would be impractical or not provide a public benefit, alternative methods may be approved with a concept plan. Alternative methods may include but are not limited to portable spill berms, environmentally sensitive materials, and other methods to mitigate property damage and environmental hazards.

15. Each Mobile Food Vending Unit shall be clearly marked with the food establishment's name or a distinctive identifying symbol and shall display the name while in service within the City.

16. Except as shown on an approved concept plan, the Mobile Food Vendor shall prepare, serve, store and display food and beverages on or in the Mobile Food Vending Unit itself; and shall not attach, set up, or use any other device or equipment intended to increase the selling, serving, storing or displaying capacity of the Mobile Food Vendor.

17. No Mobile Food Vendor may operate outside of the hours of 8:00 AM to 10:00 PM, unless otherwise authorized within the permit.

18. Mobile Food Vendors must comply with City Code Section 44.1, “Noise Standards.”

19. Mobile Food Vendors must comply with City Code Section 43.1, “Outdoor Lighting Standards.”

20. Drive-through service from Mobile Food Vendors is prohibited.

21. Alcohol sales from Mobile Food Vendors is prohibited.

22. Access to Restroom Facilities.

    a. Any Mobile Food Vendor that will be in one location for more than four (4) hours must submit to the City written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom for the use of the Mobile Food Vendor employees and customers located in a business establishment within one hundred fifty (150) feet of each location where the Mobile Food Vending Unit will be in operation.

    b. Proof of availability of adequate facilities shall be in the form of a written and notarized statement from the property owner, or owner's authorized agent, including the name, address, and telephone number of the property owner or authorized agent, and the type of business and hours of operation of the business, granting permission for the use of the facilities. If the business owner is a partnership or corporation, the statement shall include the name, address and telephone number of one (1) of the partners or officers.

    c. A copy of the notarized statement shall be immediately available for inspection by the City on the Mobile Food Vending Unit.

23. Mobile Food Vehicles must be movable by motorized or non-motorized means.

B) Mobile Food Vendors on Private Property. Mobile Food Vending Units located on private property must comply with the following:

1. The private property must be located in a zoning district that allows restaurants, as that term is defined in Section 49 of the City's Zoning ordinance.

2. The private property must be developed and improved, and contain an existing permanent business operating in a building with a certificate of occupancy at all times while the Mobile Food Vending Unit occupies the property. Alternatively, a Mobile Food Vendor may operate from a Mobile Food Vendor Food Court site that is designed and intended for mobile food use as the primary use of the property. A concept plan will be required for a Mobile Food Vendor Court that is the primary use on a property.

3. Electricity shall be from a generator and the Mobile Food Vendor shall utilize electrical cords in conformance with the National Electrical Code as adopted and amended by the City.

4. The Mobile Food Vendor must submit with the permit application written authorization or other suitable documentation showing that the owner of the property, or the owner's authorized agent, consents to the Mobile Food Vendor operating on said property.

5. Any permanent structure will require a building permit and be subject to any applicable regulations.

6. Two sandwich board signs may be used on-site during business hours. All other signage must be on the truck or trailer and mounted flush to the surface of the unit.

C) Mobile Food Vendors on Construction Sites. For subdivisions or sites in any zoning districts that are actively under construction and have not yet been issued a Certificate of Occupancy, a Mobile Food Vendor may operate for less than one (1) hour.

D) Mobile Food Vendor Permit Application. The application for a Mobile Food Vendor permit shall include the following information:

1. an application fee of $400;

2. name, legal name of business or entity, business address, telephone number, and email address of the applicant;

3. the applicant's identification number as shown on a current and valid government-issued identification document that includes a photograph of the applicant;

4. if the applicant represents a corporation, association or partnership, the names and addresses of the officers or partners;

5. name, legal name of business or entity, business address, telephone number, and email address of the owner if the owner is not the applicant;

6. signed and notarized permission from all private property owners where the Mobile Food Vending Unit will be stationed;

7. the manner of mobile food vending operation to be conducted (for example, foot vending, truck, trailer, pushcart, etc.); the make, model, year, license or registration, and vehicle identification number of each vehicle to be used in the mobile food vending operation;

8. proof of motor vehicle insurance for each vehicle to be used in the mobile food vending operation;

9. an itinerary of locations where sales will occur; and a location map and sketch of site location for each location to be used by the Mobile Food Vendor;

10. a concept plan, if applicable;

11. a copy of the vendor's current health permit from Bastrop County;

12. if the mobile vending unit will be placed in one (1) location for more than four (4) hours, a written agreement from a business within one hundred fifty (150) feet for employees of the mobile food establishment to have use of flushable restrooms (or other facilities as approved by the health authority) during hours of operation;

13. proof of water/wastewater service;

14. documentation indicating the volume capacity of any required water and wastewater storage tanks either on the tank itself or in writing;

15. a description of the type of food or the specific foods to be vended;

16. a notarized statement from the owner of the commissary stating that the mobile food establishment will use the facility as its base of operation and providing the address and food establishment permit number of the facility;

17. a valid copy of the applicant's sales tax and use tax permit; and

18. any other information reasonably required by the Director of Planning and Development.

E) Mobile Food Vendor Permits.

1. Permit Determinations. The City will evaluate the data furnished by the applicant and may require additional information. Within fourteen (14) days of receipt of a completed permit application, the City will determine whether or not to issue a Mobile Food Vendor permit. The City may deny an application for a permit on any of the following grounds:

    a. failing to provide all of the information required by the City;

    b. the applicant's past record of ordinance violations;

    c. safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances; and

    d. providing false, misleading or inaccurate information to the City.

2. Permits are not transferable.

3. Mobile Food Vendor permits expire on October 31, 2019.

4. Permit fees will not be prorated. Other fees related to the construction of a Mobile Food Vendor Food Court will be required during the review and construction of the Mobile Food Vendor Food Court.

F) Permit Revocation and Appeal.

1. The City Manager or City Manager's designee may revoke a permit issued under this ordinance by a Mobile Food Vendor if the permit holder or the permit holder's employee:

    a. commits critical or repeated violations of applicable law; or

    b. knowingly provides false information on an application; or

    c. interferes with the Health Authority in the performance of the Health Authority's duties; or

    d. if a permitted establishment under this Article changes ownership and there are violations that must be corrected to meet applicable standards.

2. Before revoking a permit, the City shall provide the permit holder or person in charge with written notice of the pending permit revocation.

    The written notice shall include:

    a. the reason(s) the permit is subject to revocation; and

    b. if applicable:

1. the date on which the permit is scheduled to be revoked; and

2. a statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a meeting with the City no later than the tenth (10^{th}) day after the date the notice is served.

3. The applicant may appeal the revocation of a permit by submitting a written request for appeal along with any evidence supporting the appeal to the Board of Appeals within ten (10) days of receiving the notice of revocation. The Board of Appeals will make a decision within a reasonable time of receipt of the appeal, but no later than thirty (30) days after receipt. The Board of Appeals' decision shall be final.

G) Inspections.

1. The City may inspect a Mobile Food Vendor during regular business hours and at other reasonable times to determine compliance with this ordinance.

2. After conducting an inspection, the City shall inform the Mobile Food Vendor of findings.

3. If a violation is found, the City shall:

   a. close the unit; or

   b. prescribe a reasonable time period for correction of violations. Re-inspections at prescribed time intervals will be conducted to determine whether required corrections have been made.

H) Penalty.

A violation of this ordinance is considered a violation pertaining to fire safety, zoning, public health and/or sanitation and is punishable by a fine not to exceed two thousand dollars ($2,000.00) in accordance with City Code Section 1.01.009.

SECTION 6. REPEALER: In the case of any conflict between the other provisions of this ordinance and any existing ordinance of the City, the provisions of this ordinance will control.

SECTION 7. SEVERABILITY: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this ordinance that can be given effect without the invalid provision.

SECTION 8. ENFORCEMENT: The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person

violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

SECTION 9. EFFECTIVE DATE: This ordinance shall be effective on May 1, 2019.

SECTION 10. PROPER NOTICE & MEETING: It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ and APPROVED on First Reading on the 9th day of April 2019.

READ and ADOPTED on Second Reading on the 23rd day of April 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

Item for Individual Consideration

Consider action to approve the first reading of Ordinance 2019-07 of the City of Bastrop, Texas ("City") implementing a Pilot Program to authorize the sale of food from Mobile Food Vendors within the city limits and to establish a Mobile Food Vendor Permit process for the Pilot Program; providing for findings of fact, purpose, expiration date; enactment, variance, repealer, severability, effective date, proper notice and meeting, and forward to the April 23, 2019 Consent Agenda for second reading.

BASTROPTX
Heart of the Lost Pines / Est. 1832

Recap

- What is a Mobile Food Vendor
- Types of Mobile Food Units
- Categories of Mobile Food Vendors







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Mobile Food Vendor

Any business that operates or sells food for human consumption, hot or cold, from a Mobile Food Vending Unit.

- The permit is issued to the Vendor as a person or legal entity that is responsible for the business.
- The Vending Unit is the place from which the food is prepared and sold.

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Types of Mobile Food Vending Units

- Mobile Food Truck: a self-contained motorized unit selling items defined as edible goods.

- Mobile Concession Trailer: a vending unit selling items defined as edible goods, which is pulled by a motorized unit and has no power to move on its own.

- Mobile Food Cart or Concession Cart: means a mobile vending unit, selling items defined as edible goods, that must be moved by non-motorized means.

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Types of Vendor Units



Food Cart or Concession Cart



Mobile Concession Trailer



Mobile Food Truck

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Categories of Mobile Food Vendors

- Single Vendor located on a site with an occupied primary building/use:
  - Must have permission from the property owner and meet location/safety requirements
  - Location map and sketch plan required

- Multiple or Single Vendor located on a site as the primary use:
  - Will require a Concept Plan*

- Construction Sites
  - Will be allowed for up to one (1) hour per site

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Mobile Food Vendors – Food Court



Fort Worth, TX

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Mobile Food Vendors – Food Court



Elgin, TX

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Mobile Food Vendors – Food Court



Fort Worth, TX

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What are we trying to avoid?

Unintended consequences…

Good intentions can lead to negative outcomes!



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Unintended Consequences



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Unintended Consequences

- Destruction of property
- Debris in streets



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Unintended Consequences

- FOG
  - Fats, oils, and grease
- Illegal disposal



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Unintended Consequences

- Traffic issues





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Unintended Consequences

- Life Safety
  - Fire Hazards
  - In enclosed space



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Staff Recommendations – Health and Safety

- Operate between 8:00 am and 10:00 pm
- Must display city permit and health district permit
- Shall not operate within a public park, public right-of-way, publicly owned property or site without written permission from the City Manager or the City Manager's designee.
- Follow all adopted fire and building codes for health and safety
- Employees must have food handler's permits
- Provide proof of regular maintenance and contract with an approved commissary
- When required, be equipped with commercial mechanical facilities sufficient to provide proper cooking ventilation and fire suppression*
- Provide separation from buildings or other vehicles
- Cannot block fire lanes or required parking of a primary business
- Comply with the Noise Standards and Outdoor Lighting Standards

* ***Updated from March 26th meeting***

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Staff Recommendations – Site Development

- The Mobile Food Vending Unit and any parking areas used by the Mobile Food Vendor or its customers, should be located on a paved surface, or an alternative all-weather surface as approved by the City Engineer or their designee. Where providing paved or all-weather surface would be impractical or not provide a public benefit, alternative methods may be approved with a concept plan. Alternative methods may include but are not limited to portable spill berms, environmentally sensitive materials, and other methods to mitigate property damage and environmental hazards.*
- Any permanent structure will require a building permit and be subject to any applicable regulations.*
- Two sandwich board signs may be used on-site during business hours. All other signage must be on the truck or trailer and mounted flush to the surface of the unit.*

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Staff Recommendations – Anything over 4 hours

- Restroom facility within 150’
- Provide covered garbage and storage facilities for employee and customer use*



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Staff Recommendations – Concept Plan

- A diagramed plan that includes property lines, adjacent rights-of-way, location of all Mobile Food Vending Units, parking areas and surface material, maneuvering areas and surface material, seating areas, and any other information reasonably required by the Director of Planning and Development. Concept plans will be approved by the Director of Planning and Development.*

Staff Recommendations – Concept Plan Triggers

- Alternative parking surface
- Increased storage, display, or serving areas – detached
- Mobile Food Vendor Court – primary use





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Pilot Program Goals

- Protect the public safety and welfare
- Create new business opportunities
- Protect existing business owner's investments
- Unique experiences
- Provide a public service



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Questions?



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STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12I

TITLE:
Consider action to approve Resolution R-2019-36 of the City Council of the City of Bastrop, Texas authorizing the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to communicate with the Office of the Governor and Texas Legislature on behalf of the City of Bastrop Texas; and establishing an effective date.

STAFF REPRESENTATIVE:
Lynda K. Humble, City Manager
Alan Bojorquez, City Attorney

BACKGROUND/HISTORY:
During the 2017 Legislative Session, more than 6,500 bills were introduced with more than 2,000 of them affecting the governing of Texas municipalities in a substantial way. Since the 2019 Legislative Session has convened, numerous bills have been filed in both the Texas Senate and House of Representatives that affect the authority, obligations, and funding of Texas municipalities, including the City of Bastrop, in a substantial way. On December 11, 2018, the City Council approved Resolution No. R-2018-118 supporting the Texas Municipal League Legislative Program.

POLICY EXPLANATION:
By approving Resolution R-2019-36, the Mayor, Mayor Pro-Tem, City Manager, and City Attorney are authorized to communicate with the Office of the Governor, Texas Senate, and/or Texas House of Representatives regarding pending or proposed legislation, including any amendments or committee substitutes. The Resolution will also authorize the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to publicly voice, on behalf of the City of Bastrop, positions that are consistent with Resolution No. R-2018-118, any policy statements previously enacted by the City Council, or specific directives from the City Council. This Resolution also provides authority for these positions to provide written or verbal testimony and position statements on behalf of the City of Bastrop.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Consider action to approve Resolution R-2019-36 of the City Council of the City of Bastrop, Texas authorizing the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to communicate with the Office of the Governor and Texas Legislature on behalf of the City of Bastrop Texas; and establishing an effective date.

ATTACHMENTS:
- Resolution

Alan B. *Draft "A"* *April 4, 2019*

RESOLUTION NO. R-2018-36

ADVOCACY BEFORE THE 86TH TEXAS LEGISLATURE

A RESOLUTION OF THE BASTROP CITY COUNCIL AUTHORIZING THE MAYOR, MAYOR PRO-TEM, CITY MANAGER, AND CITY ATTORNEY TO COMMUNICATE WITH THE OFFICE OF THE GOVERNOR AND TEXAS LEGISLATURE ON BEHALF OF THE CITY OF BASTROP, TEXAS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, during the 2017 Legislative Session more than 6,500 bills were introduced, with more than 2,000 of them affecting the governing of Texas municipalities in a substantial way; and

WHEREAS, the 2019 Legislative Session convened and numerous bills have been filed in both the Texas Senate and the Texas House of Representatives that affect the authority, obligations, and funding of the City of Bastrop; and

WHEREAS, on December 11, 2018, the City Council of the City of Bastrop ("City Council") approved Resolution No. R-2018-118 supporting the Texas Municipal League Legislative Program; and

WHEREAS, the City Council of the City of Bastrop ("City Council") finds it to be in the public interest, and necessary for the public health, safety and welfare of the Bastrop community to convey to the Office of the Governor and the Texas Legislature the opinions, views, and insights of those serving the City of Bastrop.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP:

Section 1: The City Council hereby authorizes the Mayor, Mayor Pro-Tem, City Manager, and City Attorney (individually or collectively) to communicate with the Office of the Governor, Texas Senate, and/or Texas House of Representatives regarding pending or proposed legislation, including any amendments or committee substitutes.

Section 2: The City Council authorizes the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to publicly voice on behalf of the City of Bastrop positions that are consistent with Resolution NO. R-2018-118, any policy statements previously enacted by the City Council, or specific directives from the City Council.

Section 3: The City Council authorizes the Mayor, Mayor Pro-Tem, City Manager, and City Attorney to provide written or verbal testimony and position statements on behalf of the City of Bastrop.

Section 4: The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, Texas on this, the 9th day of April 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

STAFF REPORT

MEETING DATE: April 9, 2019 **AGENDA ITEM**: 12J

TITLE:
Consider Action to approve the first reading of Ordinance Number 2019-11 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, Chapter 2 Titled "ANIMAL CONTROL," Article 2.01 Titled "GENERAL PROVISIONS," Sections 2.01.001 Titled "DEFINITIONS"; amending the definitions of "Feral," "Livestock," "Poultry /Fowl," and Wild Birds," and 2.01.007 Titled "Injury or destruction of wild birds;" amending the provision amending the provision for the exclusion of certain birds from this section by adding chickens and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting and move to include on the April 23, 2019 agenda for a second reading.

STAFF REPRESENTATIVE:
James K. Altgelt, Director of Public Safety/Chief of Police

BACKGROUND/HISTORY:
On February 22, 2005, the Bastrop City Council ("Council") amended Chapter 2 - "ANIMAL CONTROL," Article 2.01 - "GENERAL PROVISIONS," Section 2.01.007 "Injury or destruction of wild birds" of the City of Bastrop Code of Ordinances. This amendment declared the City of Bastrop as a bird sanctuary and that any person who willfully kill or injure any wild bird, remove the eggs or young from the nest of a wild bird shall be guilty of a class C misdemeanor. Pigeons, English sparrows, European starlings, grackles, ravens, red-winged blackbirds, blackbirds, cowbirds, feral rock doves, and crows were all excluded from being included in this ordinance.

In June 2009, the Council adopted Ordinance 2009-013 and created what became to be known as the "Chicken Sanctuary".

Over the passage of time, some of these chickens migrated from the Chicken Sanctuary to other parts of the City. These broods have become a nuisance to residential and business owners.

On November 29, 2017, a Public Hearing was conducted during the City Council Meeting to address the public's concerns pertaining to the chickens and what would be the appropriate action. At that time of this Public Hearing, any chicken that was at-large and outside the Chicken Sanctuary was deemed to be a nuisance and prohibited from being allowed to roam free.

On March 14, 2018, Dan Hepker, dba Texas Nuisance Wildlife Relocation, entered into a Professional Services Agreement for the humane capture, transportation, and relocation of the chickens from private property within the City.

On March 27, 2018, after receiving an update, Council unanimously opined that the removal of the Chicken Sanctuary would be in the City's best interest.

On May 22, 2018, Council passed an ordinance that dissolved the Chicken Sanctuary.

On March 26, 2019, Council received an update pertaining to the Chicken Relocation Project. A lengthy discussion took place regarding the humane and legal removal of the free-ranging/feral chickens located throughout the City. Criminal violations of law for injuring or killing the chickens were also discussed.

A person who removes chicken eggs from their private property, injures, or kills a chicken while attempting to remove it from their private property is subject to criminal prosecution under our current ordinance. Amending our current ordinance to include chickens would allow private property owners to assist in the removal of these nuisance chickens from their property without subjecting themselves to potential criminal penalties. Amending our current ordinance would not jeopardize the City's position as a bird sanctuary and individuals who intentionally or knowingly tortured a chicken would still be subjected to criminal prosecution under Chapter 42, of the Texas Penal Code, § 42.09 – Cruelty to Animals. Under this section, "torture" is defined as any act that causes unjustifiable pain or suffering. Bastrop County Criminal District Attorney Bryan Goertz has opined that all of the livestock animals identified in this section of the statute are raised with the intention for human consumption and therefore, would be killed. It is the method used to kill the animal that would be examined to determine if the method caused unjustifiable pain or suffering. This determination of fact would be one that would ultimately be decided by a judge or jury in the event criminal charges were pursued against a person who killed an animal in a manner that "out of the ordinary" and could be deemed as torture.

POLICY EXPLANATION:
This amendment to the ordinance, if passed, would allow citizens to help remove chickens and their eggs from their private property.

FUNDING SOURCE:
N/A

RECOMMENDATION:
Consider Action to approve the first reading of Ordinance Number 2019-11 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, Chapter 2 Titled "ANIMAL CONTROL," Article 2.01 Titled "GENERAL PROVISIONS," Sections 2.01.001 Titled "DEFINITIONS"; amending the definitions of "Feral," "Livestock," "Poultry /Fowl," and Wild Birds" and 2.01.007 Titled "Injury or destruction of wild birds;" amending the provision amending the provision for the exclusion of certain birds from this section by adding chickens and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting and move to include on the April 23, 2019 agenda for a second reading.

ATTACHMENTS:

- Ordinance 2019-11
- Attachment "A"

ORDINANCE NO. 2019-11~~XX~~

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS; AMENDING THE CODE OF ORDINANCES, CHAPTER 2 TITLED "ANIMAL CONTROL," ARTICLE 2.01 TITLED "GENERAL PROVISIONS," SECTIONS 2.01.001 TITLED "DEFINITIONS"; AMENDING THE DEFINITIONS OF "FERAL" "LIVESTOCK" "POULTRY/FOWL" AND "WILD BIRDS" AND 2.01.007 TITLED "INJURY OR DESTRUCTION OF WILD BIRDS;" AMENDING THE PROVISION FOR THE EXCLUSION OF CERTAIN BIRDS FROM THIS SECTION BY ADDING POULTRY/FOWL TO THE LIST OF EXCEPTED BIRDS AND REPEALING ALL PRIOR ORDINANCES THAT ARE IN CONFLICT HEREWITH; AS ATTACHED IN EXHIBIT A; AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, EFFECTIVE DATE, REPEALER, SEVERABILITY, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Bastrop ("City") has the responsibility to address any public health and safety problems; and

WHEREAS, the Bastrop City Council ("Council") has received information from the Community and the Police Department about the presence of free-ranging/feral chickens that are a nuisance to private property; and

WHEREAS, on November 29, 2017, Council conducted a Public Hearing to address the public's concerns pertaining to the free ranging/feral chickens that resided outside of the "Chicken Sanctuary;" and

WHEREAS, on March 27, 2018, after receiving an update, the Council unanimously opined that the removal of the "Chicken Sanctuary" would be in the City's best interest; and

WHEREAS, on May 22, 2018, and the Council repealed the Ordinance that established the "Chicken Sanctuary;" and

WHEREAS, on March 26, 2019, Council had a discussion and determined obtaining help from the property owners who are impacted by the free-ranging/feral chickens would be a positive step in eradicating these broods from the City; and

WHEREAS, the City is authorized by Tex. Loc. Gov't Code § 51.001 to adopt, appeal, or amend any ordinance that is for the good government, peace, or order of the municipality, and for the trade and commerce of the municipality, and is necessary or proper for carrying out a power granted by law to the municipality; and

WHEREAS, the City has the full power of local self-government as recognized by Tex. Loc. Gov't Code § 51.072; and

WHEREAS, the City Council finds this Ordinance to be reasonable and prudent, and in the best interest of the health, safety, and sanitation of the city for its residents.

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

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ENACTMENT

Chapter 2, Article 2.01, et. Seq. of the Code of Ordinances to the City of Bastrop, which is entitled "GENERAL PROVISIONS" is amended to read as described and attached hereto as *Exhibit "A."* City staff is directed to act in accordance with the Council's amendment to *Exhibit "A".*

SECTION 3. EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage.

SECTION 4. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 5. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 6. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ & ACKNOWLEDGED on First Reading on this, the 9th day of April 2019.

READ & APPROVED on the Second Reading on this, the ____ day of _____ 2019.

APPROVED:

_____
Connie B. Schroeder, Mayor

ATTEST:

_____
Ann Franklin, City Secretary

APPROVED AS TO FORM:

_____
Alan Bojorquez, City Attorney

EXHIBIT "A"

City of Bastrop Code of Ordinances

Chapter 2 – ANIMAL CONTROL

ARTICLE 2.01 – GENERAL PROVISIONS

Sec. 2.01.001 - Definitions.

When used in the city Code of Ordinances, the following words and terms, unless the context indicates a different meaning, or unless otherwise specifically defined for application to a portion of this chapter, shall be interpreted as follows:

…

Feral. An animal that is not domesticated, cultivated, intentionally bred or generally approachable and/or an animal that is not readily able to be handled by humans, including a domestic animal that has returned to a wild state.

Fowl. All birds considered to be landfowl, including turkeys, grouse, chickens.

…

Livestock. Animals that are routinely raised on a farm and/or are generally found in agricultural habitats, but shall specifically not include feral or stray poultry/fowl.

…

Poultry. All domesticated birds or bird captive-raised for meat, eggs, or feathers, including chickens, turkeys, and game birds.

~~*Poultry/fowl.*~~

~~(1) All domesticated poultry and fowl; and~~

~~(2) All game/undomesticated poultry, fowl and birds which are kept in captivity, but excluding poultry, fowl and birds that are protected animals, as that term is defined herein.~~

…

Wild bird. A bird that normally lives in a state of nature and is not ordinarily domesticated, but specifically does not include pigeons, English sparrows, European starlings, grackles, ravens, red-winged blackbirds, blackbirds, cowbirds, feral rock doves, ~~or~~ crows, poultry and fowl.

Sec. 2.01.007 – Injury or destruction of wild birds

(a) The city is hereby declared a bird sanctuary. Any person who shall willfully kill or injure any wild bird, remove the eggs or young from the nest of a wild bird, or in any manner destroy the eggs or young of wild birds, excluding the pigeon, English sparrow, European starlings, grackles, ravens, red-winged blackbirds, blackbirds, cowbirds, feral rock doves, ~~and~~ crows, poultry and fowl shall be guilty of a class C misdemeanor. Canaries, parrots, and other exotic non-game birds may be sold, purchased, and kept as domestic pets.

(b) Nothing in this chapter invokes the application of the Endangered Species Act of 1973, as amended, or any other federal, state or local law or regulation related to wild birds or animals, unless such provisions would otherwise apply.