

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



October 11, 2022

Regular City Council Meeting at 6:30 PM

Executive Session at 5:30 PM

Regular Meeting at 6:30 PM

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.

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 IN ATTENDANCE 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 CITY COUNCIL MEETING. ALTERNATELY, IF YOU ARE UNABLE TO ATTEND THE COUNCIL MEETING, YOU MAY COMPLETE A CITIZEN COMMENT FORM WITH YOUR COMMENTS AT CITYOFBASTROP.ORG/CITIZENCOMMENT AT LEAST TWO HOURS BEFORE THE MEETING STARTS ON THE REQUESTED DATE. COMMENTS SUBMITTED BY THIS TIME WILL BE GIVEN TO THE CITY COUNCIL DURING THE MEETING AND INCLUDED IN THE PUBLIC RECORD, BUT NOT READ ALOUD. COMMENTS FROM EACH INDIVIDUAL IN ATTENDANCE WILL BE LIMITED TO THREE (3) MINUTES.

1. CALL TO ORDER

2. EXECUTIVE SESSION

2A. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding solid waste franchise agreements.

Submitted by: Sylvia Carrillo, City Manager

3. **PLEDGE OF ALLEGIANCE** - Cannon Cole and Katherine Alexander, Mina Elementary PE Posse

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

4. **INVOCATION** - Derek Brown, Next Generation Pastor, Calvary Baptist Church

5. **PRESENTATIONS**

[5A.](#) Mayor's Report

[5B.](#) Council Members' Report

[5C.](#) City Manager's Report

6. **WORK SESSIONS/BRIEFINGS - NONE**

7. **STAFF AND BOARD REPORTS**

[7A.](#) Receive Presentation on the unaudited monthly Financial Report for the period ending August 31, 2022.

Submitted by Tracy Waldron, Chief Financial Officer

8. **CITIZEN COMMENTS**

At this time, three (3) minute comments will be taken from the audience on any topic. Anyone in attendance 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 City Council meeting. Alternately, if you are unable to attend the council meeting, you may complete a citizen comment form with your comments at www.cityofbastrop.org/citizencommentform at least two hours before the meeting starts on the requested date. Comments submitted by this time will be given to the City Council during the meeting and included in the public record, but not read aloud. 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 Manager for research and possible future action.

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.

9. CONSENT AGENDA

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

9A. Consider action to approve City Council minutes from the September 20, 2022, Regular meeting.

Submitted by: Ann Franklin, City Secretary

9B. Consider action to approve Resolution No. R-2022-94 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation, as required in Section 3.08 of the City's Charter, and establishing an effective date.

Submitted by: Ann Franklin, City Secretary

9C. Consider action to approve the second reading of Ordinance No. 2022-26, of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges", Sections A13.02.002 Wastewater Service Charge, and A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, and proper notice and meeting.

Submitted by: Tracy Waldron, Chief Financial Officer

10. ITEMS FOR INDIVIDUAL CONSIDERATION

10A. Hold a public hearing and consider action through an appeal to City Council on Resolution No. 2022-92 to grant a subdivision variance from the B³ Code Technical Manual, Section 3.2.005 requiring all new lots to be a minimum of one acre in size for on-site sewer facilities and a subdivision variance from the 2018 International Fire Code, Appendix D, Section D107.1 requiring a subdivision with more than 30 units/lots to have a secondary point of egress for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

Submitted by: Jennifer C. Bills, Director of Planning & Development

10B. Hold a public hearing and consider action on Resolution No. 2022-93 on an appeal to approve a replat with variances for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

Submitted by: Jennifer C. Bills, Director of Planning & Development

[10C.](#) Consider action to approve Resolution No. R-2022-91 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Fabiola De Carvalho, AMP MIAM, Director of Engineering and Capital Project Management

[10D.](#) Consider action to approve Resolution No. R-2022-89 of the City Council of the City of Bastrop, authorizing proceeding with issuance of certificates of obligation and further directing the publication of notice of intention to issue City of Bastrop, Texas Combination Tax and Revenue Certificates of Obligation

Submitted by: Tracy Waldron, Chief Financial Officer

11. ADJOURNMENT

All items on the agenda are eligible for discussion and action unless specifically stated otherwise.

The Bastrop City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development), and §551.086 (Competitive Matters regarding Electric Utility).

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: Thursday, October 6, 2022, at 4:00 p.m. and remained posted for at least two hours after said meeting was convened.

/s/Ann Franklin
Ann Franklin, City Secretary



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding solid waste franchise agreements.

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Mayor's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, 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:



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Council Members' Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, 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: October 11, 2022

TITLE:

City Manager's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, 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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- (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: October 11, 2022

TITLE:

Receive presentation on the unaudited Monthly Financial Report for the period ending August 31, 2022.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The Chief Financial Officer provides the City Council a monthly financial report overview for all funds to include detailed analysis for General Fund, Water-Wastewater Fund, Bastrop Power & Light and the HOT Tax Fund.

REVENUE

General Fund exceeded the forecast by 4%

- Sales tax is 7.6% above forecast and 15% over same period prior year
- Development fees right in line with forecast
- There are other categories that are below forecast – specifically court fines and interest

Impact Fee Fund is in negative status – the revenue projections were based on the timing of specific developments paying into this fund – these developments are behind the projected schedule causing the fund to be short of forecast.

All other funds are performing positive to forecast.

EXPENDITURES

All funds are positive to forecast amounts.

This reporting requirement is set forth by the City of Bastrop Financial Management Policies, Chapter IV. Operating Budget, Section D. Reporting, as adopted by Resolution R-2022-73 on August 23, 2022.

ATTACHMENTS:

- Unaudited Monthly Financial Report for the period ending August 31, 2022

CITY OF BASTROP

Comprehensive Monthly Financial Report August 2022



Performance at a Glance as of August 31, 2022



	YEAR TO DATE	REFERENCE
ALL FUNDS SUMMARY		
ALL FUNDS SUMMARY	POSITIVE	Page 3-4
SALES TAXES	POSITIVE	Page 5
PROPERTY TAXES	POSITIVE	Page 6
GENERAL FUND EXPENSE BY DEPARTMENT	POSITIVE	Page 7
WATER/WASTEWATER REVENUES	POSITIVE	Page 8
WATER/WASTEWATER EXPENDITURES BY DIVISION	POSITIVE	Page 9
ELECTRIC REVENUES	POSITIVE	Page 10
HOTEL OCCUPANCY TAX REVENUES	POSITIVE	Page 11
HOTEL OCCUPANCY TAX EXPENDITURES BY DIVISION	POSITIVE	Page 12
LEGAL FEES BY ATTORNEY/CATEGORY	POSITIVE	Page 13
PERFORMANCE INDICATORS		
POSITIVE	= Positive variance or negative variance < 1% compared to seasonal trends	
WARNING	= Negative variance of 1-5% compared to seasonal trends	
NEGATIVE	= Negative variance of > 5% compared to seasonal trends	

BUDGET SUMMARY OF ALL FUNDS

	FY2022 Approved Budget	FY2022 Forecast YTD	FY2022 Actual YTD	Variance
Revenues:				
General	\$ 15,983,754	\$ 14,876,759	\$ 15,488,922	4.1%
Designated	66,908	41,413	59,389	43.4%
General Fund One-time	445,500	295,500	297,252	0.6%
Street Maintenance	3,000	2,600	4,161	60.0%
Debt Service	3,358,143	2,996,117	3,006,108	0.3%
General Gov's Projects	457,000	137,500	183,274	33.3%
Water/Wastewater	6,958,580	6,218,848	7,092,546	14.0%
Water/Wastewater Debt	3,619,436	2,497,171	2,501,329	0.2%
Water/Wastewater Capital Proj	481,000	440,917	439,072	-0.4%
Impact Fees	4,505,950	3,942,706	2,314,807	-41.3%
Vehicle & Equipment Replacement	1,560,236	1,517,335	1,573,769	3.7%
Electric	6,877,639	6,221,685	7,356,067	18.2%
HOT Tax Fund	2,476,685	2,251,683	2,924,674	29.9%
Library Board	20,600	17,217	24,708	43.5%
Cemetery	108,200	99,183	110,594	11.5%
Capital Bond Projects	4,703,958	3,692,521	3,859,192	4.5%
Grant Fund	2,668,235	12,960	25,311	95.3%
Park/Trail Land Dedicaiton	1,365	1,251	1,340	7.1%
Hunter's Crossing PID	575,879	574,727	578,302	0.6%
Bastrop EDC	5,074,414	3,217,444	4,559,749	41.7%
TOTAL REVENUES	\$ 59,946,482	\$ 49,055,537	\$ 52,400,566	6.8%

POSITIVE
WARNING
NEGATIVE

= Positive variance or negative variance < 1% compared to forecast
 = Negative variance of 1-5% compared to forecast
 = Negative variance of >5% compared to forecast

BUDGET SUMMARY OF ALL FUNDS

	<u>FY2022</u> <u>Approved Budget</u>	<u>FY2022</u> <u>Forecast YTD</u>	<u>FY2022</u> <u>Actual YTD</u>	<u>Variance</u>
<u>Expense:</u>				
General	\$ 16,653,232	\$ 14,859,883	\$ 14,078,852	-5.3%
Designated	298,100	16,748	15,077	-10.0%
General Fund One-time	445,500	159,387	155,354	-2.5%
Street Maintenance	655,000	32,404	32,686	0.9%
Debt Service	3,494,221	2,761,735	2,763,632	0.1%
General Gov't Projects	457,000	62,500	62,235	-0.4%
Water/Wastewater	7,666,249	6,892,627	6,722,194	-2.5%
Water/Wastewater Debt	3,992,281	3,316,949	3,318,562	0.0%
Water/Wastewater Capital Proj.	352,500	259,031	259,547	0.2%
Revenue Bond, Series 2020	9,157,563	4,869,717	4,783,612	-1.8%
CO, Series 2021	35,720,000	14,582,115	11,785,726	-19.2%
Impact Fees	3,449,819	545,000	549,572	0.8%
Vehicle & Equipment Replacement	1,252,930	611,222	614,102	0.5%
Electric	7,568,783	7,427,383	6,901,971	-7.1%
HOT Tax Fund	2,983,057	2,879,991	2,650,707	-8.0%
Library Board	87,950	80,621	23,979	-70.3%
Cemetery	173,828	151,842	94,988	-37.4%
Hunter's Crossing PID	604,547	547,150	510,282	-6.7%
CO, Series 2013	299,450	164,000	130,760	-20.3%
CO, Series 2018	655,500	74,000	74,007	0.0%
Limited Tax Note, Series 2020	424,043	193,514	193,749	0.1%
CO, Series 2022	3,676,250	93,665	76,249	-18.6%
Grant Fund	2,668,235	924,032	721,206	-22.0%
Bastrop EDC	6,011,878	3,393,134	2,873,266	-15.3%
TOTAL EXPENSES	\$ 108,747,916	\$ 64,898,650	\$ 59,392,315	-8.5%

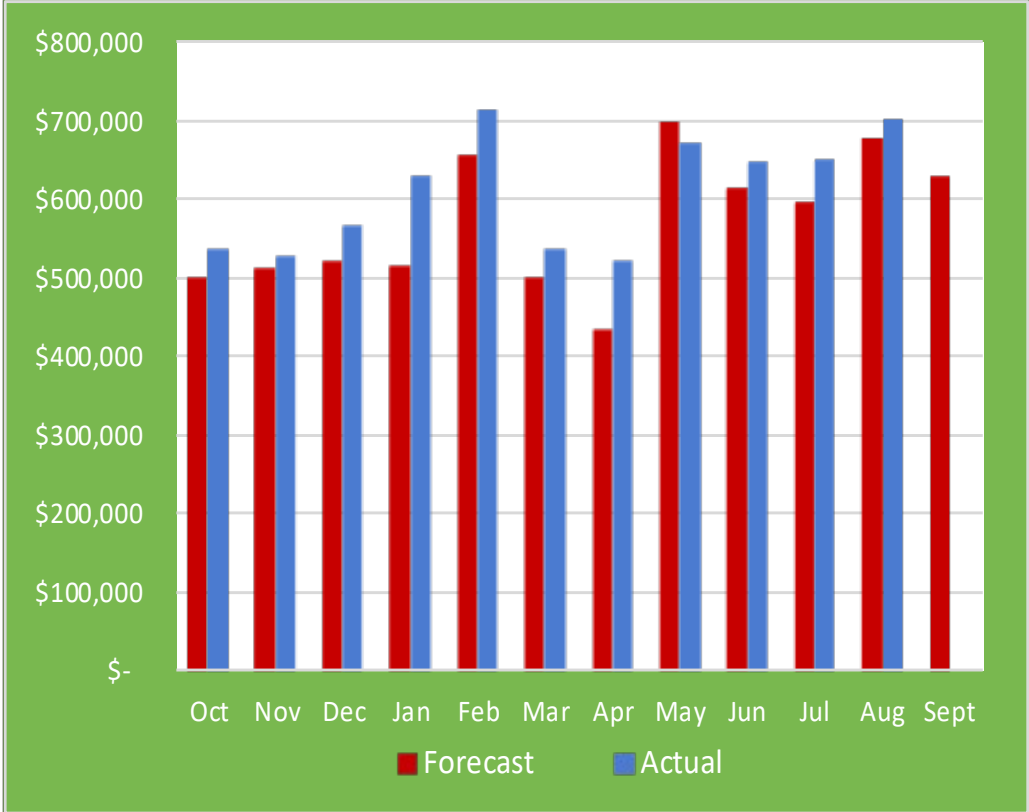
POSITIVE

= Negative variance or positive variance < 1% compared to forecast

REVENUE ANALYSIS

SALES TAX REVENUE

Month	FY2022 Forecast	FY2022 Actual	Monthly Variance
Oct	\$ 497,166	\$ 533,267	\$ 36,101
Nov	511,070	525,903	\$ 14,833
Dec	518,836	564,058	\$ 45,222
Jan	512,246	625,837	\$ 113,591
Feb	652,942	708,736	\$ 55,794
Mar	497,151	532,549	\$ 35,398
Apr	432,869	520,238	\$ 87,369
May	696,146	669,214	\$ (26,932)
Jun	611,623	645,169	\$ 33,546
Jul	594,989	647,751	\$ 52,762
Aug	673,346	698,671	\$ 25,325
Sept	626,049		\$ -
Total	\$ 6,824,433	\$ 6,671,393	\$ 473,009
Cumulative Forecast	\$ 6,198,384		
Actual to Forecast	\$ 473,009	7.6%	

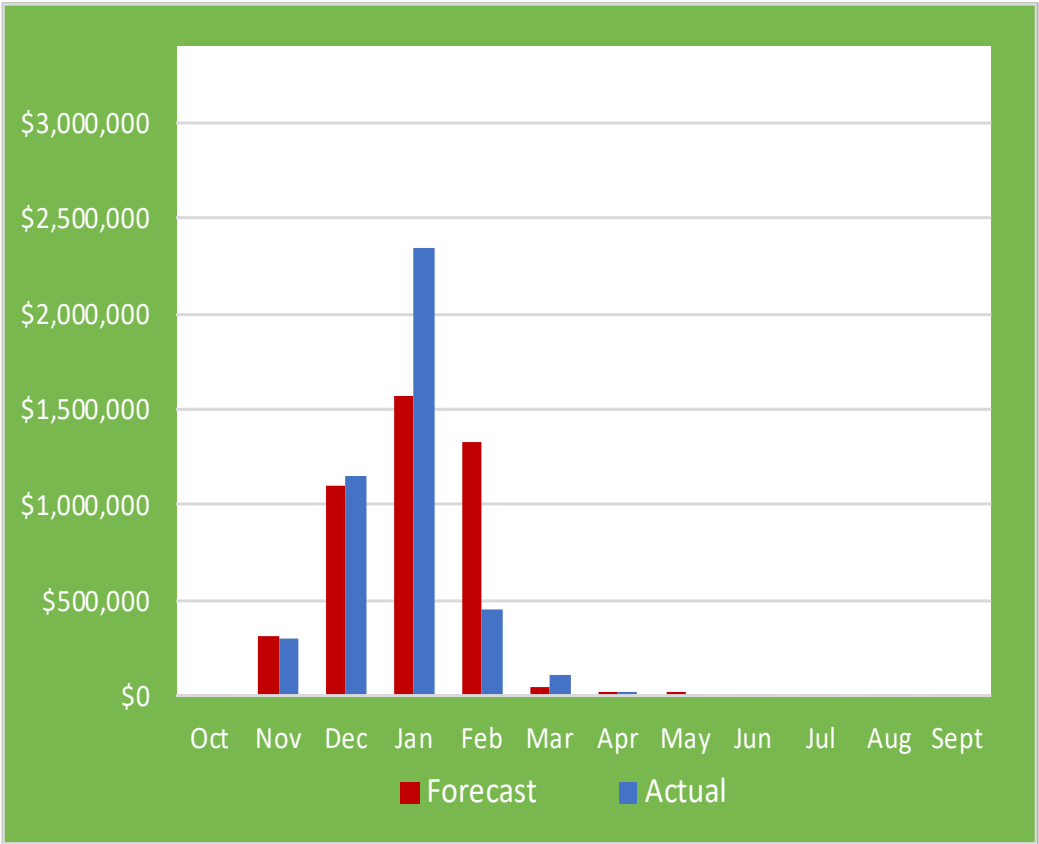


POSITIVE

Sales Tax is 42% of the total budgeted revenue for General Fund. The actual amounts for Oct. and Nov. are estimated due to the State Comptroller's two month lag in payment of these earned taxes. The forecast has been updated with the budget amendment. The actual is almost 8% greater than forecasted and 15.1% over the same period last year.

PROPERTY TAX REVENUE

<u>Month</u>	<u>FY2022 Forecast</u>	<u>FY2022 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 150	\$ 182	\$ 32
Nov	309,543	300,872	\$ (8,671)
Dec	1,105,509	1,147,364	\$ 41,855
Jan	1,565,401	2,340,230	\$ 774,829
Feb	1,326,611	453,211	\$ (873,400)
Mar	44,220	115,780	\$ 71,560
Apr	17,688	22,037	\$ 4,349
May	17,688	9,855	\$ (7,833)
Jun	8,844	12,754	\$ 3,910
Jul	8,844	9,173	\$ 329
Aug	8,844	8,741	\$ (103)
Sept	8,694		
Total	\$ 4,422,036	\$ 4,420,199	\$ 6,857
Cumulative Forecast	\$ 4,413,342		
Actual to Forecast	\$ 6,857	0.16%	

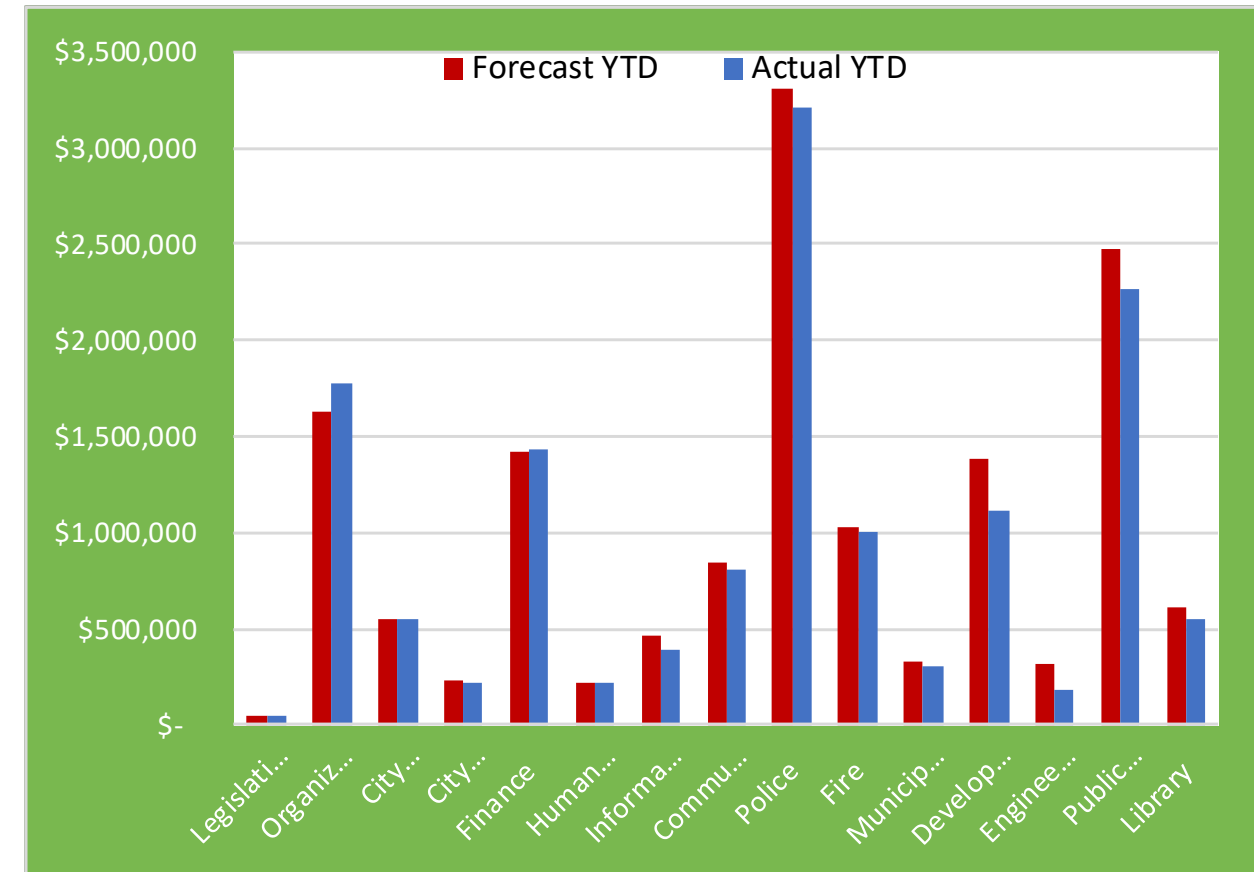


POSITIVE

Property tax represents 31% of the total General Fund revenue budget. As you can see from the forecast, they are generally collected from December to February. The forecast has been updated based on actual payment patterns this fiscal year. The Actual is just slightly over forecast.

GENERAL FUND EXPENDITURES BY DEPT.

<u>Division</u>	<u>FY2022 Forecast YTD</u>	<u>FY2022 Actual YTD</u>	<u>Variance</u>
Legislative	\$ 44,175	\$ 49,157	\$ 4,982
Organizational	1,630,507	1,780,352	\$ 149,845
City Manager	551,718	555,033	\$ 3,315
City Secretary	231,489	224,367	\$ (7,122)
Finance	1,417,439	1,428,491	\$ 11,052
Human Resources	218,872	217,797	\$ (1,075)
Information Technology	468,226	395,829	\$ (72,397)
Community Engagemen	842,221	803,042	\$ (39,179)
Police	3,307,636	3,214,879	\$ (92,757)
Fire	1,024,333	1,005,429	\$ (18,904)
Municipal Court	326,617	303,918	\$ (22,699)
Development Services	1,382,865	1,109,972	\$ (272,893)
Engineering	321,910	184,645	\$ (137,265)
Public Works	2,477,005	2,260,490	\$ (216,515)
Library	614,870	545,451	\$ (69,419)
Total	\$ 14,859,883	\$ 14,078,852	\$ (781,031)



Actual to Forecast

94.7%

POSITIVE

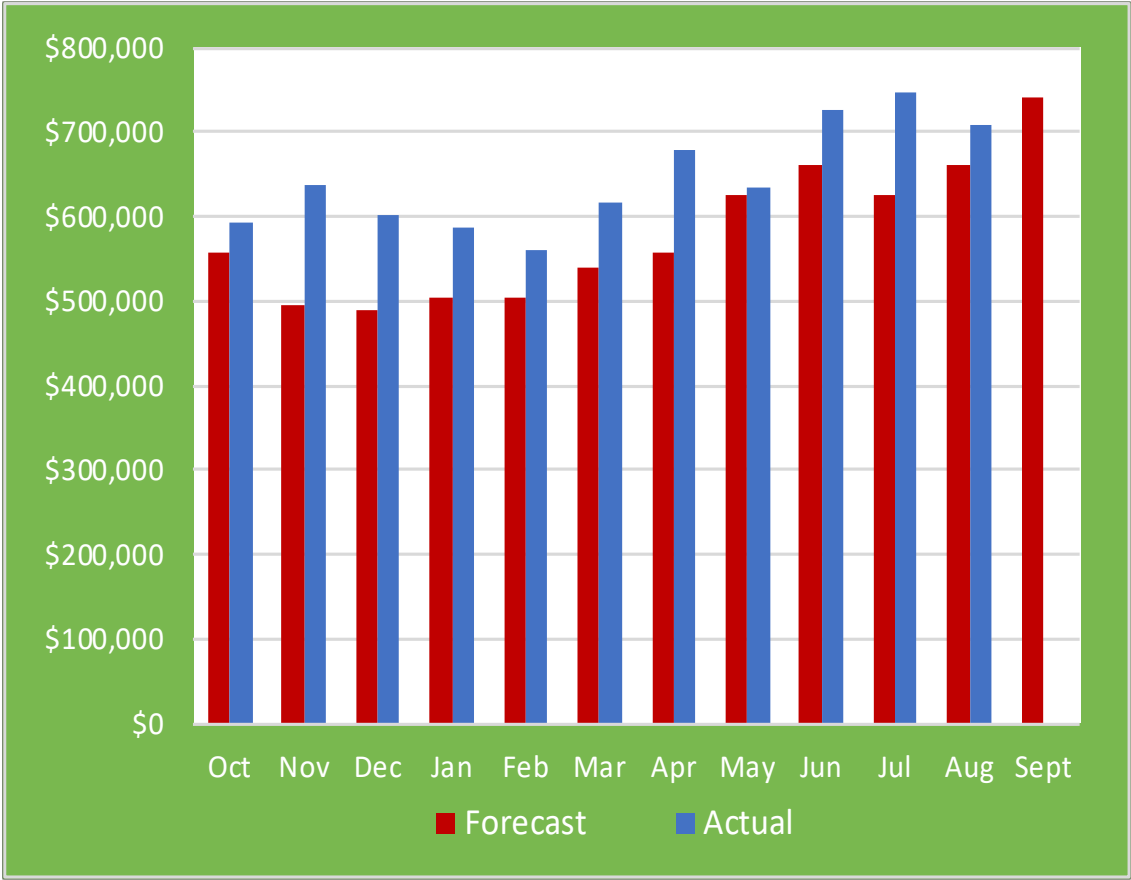
This page in the financial report looks at forecast to actual by department within the General Fund. YTD the actual is almost 95% of forecast. The Organizational department is running over forecast due to elevated legal expenses along with 380 reimbursement overages. The Finance overage is due to Solid Waste contracted services. These will be reconciled by the budget amendment in September.

COMPREHENSIVE MONTHLY FINANCIAL REPORT – August 2022

REVENUE ANALYSIS

WATER/WASTEWATER REVENUE

Month	FY2022 Forecast	FY2022 Actual	Monthly Variance
Oct	\$ 556,791	\$ 592,481	\$ 35,690
Nov	494,957	637,628	\$ 142,671
Dec	487,757	602,279	\$ 114,522
Jan	505,193	587,955	\$ 82,762
Feb	504,957	560,158	\$ 55,201
Mar	539,355	615,764	\$ 76,409
Apr	556,791	678,766	\$ 121,975
May	626,062	635,018	\$ 8,956
Jun	660,698	727,528	\$ 66,830
Jul	625,826	746,085	\$ 120,259
Aug	660,461	708,884	\$ 48,423
Sept	739,732		
Total	\$ 6,958,580	\$ 7,092,546	\$ 873,698
Cumulative Forecast	\$ 6,218,848		
Actual to Forecast	\$ 873,698	14.05%	



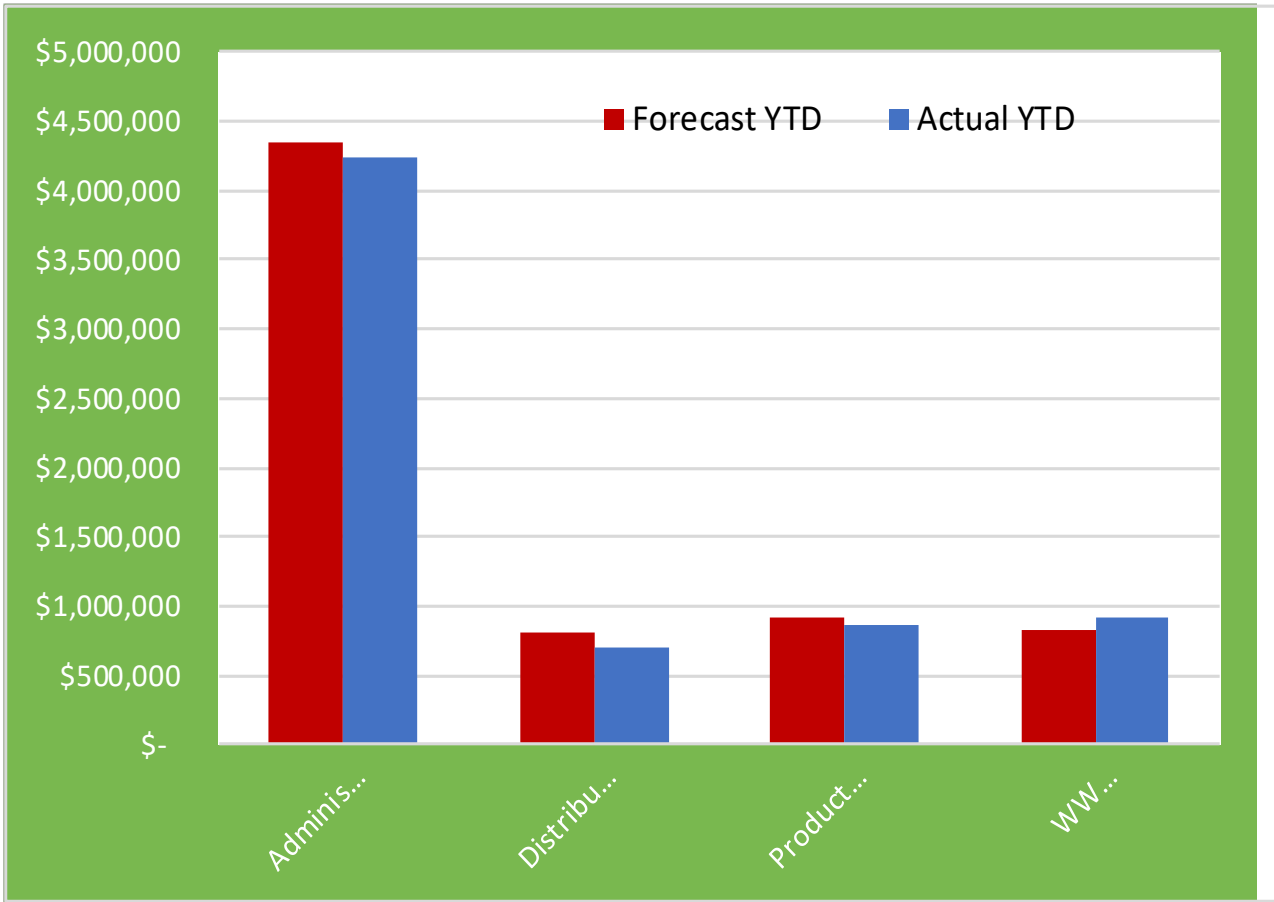
POSITIVE

The water and wastewater actual revenue is higher than forecast by 14%. There were 38 new meters set this month all residential.

EXPENSE ANALYSIS

WATER/WASTEWATER EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2022 Forecast YTD</u>	<u>FY2022 Actual YTD</u>	<u>Variance</u>
Administration	\$ 4,345,655	\$ 4,245,471	\$ (100,184)
Distribution/Collection	802,254	708,529	\$ (93,725)
Production/Treatment	925,197	858,001	\$ (67,196)
WW Treatment Plant	<u>819,521</u>	<u>910,193</u>	<u>\$ 90,672</u>
Total	<u>\$ 6,892,627</u>	<u>\$ 6,722,194</u>	<u>\$ (170,433)</u>
Actual to Forecast		97.5%	



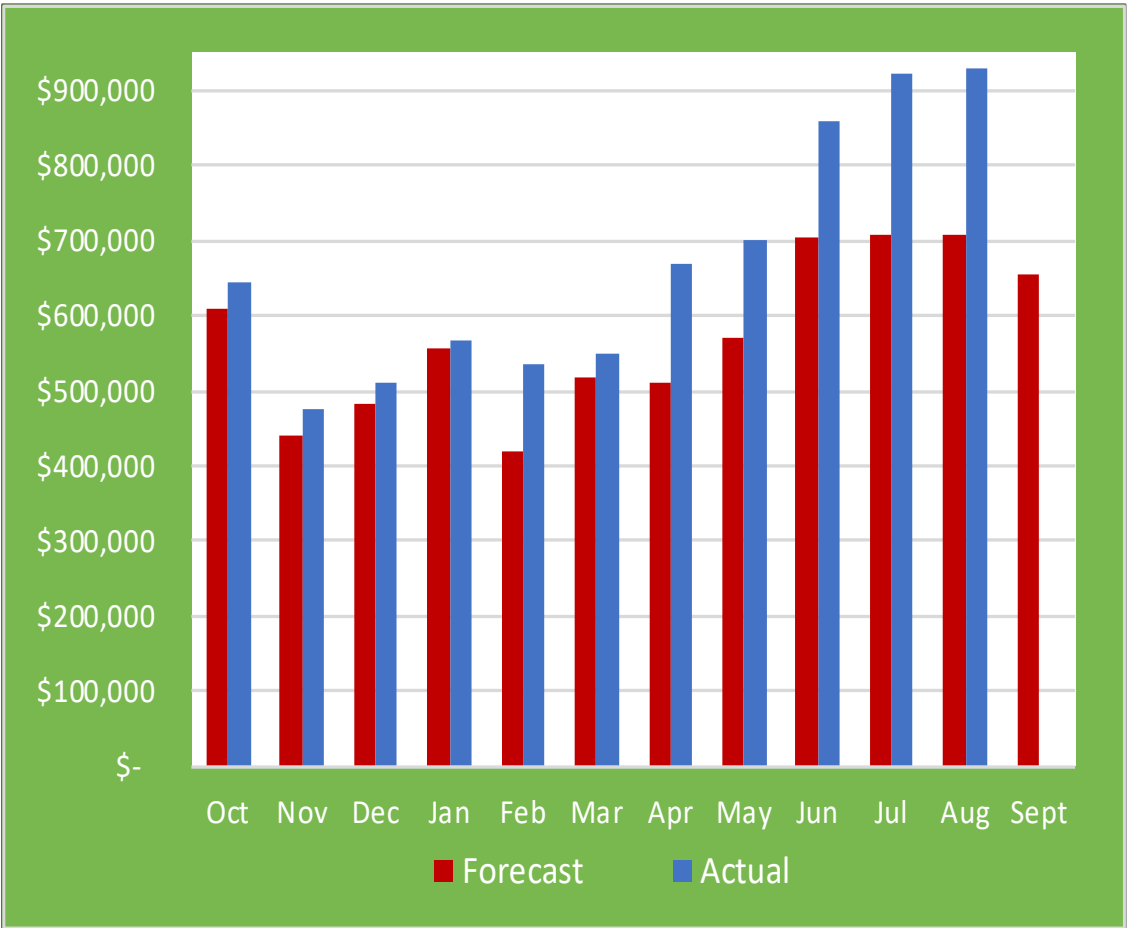
POSITIVE

This page tracks the actual to forecast by divisions within the Water/Wastewater department. The actual is 97.5% of forecast. Most of the variance is related to salary savings.

REVENUE ANALYSIS

ELECTRIC FUND REVENUE

<u>Month</u>	<u>FY2022 Forecast</u>	<u>FY2022 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 609,386	\$ 643,338	\$ 33,952
Nov	441,560	475,082	\$ 33,522
Dec	481,473	510,608	\$ 29,135
Jan	554,648	567,579	\$ 12,931
Feb	418,436	534,178	\$ 115,742
Mar	516,256	549,722	\$ 33,466
Apr	509,604	667,544	\$ 157,940
May	569,473	699,457	\$ 129,984
Jun	702,515	857,304	\$ 154,789
Jul	709,167	920,771	\$ 211,604
Aug	709,167	930,483	\$ 221,316
Sept	655,954		
Total	\$ 6,877,639	\$ 7,356,066	\$ 1,134,381
Cumulative Forecast	\$ 6,221,685		
Actual to Forecast	\$ 1,134,381	18.23%	



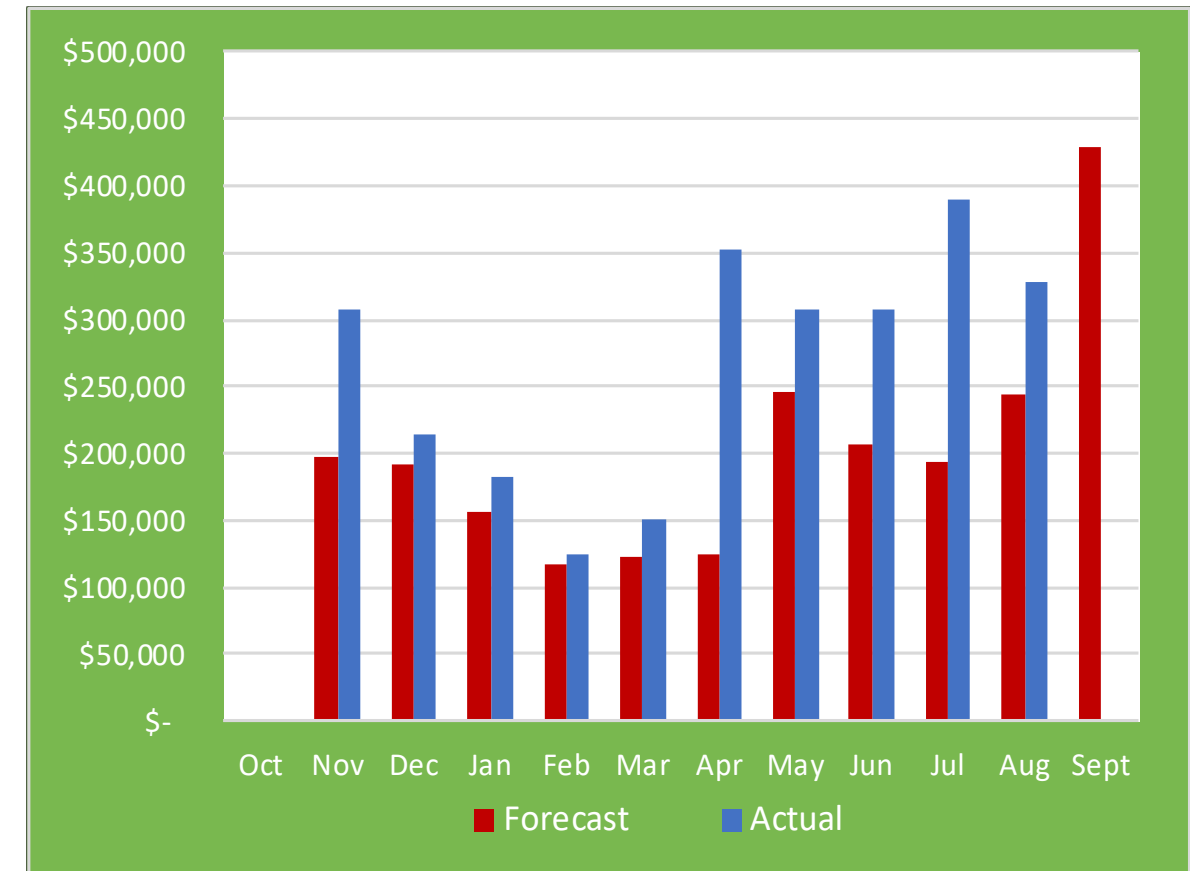
POSITIVE

The Electric utility revenue is over 18% above forecasted revenue. The LCRA rate increase went into effect July 1st accounting for some of the increase. There were 2 new commercial meters set this month.

REVENUE ANALYSIS

HOTEL OCCUPANCY TAX REVENUE

Month	FY2022 Forecast	FY2022 Actual	Monthly Variance
Oct	\$ -	\$ -	\$ -
Nov	197,220	308,282	\$ 111,062
Dec	191,223	213,812	\$ 22,589
Jan	156,750	182,958	\$ 26,208
Feb	116,831	125,532	\$ 8,701
Mar	123,656	151,620	\$ 27,964
Apr	125,518	352,429	\$ 226,911
May	245,323	307,883	\$ 62,560
Jun	207,061	306,859	\$ 99,798
Jul	193,201	388,812	\$ 195,611
Aug	244,977	327,850	\$ 82,873
Sept	429,368		
Total	\$ 2,231,128	\$ 2,666,037	\$ 864,277
Cumulative Forecast	\$ 1,801,760		
Actual to Forecast %	\$ 864,277	48.0%	



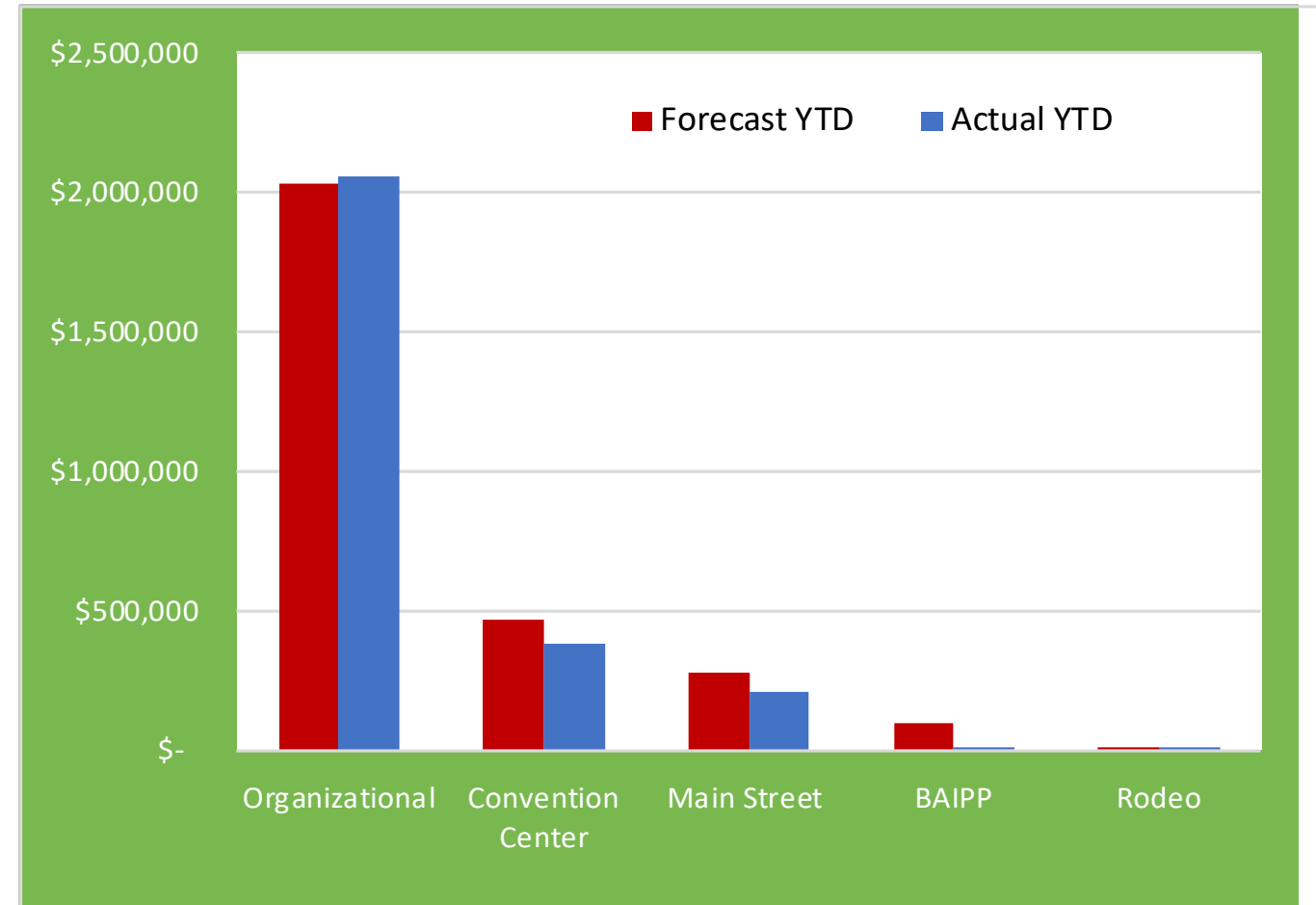
POSITIVE

This page has been updated to reflect cash method and remove accrual method to better reflect the funds true collections. The forecast has been updated to reflect the budget amendment. So far YTD we are 48% positive actual to forecast. ***The Hotel Tax revenue YTD is \$961,819 more than same time last year.***

EXPENSE ANALYSIS

HOTEL OCCUPANCY TAX EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2022 Forecast YTD</u>	<u>FY2022 Actual YTD</u>	<u>Variance</u>
Organizational	\$ 2,030,915	\$ 2,055,151	\$ 24,236
Convention Center	466,261	380,712	\$ (85,549)
Main Street	280,561	209,472	\$ (71,089)
BAIPP	99,596	2,211	\$ (97,385)
Rodeo	<u>2,658</u>	<u>3,160</u>	<u>\$ 502</u>
Total	<u>\$ 2,879,991</u>	<u>\$ 2,650,706</u>	<u>\$ (229,285)</u>
Actual to Forecast		92.0%	



POSITIVE

This report shows the actual to forecast for each division located in the Hotel Occupancy Tax Fund. YTD is reporting actual is almost 92% of forecast. The Organizational department is over forecast due to the the hotel consultant fees, this will be reconciled with the budget amendment brought to City Council in September.

Legal fees by Attorney/Category

COMPREHENSIVE MONTHLY FINANCIAL REPORT - August 2022

FIRM	CASE	FY19-20	FY20-21	FY21-22
BUNDREN				
	Pine Forest Interlocal	\$ 1,298	\$ 944	\$ 8,946
BOJORQUEZ				
	General Legal	\$ 185,102	\$ 166,756	\$ 250,465
	NEU Review	\$ -	\$ 8,493	\$ -
	Bastrop 552	\$ -	\$ 2,810	\$ 6,571
	Crouch Suit	\$ -	\$ -	\$ 12,006
	Cox Suit	\$ -	\$ -	\$ 11,122
	COVID-19	\$ 8,687	\$ 186	\$ -
	Pine Forest Interlocal	\$ 1,275	\$ -	\$ 3,710
	Prosecutor (Municipal Court)	\$ 15,526	\$ 16,331	\$ 19,944
	Water/WW	\$ 57,168	\$ 96,362	\$ 67,489
RUSSEL RODRIGUEZ HYDE				
	Hunter's Crossing PID	\$ 7,378	\$ 10,466	\$ 2,542
MULTIPLE FIRMS				
	XS Ranch Water Rights	\$ 4,888	\$ -	\$ -
	Hunter's Crossing PID	\$ 10,391	\$ -	\$ -
	W/WW Contract reviews	\$ -	\$ 1,425	\$ 14,958
	Crouch Suit	\$ -	\$ -	\$ 11,896
	Cox Suit	\$ -	\$ -	\$ 11,994
TAYLOR, OLSON, ADKINS, SRALLA & ELAM				
	71 Bastrop & MC Bastrop 71	\$ -	\$ 7,333	\$ 18,330
	Red Light Camera Suit	\$ 64	\$ -	\$ -
		\$ 291,777	\$ 311,106	\$ 439,970

SUMMARY OF CASE/TYPE

Row Labels	Sum of FY19-20	Sum of FY20-21	Sum of FY21-22
71 Bastrop & MC Bastrop 71	\$ -	\$ 7,333	\$ 18,330
Bastrop 552	\$ -	\$ 2,810	\$ 6,571
COVID-19	\$ 8,687	\$ 186	\$ -
General Legal	\$ 185,102	\$ 166,756	\$ 250,465
Hunter's Crossing PID	\$ 17,769	\$ 10,466	\$ 2,542
NEU Review	\$ -	\$ 8,493	\$ -
Pine Forest Interlocal	\$ 2,573	\$ 944	\$ 12,656
Prosecutor (Municipal Court)	\$ 15,526	\$ 16,331	\$ 19,944
Red Light Camera Suit	\$ 64	\$ -	\$ -
W/WW Contract reviews	\$ -	\$ 1,425	\$ 14,958
Water/WW	\$ 57,168	\$ 96,362	\$ 67,489
XS Ranch Water Rights	\$ 4,888	\$ -	\$ -
Crouch Suit	\$ -	\$ -	\$ 23,901
Cox Suit	\$ -	\$ -	\$ 23,116
Grand Total	\$ 291,777	\$ 311,106	\$ 439,970



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Consider action to approve City Council minutes from the September 20, 2022, Regular meeting.

AGENDA ITEM SUBMITTED BY:

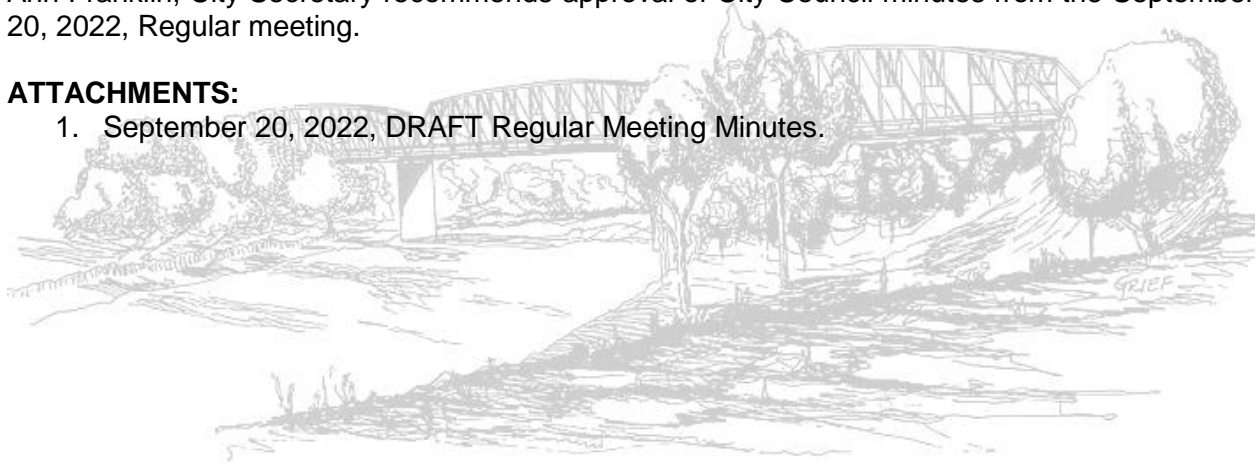
Submitted by: Ann Franklin, City Secretary

RECOMMENDATION:

Ann Franklin, City Secretary recommends approval of City Council minutes from the September 20, 2022, Regular meeting.

ATTACHMENTS:

1. September 20, 2022, DRAFT Regular Meeting Minutes.



SEPTEMBER 20, 2022

The Bastrop City Council met in a regular meeting on Tuesday, September 20, 2022, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were Mayor Schroeder and Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch and Kirkland. Officers present were Acting City Manager, Trey Job; Deputy City Secretary, Victoria Psencik; and City Attorney, Alan Bojorquez.

CALL TO ORDER

Mayor Schroeder called the meeting to order at 6:30 p.m. with a quorum present.

PLEDGE OF ALLEGIANCE

Jon Eden, James Ponticelli, Eowyn Rodriguez, and Maddy Pickering, Bastrop High School NJROTC, led the pledges.

INVOCATION

Ketrich Steger, Pastor/Chaplain, The Refuge, gave the invocation.

PRESENTATIONS

- 4A. Mayor's Report
- 4B. Council Members' Report
- 4C. City Manager's Report
- 4D. A proclamation of the City Council of the City of Bastrop, Texas recognizing the month of October as Domestic Violence Awareness Month.
Submitted by: Ann Franklin, City Secretary
Proclamation was read into record by Mayor Schroeder and received by Bernie Jackson and Cathy Henzen of the Family Crisis Center.
- 4E. A proclamation of the City Council of the City of Bastrop, Texas recognizing the week of October 9th through October 15th as Fire Prevention Week.
Submitted by: Ann Franklin, City Secretary
Proclamation was read into record by Mayor Schroeder and received by Fire Chief Andres Rosales and Bastrop Firefighters.
- 9G. Consider action to approve Resolution No. R-2022-89 of the City Council of the City of Bastrop, Texas in support of the Bastrop County Emergency Food Pantry.
No vote taken. A proclamation was read into record by Mayor Schroeder and received by Tonda Owens of the Bastrop County Emergency Food Pantry.

WORK SESSIONS/BRIEFINGS - NONE**STAFF AND BOARD REPORTS - NONE****CITIZEN COMMENTS - NONE**

CONSENT AGENDA

A motion was made by Council Member Kirkland to approve Items 8A, 8B, 8C, and 8D as listed on the Consent Agenda after being read into the record by Deputy City Secretary, Victoria Psencik. Seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

- 8A. Consider action to approve City Council minutes from the September 6, 2022, Joint Council and Visit Bastrop meeting; September 8, 2022, Board and Commission Interviews, and September 13, 2022, Regular meeting.
Submitted by: Ann Franklin, City Secretary
- 8B. Consider action to approve Resolution No. R-2022-87 of the City Council of the City of Bastrop, Texas approving an Interlocal Agreement between the City of Bastrop and the Capital Area Metropolitan Planning Organization (CAMPO) for the Chestnut Street / SL 150 Multimodal Corridor Study, with a participating match of \$50,000 from the city, attached as Exhibit A; authorizing the City Manager to execute all necessary documents; and establishing an effective date.
Submitted by: Jennifer C. Bills, Director of Planning & Development
- 8C. Consider action to approve the second reading of Ordinance No. 2022-25 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2022 in accordance with existing statutory requirements; appropriating the various amounts herein as attached in Exhibit A; repealing all prior ordinances and actions in conflict herewith; and establishing an effective date.
Submitted by: Tracy Waldron, Chief Financial Officer
- 8D. Consider action to approve Resolution No. R-2022-83 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with Continental Homes of Texas, LP for Valverde Section 1, Phase 3, as attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
Submitted by: Tracy Waldron, Chief Financial Officer

ITEMS FOR INDIVIDUAL CONSIDERATION

- 9E. Consider action to approve Resolution No. R-2022-86 of the City Council of the City of Bastrop, Texas approving the Bastrop County Hazard Mitigation Plan Update 2022, attached as Exhibit A; implementation; authorizing the Mayor to execute all necessary documents; establishing future actions; and establishing an effective date.
Submitted by: Jennifer C. Bills, Director of Planning & Development
Presentation was made by Andres Rosales, Fire Chief and Joshua Moses, TDEM County Liaison Officer.

A motion was made by Mayor Pro Tem Rogers to approve Resolution No. R-2022-86, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

- 9A. Consider action to approve the second reading of Ordinance No. 2022-22 of the City Council of the City of Bastrop, Texas adopting a budget for the Fiscal Year 2022-2023 (October 1, 2022 through September 30, 2023) attached as Exhibit A; making certain appropriations; and providing that expenditures for said Fiscal Year be made in

accordance with said budget; updating the Master Fee Schedule; providing a distribution; severability; repealer; an effective date; and proper notice and meeting.

Submitted by: Tracy Waldron, Chief Financial Officer

Presentation was made by Tracy Waldron, Chief Financial Officer.

A motion was made by Council Member Kirkland to approve the second reading of Ordinance No. 2022-22, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

Mayor Pro Tem Rogers	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Lee	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Plunkett	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Crouch	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Kirkland	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____

- 9B. Consider action to approve Resolution R-2022-85 ratifying that the adoption on the Fiscal Year 2022-2023 budget will require raising more revenues from property taxes than in the previous year.

Submitted by: Tracy Waldron, Chief Financial Officer

Presentation was made by Tracy Waldron, Chief Financial Officer.

A motion was made by Council Member Kirkland to approve Resolution No. R-2022-85 to ratify the vote just taken to approve the Fiscal Year 2022-2023 budget which will raise more revenues from ad valorem taxes than in the prior fiscal year, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

- 9C. Consider action to approve the second reading of Ordinance No. 2022-24 of the City Council of the City of Bastrop, Texas, adopting the tax roll, adopting the tax rate, and levying ad valorem taxes for the Fiscal Year 2022-2023 to provide revenue for the payment of budgeted municipal expenditures; and providing for tax assessment; records; severability; an effective date; proper notice and meeting.

Submitted by: Tracy Waldron, Chief Financial Officer

Presentation was made by Tracy Waldron, Chief Financial Officer.

A motion was made by Council Member Kirkland to increase the property tax rate by the adoption of a tax rate of \$0.5128 per \$100 valuation, which is effectively a 4.93 percent increase in the tax rate, approve the second reading of Ordinance No. 2022-24, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

Mayor Pro Tem Rogers	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Kirkland	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Lee	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Crouch	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____
Council Member Plunkett	Yea <u>X</u>	Nay _____	Abstain _____	Absent _____

- 9D. Consider action to approve the first reading of Ordinance No. 2022-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges", Sections A13.02.002 Wastewater Service Charge, and A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting, and move to include on the October 11, 2022 agenda for a second reading.

Submitted by: Tracy Waldron, Chief Financial Officer
Presentation was made by Tracy Waldron, Chief Financial Officer.

A motion was made by Mayor Pro Tem Rogers to approve the first reading of Ordinance No. 2022-26 and to include on the October 11, 2022, agenda for the second reading, seconded by Council Member Lee, motion was approved on a 5-0 vote.

An amended motion was made by Mayor Pro Tem Rogers to approve the first reading of Ordinance No. 2022-26 and to include on the October 11, 2022, Consent agenda for the second reading, seconded by Council Member Lee, motion was approved on a 5-0 vote.

- 9F. Consider action to approve Resolution No. R-2022-88 of the City Council of the City of Bastrop, Texas confirming board appointments of the Mayor, as required in Section 3.08 of the City’s Charter, as outlined in Exhibit A; and establishing an effective date.
Submitted by: Ann Franklin, City Secretary
A motion was made by Council Member Lee to approve Resolution No. R-2022-88, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.

Adjourned at 7:41 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie Schroeder

Deputy City Secretary Victoria Psencik

The Minutes were approved on October 11, 2022, by Council Member **Name**’s motion, Council Member **Name**’s second. The motion was approved on a **5-0** vote.



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Consider action to approve Resolution No. R-2022-94 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation, as required in Section 3.08 of the City's Charter, and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Ann Franklin, City Secretary

BACKGROUND/HISTORY:

Section 3.08, Mayor and Mayor Pro Tem, of the City Charter states that the Mayor shall appoint members to all City boards and commissions, subject to confirmation by the City Council.

FISCAL IMPACT:

N/A

RECOMMENDATION:

Recommend approval of Resolution No. R-2022-94 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation, as required in Section 3.08 of the City's Charter, and establishing an effective date.

ATTACHMENTS :

- Resolution

RESOLUTION NO. R-2022-94

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONFIRMING APPOINTMENT BY THE MAYOR OF SYLVIA CARRILLO TO PLACE 1 OF THE HUNTERS CROSSING LOCAL GOVERNMENT CORPORATION, AS REQUIRED IN SECTION 3.08 OF THE CITY’S CHARTER; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 3.08, Mayor and Mayor Pro Tem, of the City Charter states that the Mayor shall appoint members to all City boards and commissions, subject to confirmation by the City Council; and

WHEREAS, Mayor Connie Schroeder has appointed Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation; and

WHEREAS, City Council must confirm this appointment as required by the City Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That Mayor Connie Schroeder has appointed Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation.

Section 2: That the City Council of the City of Bastrop confirms Mayor Schroeder’s appointment of Sylvia Carrillo to Place 1 of the Hunters Crossing Local Government Corporation.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 11th day of October 2022.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Consider action to approve the second reading of Ordinance No. 2022-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges", Sections A13.02.002 Wastewater Service Charge, and A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City Manager engaged NewGen Strategies and Solutions in May 2018 to perform a Water and Wastewater Rate Study and in 2022 for a Wholesales Rate Study update. Both studies were to evaluate revenue requirements forecasted out over five (5) years and review current water and wastewater rate ordinance along with billing methodology. The consultant provided city staff with a rate model tool to be used to forecast rate scenarios based on actual and projected revenue and expense assumptions.

The Water and Wastewater Rate Study recommended that the city use a phase-in approach to increasing the demand charge by meter size for water meters to reflect the American Waterworks Associations meter equivalency standards. This step increase will continue through FY 2025.

Demand Charge by Meter Size - Water

Meter Size	# of Units	Current Rate	FY 2022	FY 2023	FY 2024	FY 2025
1.5"	73	82.06	84.65	87.24	89.83	92.42
2"	97	124.19	130.10	136.01	141.92	147.83
3"	14	232.86	243.94	255.02	266.10	277.18
4"	4	296.46	337.85	379.24	420.63	462.02
6"	2	714.14	766.60	819.06	871.52	923.98

The last Wholesale Rate Study was performed in 2019. These rates were due to be updated with the list of water and wastewater CIP projects.

Wholesale Water

Monthly Fixed Charge

Source Cost\$45,000.00 per MGD subscribed capacity

Transmission Cost~~\$4,243.70~~ 4,977.71 per MGD subscribed capacity

Customer Charge~~\$2,231.75~~ per wholesale meter

Plus the following charges for consumption per 1,000 gallons

Volumetric Charge per 1,000 gallons~~\$1,972.24~~ per 1,000 gallons of actual consumption

Wholesale Water

Monthly Fixed Charge

Customer Charge.....~~\$2,231.75~~ per wholesale meter

Plus the following charges per 1,000 gallons of metered contributed flow

Volumetric Charge per 1,000 gallons.....~~\$3,835.18~~ per 1,000 gallons of metered flow contributed

Article III, Section 3.01(13) states the City Council has the power and duty to provide for a sanitary sewer and water system. Section 3.14 (9) states that action requiring an ordinance includes the amending or repealing of a previously adopted ordinance.

FISCAL IMPACT:

Water and wastewater revenue

RECOMMENDATION:

Tracy Waldron, CFO recommends approval of the second reading of Ordinance No. 2022-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges", Sections A13.02.002 Wastewater Service Charge, and A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting.

ATTACHMENTS:

- Ordinance 2022-26 (including Exhibit A)

ORDINANCE NO. 2022-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE BASTROP CITY CODE OF ORDINANCES, AMENDING APPENDIX A, FEE SCHEDULE, ARTICLE A13.02 “WATER AND WASTEWATER RATES AND CHARGES”, SECTIONS A13.02.002 WASTEWATER SERVICE CHARGE, AND A13.02.004 WATER SERVICE CHARGE, AS ATTACHED IN EXHIBIT A; PROVIDING FOR: FINDINGS OF FACT, ENACTMENT, REPEALER, SEVERABILITY, EFFECTIVE DATE, CODIFICATION, AND PROPER NOTICE AND MEETING

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt ordinances or regulations that are for the good government, peace, or order of the City and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council of the City of Bastrop, Texas engaged NewGen Strategies and Solutions to conduct a Water and Wastewater Rate Study in May 2018 and a Wholesale Rate Study in August 2022; and

WHEREAS, the Water and Wastewater Rate Study recommended a phase-in plan for the demand charge by meter size for water meters that reflects the American Waterworks Associations industry standards; and

WHEREAS, the Wholesale Rate Study recommended increased rates for both water and wastewater to fund ongoing water and wastewater infrastructure projects; and

WHEREAS, this ordinance increases the water demand charge for meter sizes greater than 1.5” and increases wholesale water and wastewater rates; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that in order to properly bill water and wastewater charges to their customers, it is necessary to amend the City Code of Ordinances Appendix A: Fee Schedule Article A13.02 Water and Wastewater Rates and Charges, Sections 13.02.002 and 13.02.004, as attached in Exhibit A.

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 Appendix A, Article A13.02 Water and Wastewater Rates and Charges, Sections A13.02.002 Wastewater service charge and A13.02.004

Water service charge are hereby amended to read in accordance with Exhibit A which is attached hereto and incorporated into this Ordinance for all intents and purposes. Underlined language shall be added. Stricken language shall be deleted.

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. EFFECTIVE DATE This Ordinance shall be effective November 1, 2022.

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. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & APPROVED on First Reading on the 20th day of September 2022.

READ & ADOPTED on the Second Reading on the 11th day of October 2022.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "A"

Appendix A – Fee Schedule

Sec. A13.02.002 - Wastewater service charge.

(a) No change

~~(b) In order to meet critical needs of the city's wastewater system, it is the city's intention to increase these rates, by separate ordinances, by not less than 3.5% each year, starting in December 2012, and each succeeding December until December 2020, consistent with the recommendations of the city's staff, K* Friese and Associates and Rimrock Consulting. The intended future rate increases are as follows:~~

~~December 2013 – Minimum and volume charges not less than 6.3% higher than those shown adopted in 2012;~~

~~December 2014 – Minimum and volume charges not less than 3.5% higher than those shown adopted in 2013;~~

~~December 2015 – Minimum and volume charges not less than 3.5% higher than those shown adopted in 2014;~~

~~December 2016 – Minimum and volume charges not less than 4.5% higher than those shown adopted in 2015;~~

~~December 2017 – Minimum and volume charges not less than 4.5% higher than those shown adopted in 2016;~~

~~December 2018 – Minimum and volume charges not less than 4.0% higher than those shown adopted in 2017; and~~

~~December 2019 – Minimum and volume charges not less than 3.5% higher than those shown adopted in 2018.~~

~~(c)~~(b) Wholesale Wastewater: The following rates are applicable to all wholesale wastewater customers within the corporate limits of the city and the city's extraterritorial jurisdiction who have metered wastewater connections and who have executed a wholesale wastewater agreement with the city:

Monthly Fixed Charge

Customer Charge....\$1.75 per wholesale meter

Plus the following charges per 1,000 gallons of metered contributed flow

Volumetric Charge per 1,000 gallons.....\$5.18 per 1,000 gallons of metered flow contributed

Sec. A13.02.004 - Water service charges.

- (a) Retail Water: The following rates will be applicable to retail all sales or service of water within the corporate limits of the city.
- (1) Residential - In city limits

Meter Size	Minimum Charge
¾" (or smaller)	\$27.72
1"	\$47.13
1½"	\$87.24
2"	\$136.01
3"	\$255.02
4"	\$379.24
6"	\$819.06

Plus the following charges for consumption per 1,000 gallons:

0—3,000 gallons	\$ 2.85
3,001—5,000 gallons	\$ 3.04
5,001—10,000 gallons	\$ 3.22
10,001—20,000 gallons	\$ 3.42
20,001—50,000 gallons	\$ 3.69
Over 50,000 gallons	\$ 3.87

Commercial - In city limits.

Meter Size	Minimum Charge
¾" (or smaller)	\$27.72
1"	\$47.13
1½"	\$87.24
2"	\$136.01

3"	\$255.02
4"	\$379.24
6"	\$819.06

Plus the following charges for consumption per 1,000 gallons:

0—3,000 gallons	\$ 2.85
3,001—5,000 gallons	\$ 3.04
5,001—10,000 gallons	\$ 3.22
10,001—20,000 gallons	\$ 3.42
20,001—50,000 gallons	\$ 3.69
Over 50,000 gallons	\$ 3.87

(2) Residential and Commercial - Outside city limits.

Meter Size	Minimum Charge
¾" (or smaller)	\$41.59
1"	\$70.70
1½"	\$130.87
2"	\$204.03
3"	\$382.53
4"	\$649.00
6"	\$1,228.59

Plus the following charges for consumption per 1,000 gallons:

0—3,000 gallons	\$ 4.12
3,001—5,000 gallons	\$ 4.42
5,001—10,000 gallons	\$ 4.70
10,001—20,000 gallons	\$ 4.98

20,001—50,000 gallons	\$ 5.39
Over 50,000 gallons	\$ 5.66

- (b) Wholesale Water: The following rates are applicable to wholesale sales of water within the corporate limits of the city and the city's extraterritorial jurisdiction who have metered water connections and who have executed a wholesale water agreement with the city.

Monthly Fixed Charge

Source Cost\$45,000.00 per MGD subscribed capacity

Transmission Cost\$4,977.71 per MGD subscribed capacity

Customer Charge\$1.75 per wholesale meter

Plus the following charges for consumption per 1,000 gallons

Volumetric Charge per 1,000 gallons\$2.24 per 1,000 gallons of actual consumption



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Hold a public hearing and consider action through an appeal to City Council on Resolution No. 2022-92 to grant a subdivision variance from the B³ Code Technical Manual, Section 3.2.005 requiring all new lots to be a minimum of one acre in size for on-site sewer facilities and a subdivision variance from the 2018 International Fire Code, Appendix D, Section D107.1 requiring a subdivision with more than 30 units/lots to have a secondary point of egress for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Submitted by: Jennifer C. Bills, Director of Planning & Development

ITEM DETAILS:

Site Address:	TBD Post Oak Rim (Attachment 1)
Total Acreage:	1.838 acres
Legal Description:	Piney Ridge Section 1, Block A, Lot 11
Property Owner:	Martha Miles
Agent Contact:	James Garon, James E. Garon & Associates, Inc.
Existing Use:	Vacant
Existing Zoning:	P2 - Rural
Future Land Use:	Rural Residential

BACKGROUND/HISTORY:

The applicant has submitted an application to replat Lot 11 of Piney Ridge Section 1, Block A (Exhibit A). The replat proposes dividing the 1.838-acre lot into two lots, 1.065 acres and 0.773 acres.

Section 1 was originally platted with 49 lots in 1978. It was replatted in 1981 with 71 total lots. Section 2 was originally platted with 13 lots in 1980 and replatted with 32 lots. Section 3 was platted in 1981 with 65 lots. Other replats and illegal deed divisions have occurred over the years, yielding over 170 individually owned parcels in the Piney Ridge Subdivision (Attachment 2).

The applicant is requesting two variances to the subdivision regulations (Attachment 3):

B³ Code Technical Manual, Section 3.2.005

- (a) Lots 1 acre or greater outside the wastewater CCN [or more than 300 feet from an existing wastewater line] shall be permitted to utilize individual on-site sewage facility methods for sewage disposal; except that lots in subdivisions properly platted, approved, and recorded

prior to April 20, 1981, shall be exempt from this 1 acre minimum lot size requirement, to the extent permitted by current design criteria for on-site sewage facilities and administrative rules of the state commission on environmental quality, or any successive agency.

This standard was adopted to promote orderly development of utilities and infrastructure as areas of the city become more urban. Lots that are 1 acre or greater create a subdivision that is rural in nature. As the lot sizes continue to get smaller and development denser, additional septic systems create environmental issues that are not present with an organized sanitary sewer system. Additionally, as one of the Intents of the B³ Code is to ensure the City is fiscally sustainable, new properties within the City Limits should become wastewater customers.

2018 International Fire Code, Appendix D, Section D107.1 One- and Two-family dwelling residential development

Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access road.

Exceptions:

1. Where there are more than 30 dwelling units on a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3, access from two directions shall not be required.
2. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.

The Piney Ridge Subdivision has only one access road, Piney Ridge Drive, which connects to Hoffman Road. None of the other publicly accessible roads within the subdivision connect out of the subdivision. An accident at this intersection or an emergency that requires evacuation can cause the residents within the subdivision to be stuck with no alternative route for egress.

POLICY EXPLANATION:

Replats with residential restrictions are reviewed and approved by the Planning & Zoning Commission. This subdivision has residential restrictions. Appeal authority remains with the Mayor and City Council.

Bastrop, Texas Code of Ordinances
Chapter 1, Article 1.03, DIVISION 4. - APPEAL AUTHORITY

Sec. 1.03.091 - Established.
With the exception of those powers specifically relegated by state or federal law to certain appointed positions, the mayor and City Council shall hereafter have final authority over all city affairs should there be an appeal to said body politic.

Sec. 1.03.092 - Effect on authority of other officials and agencies.
Those powers and authorities heretofore and hereafter given to appointed officers and officials, city employees, boards and/or commissions shall not be lessened, with the exception that final authority through an appeal shall and will continue to remain with the mayor and City Council.

Sec. 1.03.093 - Scope.

Appeal and review authority shall not be limited to actions, but shall include all avenues of relief, including, but not limited to, permits, fees, payments, charges and penalties, wherein special circumstances or hardships may deem such waiver and/or adjustments necessary.

Compliance with 2036 Comprehensive Plan:

Future Land Use Plan - Rural Residential: The Rural Residential character area is for lands primarily found on the City's periphery, and is characterized by large lot single-family residences, as well as agriculture, ranching, silviculture, and natural landscape. Rural Residential areas which retain a pastoral setting have not always been set aside for conservation or public use, but may eventually be subject to subdivision, and/or conversion to agricultural or other similar uses.

The future land use plan does not define a "large lot size" however the description includes that a majority of the space retain a pastoral setting for agriculture or natural landscape. Creating additional lots does not maintain this intent.

Goal 4.1.1 Provide a greater diversity of housing options in Bastrop while protecting the character of the City's existing neighborhoods.

The Piney Ridge Subdivision was originally platted with a majority of the lots ranging from 1 acre to over 5 acres in size.

Sec. 212.014. Replatting without Vacating Preceding Plat.

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted;
- (2) is approved by the municipal authority responsible for approving plats; and
- (3) does not attempt to amend or remove any covenants or restrictions.

Sec. 212.015. Additional Requirements for Certain Replats.

(a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

- (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or

Prior to the adoption of the B³ Code in 2019, the property was zoned SF-20, which was a residential zoning classification that did not allow more than 1 residential unit per lot.

- (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

The subdivision has residential deed restrictions.

(a-1) If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

Two variances are being requested.

(a) Notice of the hearing required under Subsection (a-1) shall be given before the 15th day before the date of the hearing by:

- (1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
- (2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

A notice was placed in the Bastrop Advertiser on August 31, 2022 and notice mailed to the property owners within 200 feet. At the time of this report, two responses opposed to the replat have been received (Attachment 4).

(b) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

At the time of this report, no protest has been received.

(c) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

B³ Code – Chapter 1: Subdivisions

- Section 1.3.001 Standard Procedure - Platting

Any subdivision requiring the extension of public infrastructure or of more than four lots require the approval of a Preliminary Plat, Public Improvement Plan, and a Final Plat. This re-subdivision is fewer than four lots and did not require public infrastructure, classifying it as a replat.

- Section 1.3.004 Plat Requirements

The Development Review Committee reviewed the replat for compliance with subdivision and utility standards on August 22, 2022 and deemed that the plat cannot be recommended for approval unless the two variance requests are granted.

PLANNING & ZONING COMMISSION DETERMINATION:

The Planning & Zoning Commission, being the municipal authority responsible for approving plats, held a public hearing at a special meeting on September 15, 2022 and voted 6-0 to deny both variances.

STAFF RECOMMENDATION:

Hold a public hearing and consider action on the appeal to **deny** Resolution No. 2022-92 to grant a subdivision variance from the B³ Code Technical Manual, Section 3.2.005 requiring all new lots to be a minimum of one acre in size for on-site sewer facilities and a subdivision variance from the 2018 International Fire Code, Appendix D, Section D107.1 requiring a subdivision with more than 30 units/lots to have a secondary point of egress for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution No. R-2022-92
- Exhibit A: Piney Ridge Section 1, Block A, Replat of Lot 11
- Attachment 1: Location Map
- Attachment 2: Piney Ridge Parcel Map
- Attachment 3: Applicant Letter
- Attachment 4: Property Owner Response



RESOLUTION NO. R-2022-92

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, TO APPROVE AN APPEAL OF THE DETERMINATION OF THE PLANNING & ZONING COMMISSION AND GRANT A SUBDIVISION VARIANCE FROM THE B³ CODE TECHNICAL MANUAL, SECTION 3.2.005 REQUIRING ALL NEW LOTS TO BE A MINIMUM OF ONE ACRE IN SIZE FOR ON-SITE SEWER FACILITIES AND A SUBDIVISION VARIANCE FROM THE 2018 INTERNATIONAL FIRE CODE, APPENDIX D, SECTION D107.1 REQUIRING A SUBDIVISION WITH MORE THAN 30 UNITS/LOTS TO HAVE A SECONDARY POINT OF EGRESS FOR PINEY RIDGE SECTION 1, BLOCK A, REPLAT OF LOT 11, BEING 1.838 ACRES OUT OF PINEY RIDGE SUBDIVISION, LOCATED AT TBD POST OAK RIM, 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 City of Bastrop Subdivision Ordinance, Section 9 - Variances, the City Council is able to waive required subdivision regulations when the requirements cause an unnecessary hardship to the subdivider and the variance does not depart from the intent of the code; and

WHEREAS, Martha Miles (“the Applicant”) has requested a subdivision variance to allow the subdivision of a new lot that is less than one acre in size and a subdivision variance to increase the amount of platted lots in a subdivision that has more than 30 lots and residential units; and

WHEREAS, Section 3.2.005 of the B³ Code Technical Manual requires all new lots to be a minimum of one acre in size for on-site sewer facilities; and

WHEREAS, the 2018 International Fire Code, Appendix D, Section D107.1 requires a subdivision with more than 30 units/lots to have a secondary point of egress; and

WHEREAS, the Texas Local Government Code, Section 212.0146 requires notices to be sent to properties within 200 feet of the replat, and a public hearing be held to consider a residential replat that require a variance before approval; and

WHEREAS, the Planning & Zoning Commission, being the municipal authority responsible for approving plats, held a public hearing at a special meeting on September 15, 2022 and voted 6-0 to deny both variances; and

WHEREAS, Section 1.03.092 of the Bastrop, Texas Code of Ordinances provides final authority to City Council through an appeal process; and

WHEREAS, on September 16, 2022 the Applicant request an appeal to City Council on the determination of the Planning & Zoning Commission; and

WHEREAS, the City Council after reviewing the facts as provided by City Staff and the Applicant, finds that the these requirements cause an unnecessary hardship to the applicant and do not create a risk to life and safety.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: Approving the appeal to grant subdivision variance to waive the requirements the B³ Code Technical Manual, Section 3.2.005 requiring all new lots to be a minimum of one acre in size for on-site sewer facilities and a subdivision variance from the 2018 International Fire Code, Appendix D, Section D107.1 requiring a subdivision with more than 30 units/lots to have a secondary point of egress, as shown in Exhibit A, within the city limits of Bastrop, Texas, is hereby approved.

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 11th day of October 2022.

CITY OF BASTROP, TEXAS

APPROVED:

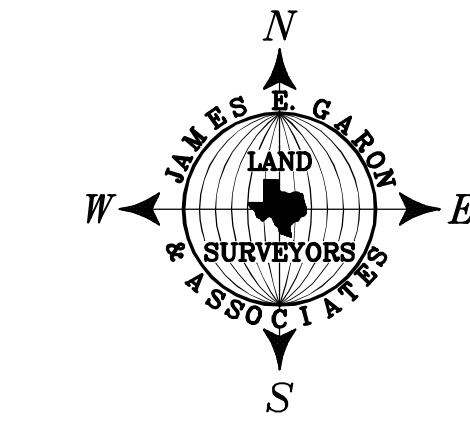
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



SCALE: 1" = 50'

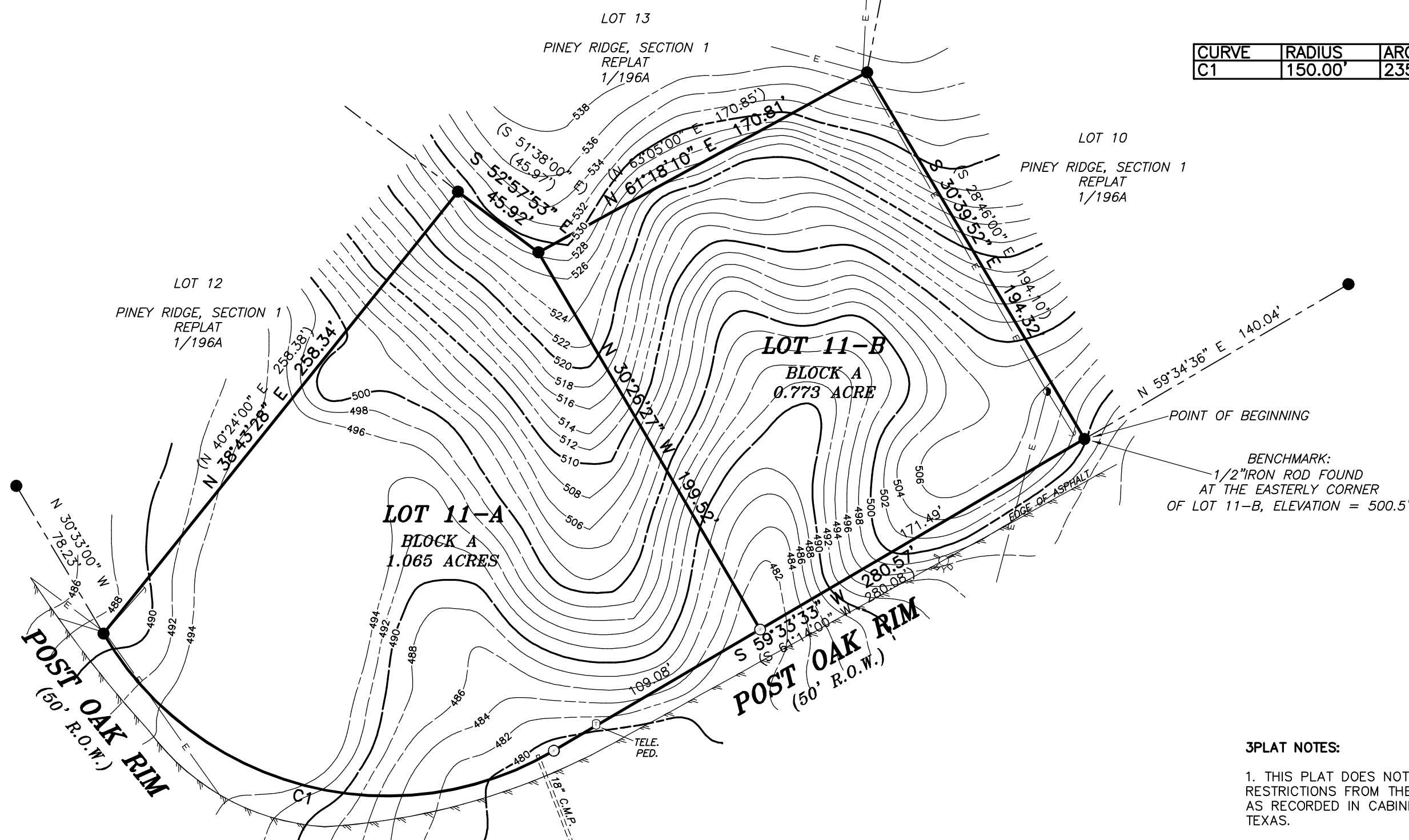
BEARINGS SHOWN ARE GRID NORTH BASED ON GPS OBSERVATIONS FOR TEXAS STATE PLANE COORDINATE SYSTEM "CENTRAL ZONE" NAD83.

LEGEND

- 5/8" IRON ROD FOUND (UNLESS NOTED)
1/2" IRON ROD SET W/CAP
STAMPED J.E. GARON RPLS 4303
POWER POLE
OVERHEAD ELECTRIC LINE
DOWN GUY
CORRUGATED METAL PIPE
RECORD CALL
U.E. UTILITY EASEMENT

PINEY RIDGE, SECTION ONE, REPLAT
REPLAT OF LOT 11, BLOCK A

Table with 5 columns: CURVE, RADIUS, ARC LENGTH, CHORD LENGTH, CHORD BEARING, DELTA ANGLE. Row 1: C1, 150.00', 235.62', 212.13', N 75°25'24" W 190°00'01"



SUMMARY

NO. OF BLOCKS = 1
NO. OF LOTS = 2
ACRES = 1.838 ACRES
LAND USE - RESIDENTIAL

OWNER:

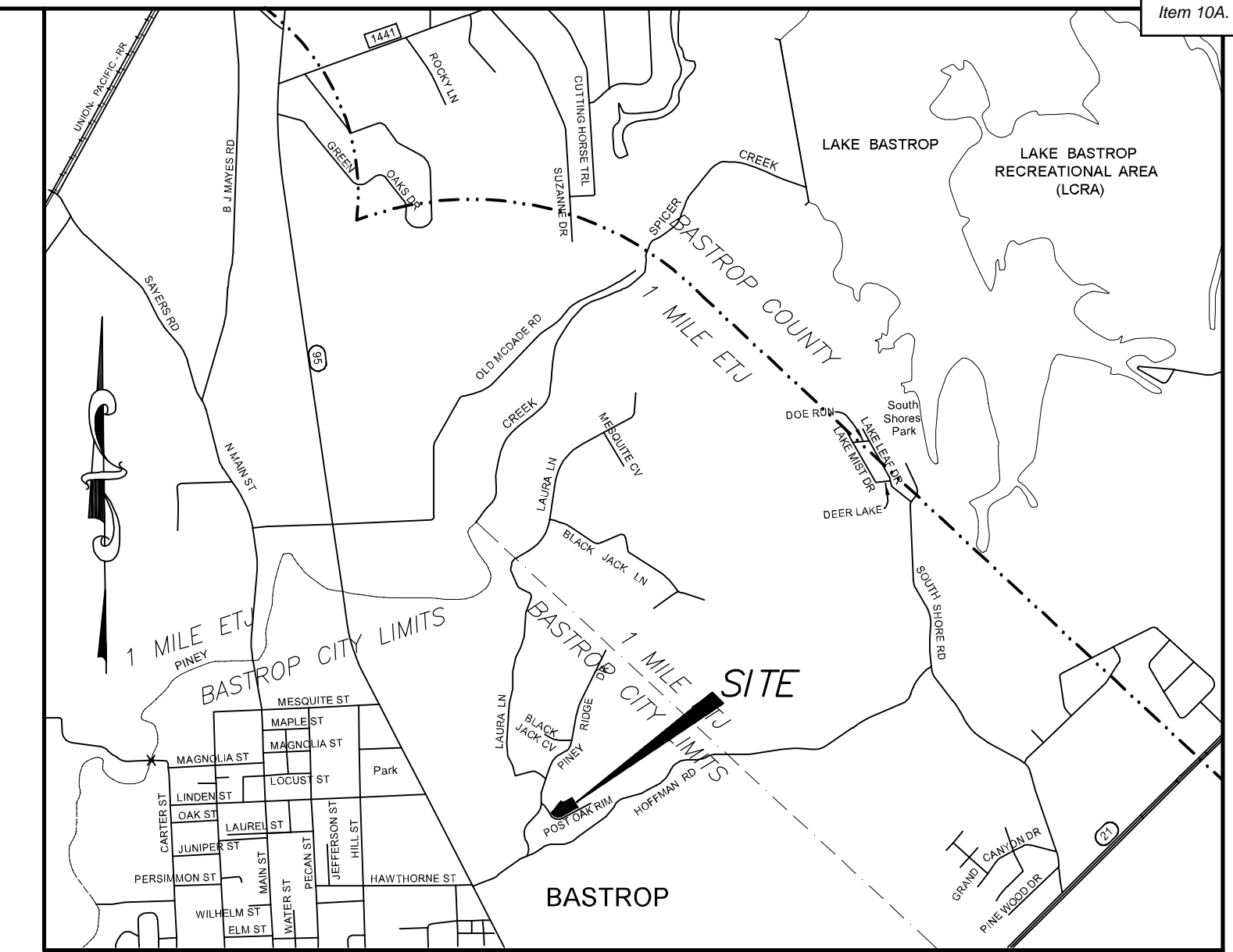
Martha Miles
127 N Kaupo Drive
Bastrop, Texas 78602
713-819-7123

ENGINEER:

James E. Garon & Associates, Inc.
Firm Reg. # - 20368
Rachel D. Hartzler
License #117344
185 McAllister Road
Bastrop, Texas 78602
512-303-4185

SURVEYOR:

James E. Garon & Associates, Inc.
James E. Garon, R.P.L.S.
Firm Reg. #10058400
185 McAllister Rd.
Bastrop, Texas 78602
512-303-4185



LOCATION MAP
NOT TO SCALE

PLAT NOTES:

- 1. THIS PLAT DOES NOT ATTEMPT TO AMEND OR REMOVE ANY COVENANTS OR RESTRICTIONS FROM THE PREVIOUS SUBDIVISION PINEY RIDGE, SECTION ONE, REPLAT AS RECORDED IN CABINET NO. 1, PAGE 196A, PLAT RECORDS BASTROP COUNTY, TEXAS.
2. ALL SUBDIVISION PERMITS SHALL CONFORM TO THE CITY OF BASTROP CODE OF ORDINANCES, PUBLIC IMPROVEMENT STANDARDS, AND GENERALLY ACCEPTED ENGINEERING PRACTICES.
3. 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.
4. NO LOT IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO THE APPROVED WATER DISTRIBUTION AND WASTEWATER CONNECTION FACILITIES.
5. WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
6. ALL UTILITIES WILL BE UNDERGROUND.
7. IMPACT FEES SHALL BE ASSESSED IN ACCORDANCE WITH THE ORDINANCE EFFECTIVE AT THE TIME OF PLATTING.
8. DEVELOPER OR PROPERTY OWNER SHALL BE SOLELY RESPONSIBLE FOR ALL RELOCATION AND MODIFICATIONS TO EXISTING UTILITIES.
9. TEMPORARY AND PERMANENT EASEMENTS TO BE PROVIDED, AS REQUIRED AT THE CITY'S SOLE DISCRETION FOR OFF-SITE IMPROVEMENTS.
10. AS SHOWN HEREON, 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.
11. PROPERTY OWNER SHALL PROVIDE FOR ACCESS TO ALL EASEMENTS AS MAY BE NECESSARY AND SHALL NOT PROHIBIT ACCESS BY GOVERNMENTAL AUTHORITIES.
12. NO BUILDING, FENCES, LANDSCAPING OR OTHER STRUCTURES ARE PERMITTED WITHIN DRAINAGE EASEMENTS SHOWN, EXCEPT AS APPROVED BY THE CITY OF BASTROP AND/OR BASTROP COUNTY.
13. ALL EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR HIS OR HER ASSIGNEES.
14. 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).
15. EROSION AND SEDIMENTATION CONTROLS CONSTRUCTED IN ACCORDANCE WITH THE CODE OF ORDINANCES OF THE CITY OF BASTROP ARE REQUIRED FOR ALL CONSTRUCTION ON EACH LOT, INCLUDING SINGLE FAMILY AND DUPLEX CONSTRUCTION.
16. 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.
17. SIDEWALKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF BASTROP.
18. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOTS IN THE SUBDIVISION, BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF BASTROP.
19. BUILD-TO LINES SHALL BE IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF BASTROP.
20. BLANKET TEMPORARY ACCESS AND CONSTRUCTION EASEMENT DOCUMENT # _____ HAS BEEN PROVIDED FOR CONSTRUCTION ACCESS.
21. ANY PUBLIC 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 SUCH PROVIDERS WITH ANY EASEMENT AND OR ACCESS REQUIRED, IN ADDITION TO THOSE INDICATED, FOR THE INSTALLATION AND ONGOING MAINTENANCE OF PUBLIC UTILITIES.
22. LINE EXTENSION FEES ARE REQUIRED TO BE ASSESSED AT THE TIME OF PLATTING. PROVIDE ELECTRIC LOAD CALCULATIONS, NUMBER OF SERVICES, OR PLANS FOR REVIEW.
23. THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF BASTROP.
24. BENCHMARK USED: 1/2" IRON ROD FOUND AT THE EASTERLY CORNER OF LOT 11-B, ELEVATION = 500.5', MONUMENT DATA, LCRA HARN STATION A757 NORTHING STP: 10020749.9478, EASTING STP: 3252162.9986, ELEVATION = 386.54'.

LEGAL DESCRIPTION:

BEING 1.838 ACRES, AND BEING ALL OF LOT 11, BLOCK A, PINEY RIDGE, SECTION ONE, REPLAT, A SUBDIVISION IN PLAT CABINET NO. 1, PAGE 196A, PLAT RECORDS, BASTROP COUNTY, TEXAS AND BEING CONVEYED TO MARTHA MILES BY DEED RECORDED IN INSTRUMENT #202011581 OF THE OFFICIAL RECORDS OF BASTROP COUNTY, TEXAS; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 1/2" iron rod found in the northerly right-of-way line of Post Oak Rim (50' R.O.W.) for the most easterly corner hereof and said Lot 11, being the most southerly corner of Lot 10, Block A of said Piney Ridge, Section One, Replat;

THENCE S 59°33'33" W a distance of 280.57 feet along said right-of-way to a 1/2" iron rod with cap stamped "J.E. Garon RPLS4303" set at a point of curvature for an angle point hereof;

THENCE with said curve, being a curve to the right, having a radius of 150.00 feet, on an arc distance of 235.62 feet and whose chord bears N 75°25'24" W a distance of 212.13' feet to a 1/2" iron rod found for the most westerly corner hereof and said Lot 11, Block A, being the most southerly corner of Lot 10, Block A of said Piney Ridge, Section One, Replat;

THENCE leaving said right-of-way with the common line of said Lots 10 and 11, Piney Ridge, Section One, Replat, N 38°43'28" E a distance of 258.34 feet to a 1/2" iron rod found in the southwest line of Lot 13, Block A of said Piney Ridge, Section One, Replat, the easterly corner of said Lot 12, Block A for a northerly corner hereof and said Lot 11, Block A;

THENCE with the common line of said Lots 11 and 13, Block A, S 52°57'53" E a distance of 45.92 feet for an angle point and N 61°18'10" E a distance of 170.81 feet to a 1/2" iron rod found at a westerly corner of said Lot 10, Block A, the southeasterly corner of said Lot 13, Block A for the northeasterly corner hereof and said Lot 11, Block A;

THENCE S 30°39'52" E a distance of 194.32 feet to the POINT OF BEGINNING, containing 1.838 acres of land.

CONSERVATION SUBDIVISION NOTES:

THIS PROJECT IS LOCATED WITHIN THE AREA OF "KNOWN AND POTENTIAL HABITAT" OF THE ENDANGERED HOUSTON TOAD AS DETERMINED BY THE U.S. FISH AND WILDLIFE SERVICE, AS AUTHORIZED UNDER BASTROP COUNTY'S FEDERAL FISH AND WILDLIFE-ISSUED ENDANGERED SPECIES - INCIDENTAL TAKE PERMIT NUMBER TE-113500-0. PROPERTY OWNERS SHOULD CONTACT THE LOST PINES HABITAT CONSERVATION PLAN (LPHCP) ADMINISTRATOR AT THE BASTROP COUNTY DEVELOPMENT SERVICES DEPARTMENT PRIOR TO ANY DEVELOPMENT ACTIVITY.

SINCE NO FURTHER FRAGMENTATION OF POTENTIAL HOUSTON TOAD HABITAT OCCURS FROM THIS SUBDIVISION, IT HAS NO EFFECT TO THE LPHCP.

STATE OF TEXAS
COUNTY OF BASTROP

I, KRISTA BARTSCH, COUNTY CLERK OF BASTROP COUNTY, TEXAS, 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 2022, A.D., AT 1:00 O'CLOCK P.M., IN THE PLAT RECORDS OF BASTROP COUNTY, TEXAS IN PLAT CABINET PAGE

FILED FOR RECORD ON THE DAY OF 2022, A.D.

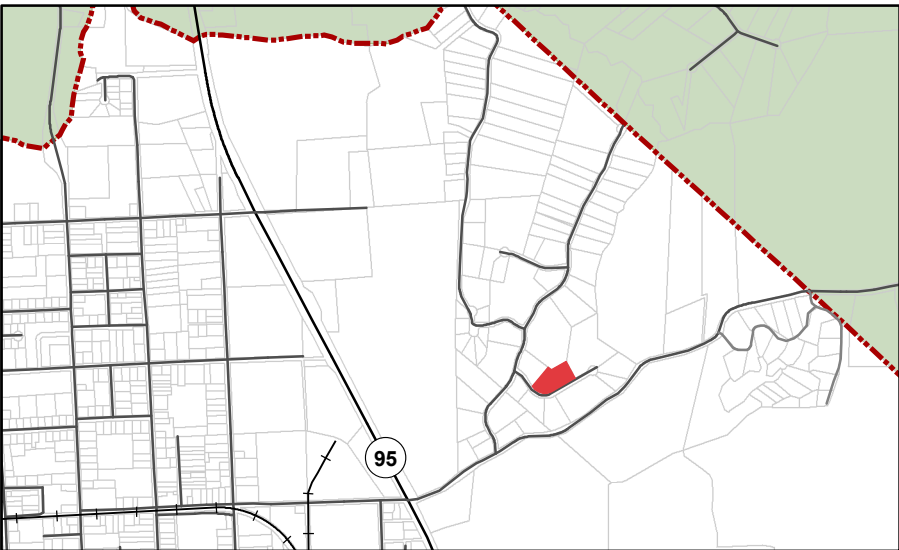
DEPUTY KRISTA BARTSCH
COUNTY CLERK
BASTROP COUNTY, TEXAS

PINEY RIDGE, SECTION ONE, REPLAT
REPLAT OF LOT 11, BLOCK A

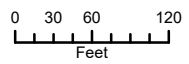
FIELD BOOK: B-671/15
FILE: Server\Co\Bastrop\Subd\Piney Ridge\Section 1\98921-Plat\98921-Plat.dwg

James E. Garon & Assoc.
LAND SURVEYORS & CIVIL ENGINEERS
Firm Reg. #10058400 & F-20368
185 McAllister Road
Bastrop, Texas 78602
(512) 303-4185
jgaron@austin.rr.com
www.jamesegaron.com

Table with 2 columns: SURVEY DATE, DRAWN, REVISED. Values: NOVEMBER 29, 2021; DECEMBER 23, 2021



Piney Ridge, Section One, Block A, Lot 11 Replat and Subdivision Variances

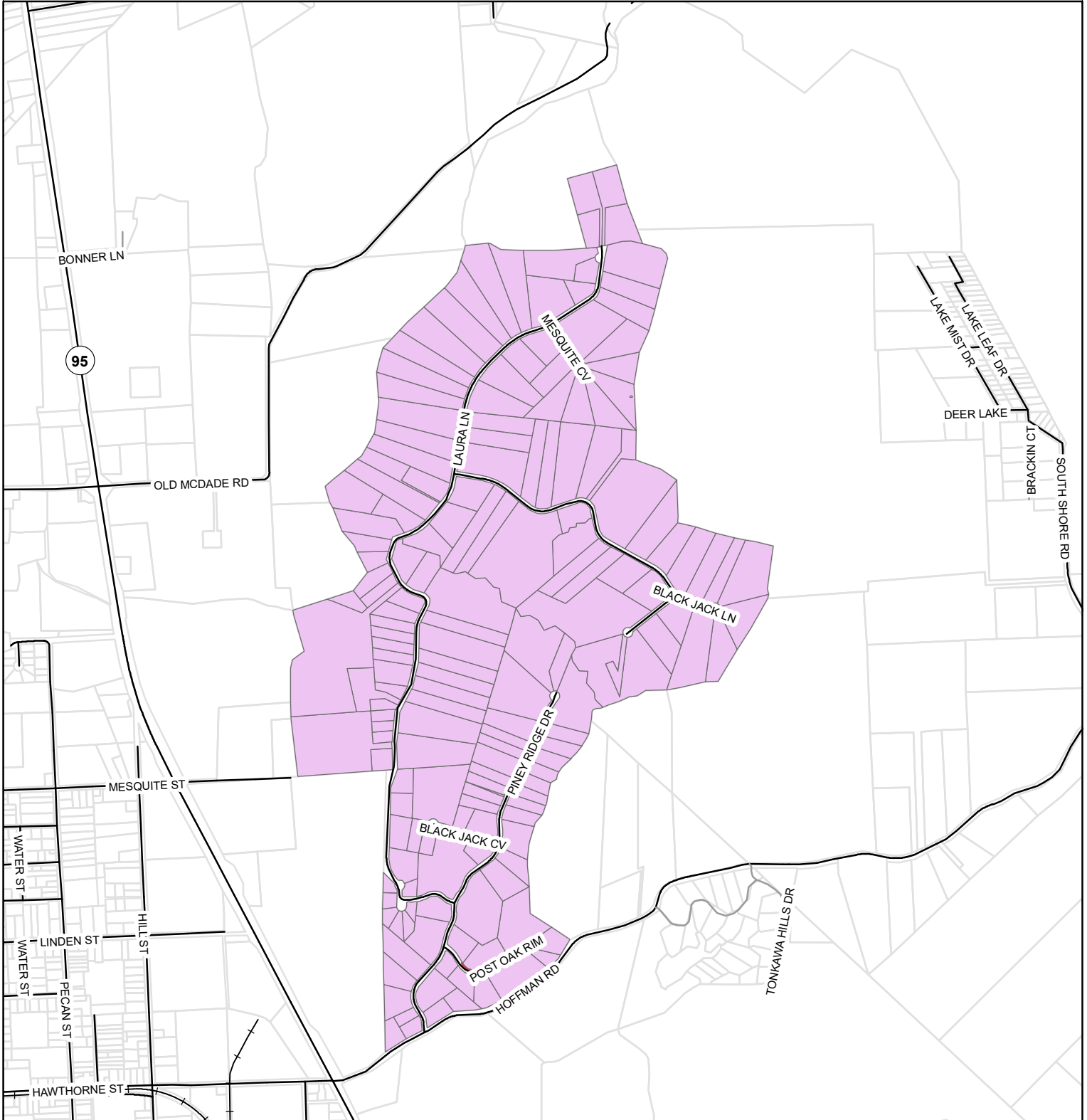


1 inch = 150 feet

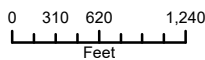
Date: 8/22/2022

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 usefulness of information, nor does it represent that its use will not infringe upon privately owned rights.





**Piney Ridge Subdivision
 170 Parcels**



1 inch = 1,370 feet

Date: 8/22/2022

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 usefulness of information, nor does it represent that its use will not infringe upon privately owned rights.



**JAMES E. GARON
& ASSOCIATES, INC.**

LAND SURVEYORS &
CIVIL ENGINEERS

185 McAllister Road
Bastrop, Texas 78602
512-303-4185
Firm #10058400
jgaron@austin.rr.com

August 2, 2022

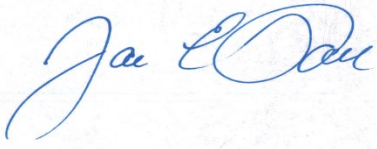
City of Bastrop
Planning & Development
1311 Chestnut Street
Bastrop, TX 78602

RE: #22-000018 - Piney Ridge, Section One Replat, Replat of Lot 11, Block A

We request a variance from Bastrop Building Block Technical Manual. Article 3.2 Infrastructure requirements: Section 3.2.005. Lot 11-B is 0.773 acre and does not meet the requirement of 1 acre for an on-site septic system. The lot will be connected to an approved water supply system and under TCEQ rules the minimum required lot size is 0.50 acre.

In addition we request a variance from the IFC 2018, Appendix D, Sec. D107 not allowing more than 30 units in a subdivision without a secondary outlet. This is an existing subdivision, developed in 3 large sections, all exceeding 30 units. There have been multiple replats of lots creating additional units. This replat is fairly near the single outlet to Hoffman Road and should not pose an increased hazard.

Sincerely,



James E. Garon
Registered Professional Land Surveyor
Server: Co\Bastrop\Subdivision\Piney Ridge Sec 1\989-21 plat

Received 9/15/2022

Attachment 4



Notice of Pending Subdivision Variance and Replat
City of Bastrop
Planning & Zoning Commission
And City Council

Dear Property Owner:

The **Planning and Zoning Commission** will conduct a public hearing on **Thursday, September 15, 2022 at 6:00 p.m.** and the **City Council** *may* conduct a public hearing (if appealed) **Tuesday, October 11, 2022 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** on the following request:

Consider action to approve two subdivision variances 1) The B³ Code Technical Manual Section 3.2.005 requires all new lots to be a minimum of 1 acre in size if utilizing on-site sewer facilities (septic). 2) The 2018 International Fire Code, Appendix D, Section D107 requires a subdivision with more than 30 units/lots to have a secondary point of egress and replat for Piney Ridge Section 1, Block A, Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas.

Applicant: James Garon/ James E. Garon & Associates, Inc
Owner: Martha Miles
Address: TBD Post Oak Rim
Legal Description: 1.838 acres out of the Piney Ridge Subdivision
Lots Created: 1 (one lot divided into two)
Zoning Designation: P-2 Rural

The site location map 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 Texas Local Government Code Chapter 212.05(a-1). For more information or to provide comments on this project, you may contact the Planning & Development Department at (512) 332-8840, visit or mail your response card below to the office at 1311 Chestnut Street, Bastrop, Texas 78602. The agenda will be posted 72 hours in advance at https://bastrop-tx.municodemeetings.com/?field=microsite_tid_selective=571



PROPERTY OWNER'S RESPONSE

As a property owner within 200 feet: (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: GREG WARNER & PATRICIA GREEN

Property Address: 133 Post Oak Rim

Mailing Address (if different than property address): _____

Phone (optional): (512) 217-4094 Email (optional): pgreen1@aol.com

Property Owner's Signature: [Handwritten Signature]

Re: Piney Ridge Subdivision Variance and Replat

PLANNING DEPARTMENT

PROPERTY OWNER'S RESPONSE

As a property owner within 200 feet: (please check one)

- I am in favor of the request.
- I am opposed to the request.
- I have no objection to the request.

Item 10A.

Property Owner Name: Randolph and Stephani Daniel

Property Address: 138 Post Oak Rm, Bastrop, TX 78602

Mailing Address (if different than property address): _____

Phone (optional): 512-303-0337 Email (optional): _____

Property Owner's Signature: [Signature]

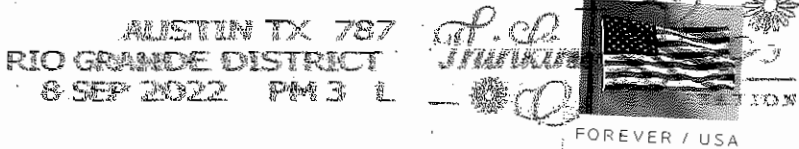
Re: Piney Ridge Subdivision Variance and Replat

PLANNING DEPARTMENT

1311 Chestnut Street • Bastrop, Texas 78602 • 512.332.8840 • www.cityofbastrop.org

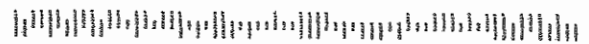
FLOWER SHOPPE.biz

theflowershoppe.biz
138 Post Oak Rm
BASTROP, TX 78602



CITY OF BASTROP PLANNING DEPT
RE: PINEY RIDGE Subdivision
Variance and Replat
1311 CHESTNUT STREET
BASTROP, TX 78602

78602-040411





STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Hold a public hearing and consider action on Resolution No. 2022-93 on an appeal to approve a replat with variances for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Submitted by: Jennifer C. Bills, Director of Planning & Development

ITEM DETAILS:

Site Address:	TBD Post Oak Rim (Attachment 1)
Total Acreage:	1.838 acres
Legal Description:	Piney Ridge Section 1, Block A, Lot 11
Property Owners:	Martha Miles
Agent Contact:	James Garon, James E. Garon & Associates, Inc.
Existing Use:	Vacant
Existing Zoning:	P2 - Rural
Future Land Use:	Rural Residential

BACKGROUND/HISTORY:

The applicant has submitted an application to replat Lot 11 of Piney Ridge Section 1, Block A (Exhibit A). The replat proposes dividing the 1.838-acre lot into two lots, 1.065 acres and 0.773 acres.

Section 1 was originally platted with 49 lots in 1978. It was replatted in 1981 with 71 total lots. Section 2 was originally platted with 13 lots in 1980 and replatted with 32 lots. Section 3 was platted in 1981 with 65 lots. Other replats and illegal deed divisions have occurred over the years, yielding over 170 individually owned parcels in the Piney Ridge Subdivision.

The previous item is a public hearing and consideration for the two variances requested for this replat.

Traffic Impact and Streets

Both proposed lots will have frontage on Post Oak Rim. There are 7 streets within the subdivision. Piney Ridge Drive connects to Hoffman Road. The other 6 streets (Laura Lane, Post Oak Rim, Black Jack Cove, Black Jack Lane, Elm Cove and Mesquite Cove all are dead end streets that do not provide any additional connections outside of the subdivision. All 170 existing parcels must exit at Piney Ridge Drive and Hoffman Road.

Utilities

Water service (domestic and fire) is currently provided by the City of Bastrop. Wastewater service is provided by OSSF (on-site sewage facility). The nearest public sanitary sewer line is approximately 1,790 feet from Lot 11.

Drainage

P2 zoning allows a percentage of impervious cover of up to 40%. The Piney Ridge Subdivision uses open ditch systems to convey water into Piney Creek.

POLICY EXPLANATION:

Replats with residential restrictions are reviewed and approved by the Planning & Zoning Commission. This subdivision has residential restrictions.

Bastrop, Texas Code of Ordinances

Chapter 1, Article 1.03, DIVISION 4. - APPEAL AUTHORITY

Sec. 1.03.091 - Established.

With the exception of those powers specifically relegated by state or federal law to certain appointed positions, the mayor and City Council shall hereafter have final authority over all city affairs should there be an appeal to said body politic.

Sec. 1.03.092 - Effect on authority of other officials and agencies.

Those powers and authorities heretofore and hereafter given to appointed officers and officials, city employees, boards and/or commissions shall not be lessened, with the exception that final authority through an appeal shall and will continue to remain with the mayor and City Council.

Sec. 1.03.093 - Scope.

Appeal and review authority shall not be limited to actions, but shall include all avenues of relief, including, but not limited to, permits, fees, payments, charges and penalties, wherein special circumstances or hardships may deem such waiver and/or adjustments necessary.

Compliance with 2036 Comprehensive Plan:

Future Land Use Plan - Rural Residential: The Rural Residential character area is for lands primarily found on the City's periphery, and is characterized by large lot single-family residences, as well as agriculture, ranching, silviculture, and natural landscape. Rural Residential areas which retain a pastoral setting have not always been set aside for conservation or public use, but may eventually be subject to subdivision, and/or conversion to agricultural or other similar uses.

The future land use plan does not define a "large lot size" however the description includes that a majority of the space retain a pastoral setting for agriculture or natural landscape. Creating additional lots does not maintain this intent.

Goal 4.1.1 Provide a greater diversity of housing options in Bastrop while protecting the character of the City's existing neighborhoods.

The Piney Ridge Subdivision was originally platted with a majority of the lots ranging from 1 acre to over 5 acres in size.

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 B³ Code, Chapter 1: Subdivision outlines the process and 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 subdividing a 1.838-acre residential lot into two lots. The B³ Code Technical Manual Section 3.2.005 requires all new lots to be a minimum of 1 acre in size if utilizing on-site sewer facilities (septic).

Additionally, the 2018 International Fire Code, Appendix D, Section D107.1 requires a subdivision with more than 30 units/lots to have a secondary point of egress.

Two variance requests accompany this plat request.

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 replat does not conform to the Future Land Use Plan, which requires areas to extend utilities as the area becomes more urban.

(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;

Extension of roads are required to meet egress requirements for the Piney Ridge Subdivision. Utility extensions are required for sewer for an additional lot that is less than 1 acre.

(3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

A fiscal guarantee is not applicable if the replat is approved.

- (4) it conforms to any rules adopted under Section 212.002.

The plat does not comply with the requirements of the adopted B³ Code and Texas Local Government Code.

Sec. 212.014. Replatting without Vacating Preceding Plat.

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted;
- (2) is approved by the municipal authority responsible for approving plats; and
- (3) does not attempt to amend or remove any covenants or restrictions.

Sec. 212.015. Additional Requirements for Certain Replats.

(a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

- (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or

Prior to the adoption of the B³ Code in 2019, the property was zoned SF-20, which was a residential zoning classification that did not allow more than 1 residential unit per lot.

- (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

The subdivision has residential deed restrictions.

(a-1) If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

Two variances are being requested.

(b) Notice of the hearing required under Subsection (a-1) shall be given before the 15th day before the date of the hearing by:

- (1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
- (2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

A notice was placed in the Bastrop Advertiser on August 31, 2022 and notice mailed to the property owners within 200 feet. At the time of this report, two responses have been received in opposition.

(c) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

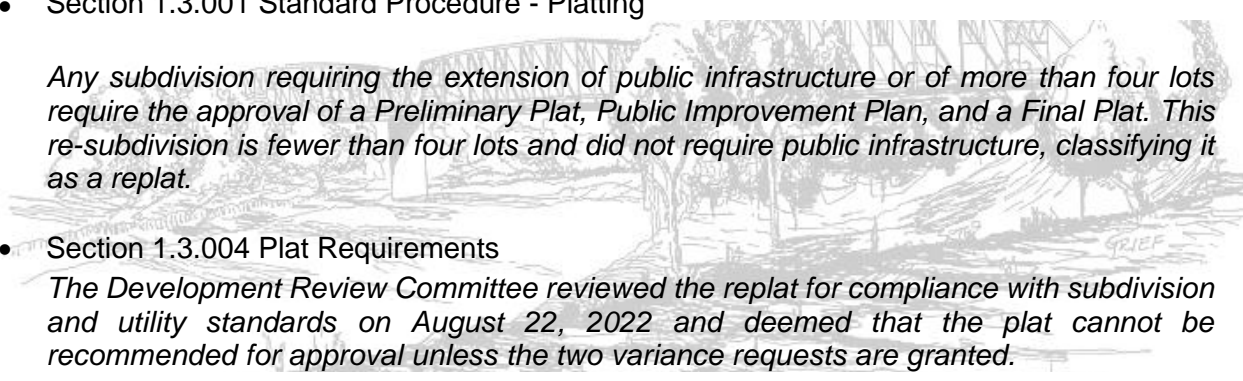
At the time of this report, no protest has been received.

(d) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

B³ Code – Chapter 1: Subdivisions

- Section 1.3.001 Standard Procedure - Platting

Any subdivision requiring the extension of public infrastructure or of more than four lots require the approval of a Preliminary Plat, Public Improvement Plan, and a Final Plat. This re-subdivision is fewer than four lots and did not require public infrastructure, classifying it as a replat.



- Section 1.3.004 Plat Requirements

The Development Review Committee reviewed the replat for compliance with subdivision and utility standards on August 22, 2022 and deemed that the plat cannot be recommended for approval unless the two variance requests are granted.

PLANNING & ZONING COMMISSION DECISION:

The Planning & Zoning Commission, being the municipal authority responsible for approving plats, held a public hearing at a special meeting on September 15, 2022 and voted 6-0 to deny the replat for not meeting the Bastrop Building Block (B³) subdivision requirements without the variances.

STAFF RECOMMENDATION:

Hold public hearing and consider action to **deny** Resolution No. 2022-93 on an appeal to approve a replat with variances for Piney Ridge Section 1, Block A, Replat of Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas, as shown in Exhibit A; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution No. R-2022-93
- Exhibit A: Piney Ridge Section 1, Block A, Replat of Lot 11
- Attachment 1: Location Map
- Attachment 2: Property Owner Responses

RESOLUTION NO. R-2022-93

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, ON AN APPEAL TO APPROVE A REPLAT WITH VARIANCES FOR PINEY RIDGE SECTION 1, BLOCK A, REPLAT OF LOT 11, BEING 1.838 ACRES OUT OF PINEY RIDGE SUBDIVISION, LOCATED AT TBD POST OAK RIM, 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 Bastrop Building Block (B³) Code, the Planning & Zoning Commission is required to take action regarding certain plats; and

WHEREAS, Martha Miles (“the Applicant”) has submitted a replat of Lot 11 of Piney Ridge, Section 1, Block A, existing subdivision; and

WHEREAS, notice of the subdivision was sent in accordance with the Bastrop Building Block (B³) Code and the Texas Local Government Code to notify the public; and

WHEREAS, the replat will create two lots, 1.065 acres and 0.773 acres; and

WHEREAS, the Planning & Zoning Commission held a special meeting on September 15, 2022 to hold a public hearing and denied two subdivision variances for the replat; and

WHEREAS, the Planning & Zoning Commission voted 6-0 to deny the replat for not meeting the B³ Code requirements; and

WHEREAS, Section 1.03.092 of the Bastrop, Texas Code of Ordinances provides final authority to City Council through an appeal process; and

WHEREAS, on September 16, 2022 the Applicant request an appeal to City Council on the determination of the Planning & Zoning Commission; and

WHEREAS, the City Council after reviewing the replat request finds that replat meets the requirements of the Bastrop Building Block (B³) Code for subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: The Replat Plat known as Piney Ridge Subdivision, Section 1, Block A, Replat of Lot 11, located at TBD Post Oak Rim, within the city limits of the 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 11th day of October, 2022.

APPROVED:

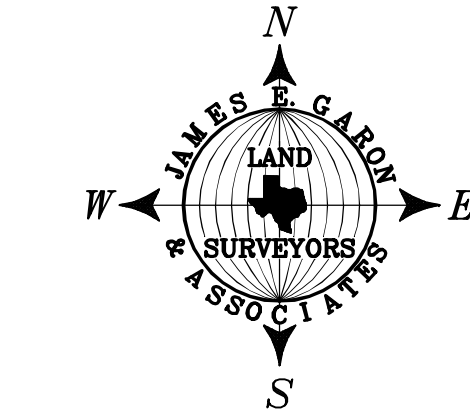
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



PINEY RIDGE, SECTION ONE, REPLAT REPLAT OF LOT 11, BLOCK A

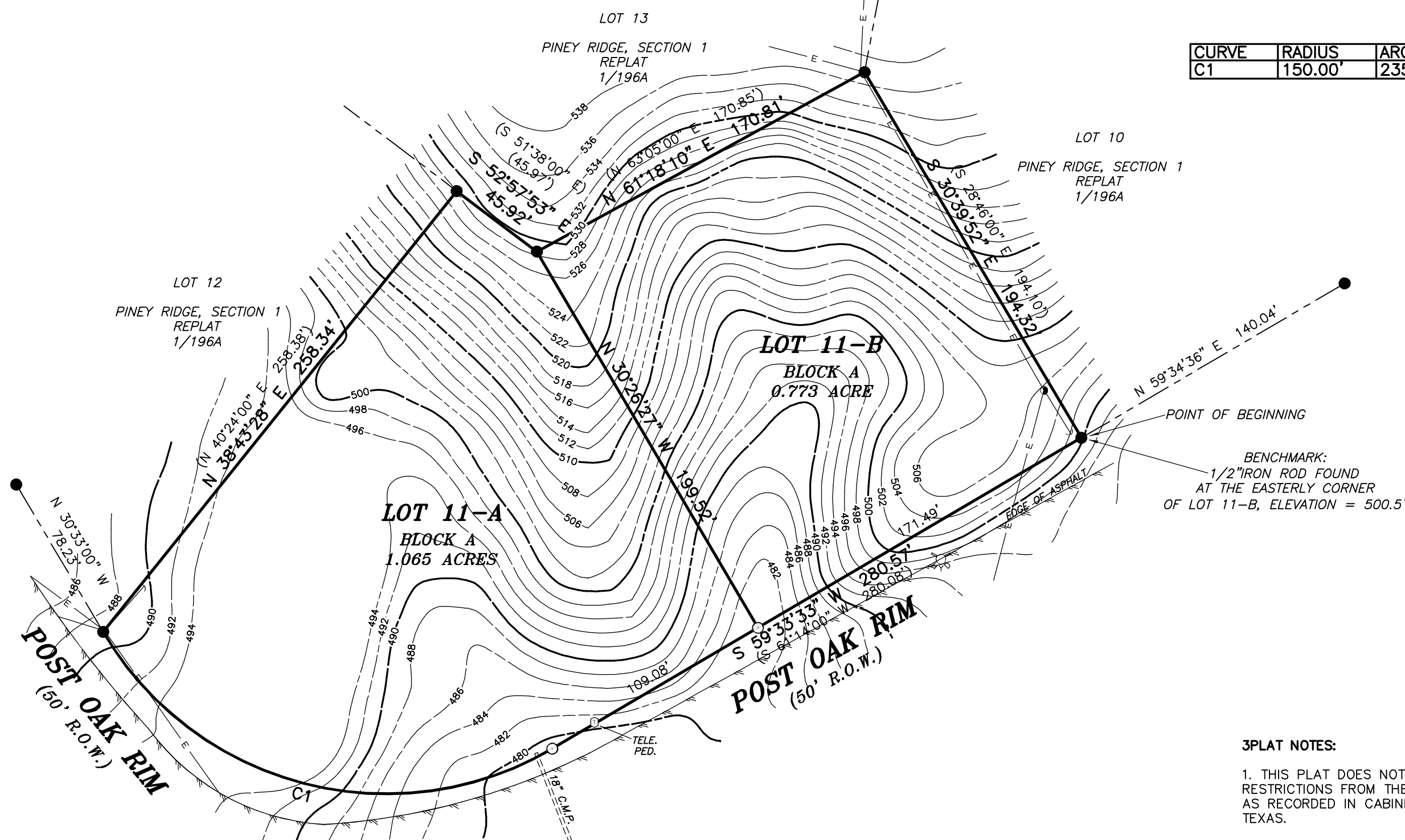


SCALE: 1" = 50'

BEARINGS SHOWN ARE GRID NORTH BASED ON GPS OBSERVATIONS FOR TEXAS STATE PLANE COORDINATE SYSTEM "CENTRAL ZONE" NAD83.

LEGEND

- 5/8" IRON ROD FOUND (UNLESS NOTED)
- 1/2" IRON ROD SET W/CAP
- STAMPED J.E. GARON RPLS 4303
- POWER POLE
- OVERHEAD ELECTRIC LINE
- DOWN GUY
- CORRUGATED METAL PIPE
- RECORD CALL (BRG.-DIST.)
- U.E. UTILITY EASEMENT



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	150.00'	235.62'	212.13'	N 75°25'24" W	90°00'01"

SUMMARY

NO. OF BLOCKS = 1
NO. OF LOTS = 2
ACRES = 1.838 ACRES
LAND USE - RESIDENTIAL

OWNER:

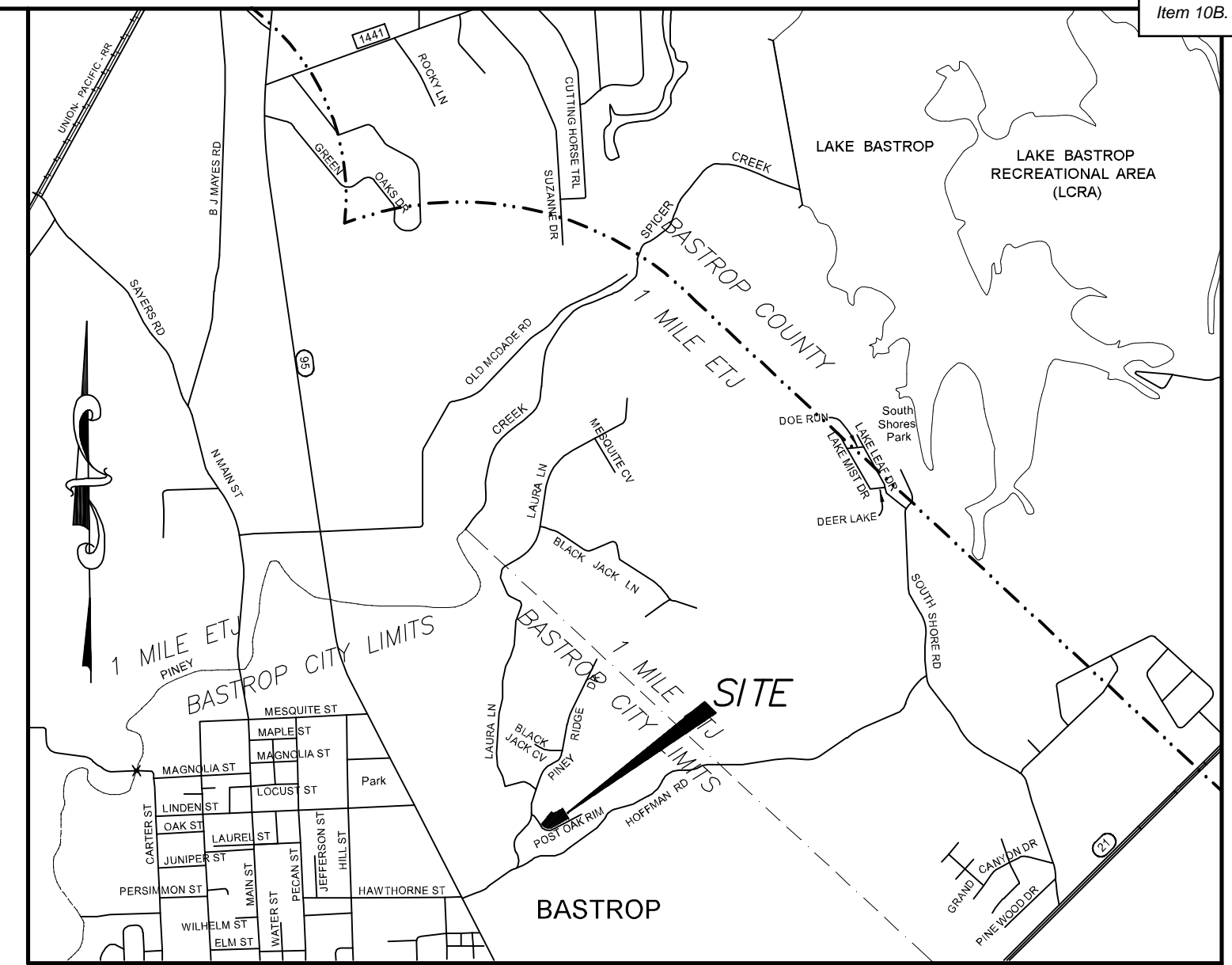
Martha Miles
127 N Kaupo Drive
Bastrop, Texas 78602
713-819-7123

ENGINEER:

James E. Garon & Associates, Inc.
Firm Reg. # - 20368
Rachel D. Hartzler
License #117344
185 McAllister Road
Bastrop, Texas 78602
512-303-4185

SURVEYOR:

James E. Garon & Associates, Inc.
James E. Garon, R.P.L.S.
Firm Reg. #10058400
185 McAllister Rd.
Bastrop, Texas 78602
512-303-4185



LOCATION MAP
NOT TO SCALE

PLAT NOTES:

- THIS PLAT DOES NOT ATTEMPT TO AMEND OR REMOVE ANY COVENANTS OR RESTRICTIONS FROM THE PREVIOUS SUBDIVISION PINEY RIDGE, SECTION ONE, REPLAT AS RECORDED IN CABINET NO. 1, PAGE 196A, PLAT RECORDS BASTROP COUNTY, TEXAS.
- ALL SUBDIVISION PERMITS SHALL CONFORM TO THE CITY OF BASTROP CODE OF ORDINANCES, PUBLIC IMPROVEMENT STANDARDS, AND GENERALLY ACCEPTED ENGINEERING PRACTICES.
- 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.
- NO LOT IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO THE APPROVED WATER DISTRIBUTION AND WASTEWATER CONNECTION FACILITIES.
- WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
- ALL UTILITIES WILL BE UNDERGROUND.
- IMPACT FEES SHALL BE ASSESSED IN ACCORDANCE WITH THE ORDINANCE EFFECTIVE AT THE TIME OF PLATTING.
- DEVELOPER OR PROPERTY OWNER SHALL BE SOLELY RESPONSIBLE FOR ALL RELOCATION AND MODIFICATIONS TO EXISTING UTILITIES.
- TEMPORARY AND PERMANENT EASEMENTS TO BE PROVIDED, AS REQUIRED AT THE CITY'S SOLE DISCRETION FOR OFF-SITE IMPROVEMENTS.
- AS SHOWN HEREON, 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.
- PROPERTY OWNER SHALL PROVIDE FOR ACCESS TO ALL EASEMENTS AS MAY BE NECESSARY AND SHALL NOT PROHIBIT ACCESS BY GOVERNMENTAL AUTHORITIES.
- NO BUILDING, FENCES, LANDSCAPING OR OTHER STRUCTURES ARE PERMITTED WITHIN DRAINAGE EASEMENTS SHOWN, EXCEPT AS APPROVED BY THE CITY OF BASTROP AND/OR BASTROP COUNTY.
- ALL EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR HIS OR HER ASSIGNEES.
- 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).
- EROSION AND SEDIMENTATION CONTROLS CONSTRUCTED IN ACCORDANCE WITH THE CODE OF ORDINANCES OF THE CITY OF BASTROP ARE REQUIRED FOR ALL CONSTRUCTION ON EACH LOT, INCLUDING SINGLE FAMILY AND DUPLEX CONSTRUCTION.
- 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.
- SIDEWALKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF BASTROP.
- PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOTS IN THE SUBDIVISION, BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF BASTROP.
- BUILD-TO LINES SHALL BE IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF BASTROP.
- BLANKET TEMPORARY ACCESS AND CONSTRUCTION EASEMENT DOCUMENT # _____ HAS BEEN PROVIDED FOR CONSTRUCTION ACCESS.
- ANY PUBLIC 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 SUCH PROVIDERS WITH ANY EASEMENT AND OR ACCESS REQUIRED, IN ADDITION TO THOSE INDICATED, FOR THE INSTALLATION AND ONGOING MAINTENANCE OF PUBLIC UTILITIES.
- LINE EXTENSION FEES ARE REQUIRED TO BE ASSESSED AT THE TIME OF PLATTING. PROVIDE ELECTRIC LOAD CALCULATIONS, NUMBER OF SERVICES, OR PLANS FOR REVIEW.
- THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF BASTROP.
- BENCHMARK USED: 1/2" IRON ROD FOUND AT THE EASTERLY CORNER OF LOT 11-B, ELEVATION = 500.5', MONUMENT DATA, LCRA HARN STATION A757 NORTHING STP: 10020749.9478, EASTING STP: 3252162.9986, ELEVATION = 386.54'.

LEGAL DESCRIPTION:

BEING 1.838 ACRES, AND BEING ALL OF LOT 11, BLOCK A, PINEY RIDGE, SECTION ONE, REPLAT, A SUBDIVISION IN PLAT CABINET NO. 1, PAGE 196A, PLAT RECORDS, BASTROP COUNTY, TEXAS AND BEING CONVEYED TO MARTHA MILES BY DEED RECORDED IN INSTRUMENT #202011581 OF THE OFFICIAL RECORDS OF BASTROP COUNTY, TEXAS; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 1/2" iron rod found in the northerly right-of-way line of Post Oak Rim (50' R.O.W.) for the most easterly corner hereof and said Lot 11, being the most southerly corner of Lot 10, Block A of said Piney Ridge, Section One, Replat;

THENCE S 59°33'33" W a distance of 280.57 feet along said right-of-way to a 1/2" iron rod with cap stamped "J.E. Garon RPLS4303" set at a point of curvature for an angle point hereof;

THENCE with said curve, being a curve to the right, having a radius of 150.00 feet, on an arc distance of 235.62 feet and whose chord bears N 75°25'24" W a distance of 212.13' feet to a 1/2" iron rod found for the most westerly corner hereof and said Lot 11, Block A, being the most southerly corner of Lot 10, Block A of said Piney Ridge, Section One, Replat;

THENCE leaving said right-of-way with the common line of said Lots 10 and 11, Piney Ridge, Section One, Replat, N 38°43'28" E a distance of 258.34 feet to a 1/2" iron rod found in the southwest line of Lot 13, Block A of said Piney Ridge, Section One, Replat, the easterly corner of said Lot 12, Block A for a northerly corner hereof and said Lot 11, Block A;

THENCE with the common line of said Lots 11 and 13, Block A, S 52°57'53" E a distance of 45.92 feet for an angle point and N 61°18'10" E a distance of 170.81 feet to a 1/2" iron rod found at a westerly corner of said Lot 10, Block A, the southeasterly corner of said Lot 13, Block A for the northeasterly corner hereof and said Lot 11, Block A;

THENCE S 30°39'52" E a distance of 194.32 feet to the POINT OF BEGINNING, containing 1.838 acres of land.

CONSERVATION SUBDIVISION NOTES:

THIS PROJECT IS LOCATED WITHIN THE AREA OF "KNOWN AND POTENTIAL HABITAT" OF THE ENDANGERED HOUSTON TOAD AS DETERMINED BY THE U.S. FISH AND WILDLIFE SERVICE, AS AUTHORIZED UNDER BASTROP COUNTY'S FEDERAL FISH AND WILDLIFE-ISSUED ENDANGERED SPECIES - INCIDENTAL TAKE PERMIT NUMBER TE-113500-0. PROPERTY OWNERS SHOULD CONTACT THE LOST PINES HABITAT CONSERVATION PLAN (LPHCP) ADMINISTRATOR AT THE BASTROP COUNTY DEVELOPMENT SERVICES DEPARTMENT PRIOR TO ANY DEVELOPMENT ACTIVITY.

SINCE NO FURTHER FRAGMENTATION OF POTENTIAL HOUSTON TOAD HABITAT OCCURS FROM THIS SUBDIVISION, IT HAS NO EFFECT TO THE LPHCP.

STATE OF TEXAS COUNTY OF BASTROP

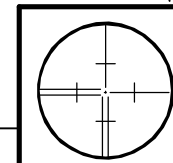
I, KRISTA BARTSCH, COUNTY CLERK OF BASTROP COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 2022, A.D., AT _____ O'CLOCK _____ M., IN THE PLAT RECORDS OF BASTROP COUNTY, TEXAS IN PLAT CABINET _____, PAGE _____

FILED FOR RECORD ON THE _____ DAY OF _____, 2022, A.D.

DEPUTY _____ KRISTA BARTSCH
COUNTY CLERK
BASTROP COUNTY, TEXAS

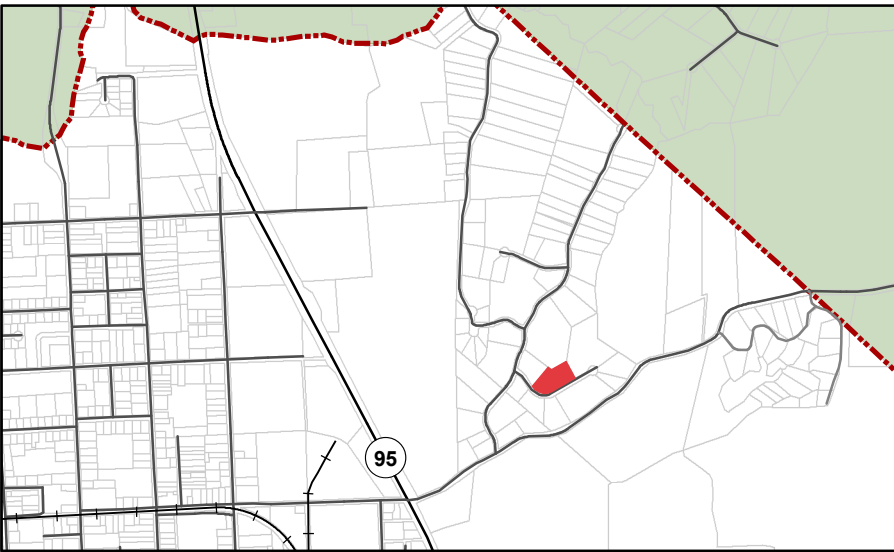
PINEY RIDGE, SECTION ONE, REPLAT REPLAT OF LOT 11, BLOCK A

FIELD BOOK: B-671/15
FILE: Server\Co\Bastrop\Subd\Piney Ridge\Section 1\98921-Plat\98921-Plat.dwg

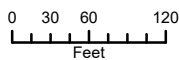


JAMES E. GARON & ASSOC.
LAND SURVEYORS & CIVIL ENGINEERS
Firm Reg. #10058400 & F-20368
185 McAllister Road
Bastrop, Texas 78602
(512) 303-4185
jgaron@austin.rr.com
www.jamesegaron.com

SURVEY DATE:	NOVEMBER 29, 2021
DRAWN:	DECEMBER 23, 2021
REVISED:	
REVISED:	
REVISED:	



Piney Ridge, Section One, Block A, Lot 11 Replat and Subdivision Variances



1 inch = 150 feet

Date: 8/22/2022

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 usefulness of information, nor does it represent that its use will not infringe upon privately owned rights.



Received 9/15/2022

Attachment 2



Notice of Pending Subdivision Variance and Replat
City of Bastrop
Planning & Zoning Commission
And City Council

Dear Property Owner:

The **Planning and Zoning Commission** will conduct a public hearing on **Thursday, September 15, 2022 at 6:00 p.m.** and the **City Council** *may* conduct a public hearing (if appealed) **Tuesday, October 11, 2022 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** on the following request:

Consider action to approve two subdivision variances 1) The B³ Code Technical Manual Section 3.2.005 requires all new lots to be a minimum of 1 acre in size if utilizing on-site sewer facilities (septic). 2) The 2018 International Fire Code, Appendix D, Section D107 requires a subdivision with more than 30 units/lots to have a secondary point of egress and replat for Piney Ridge Section 1, Block A, Lot 11, being 1.838 acres out of Piney Ridge Subdivision, located at TBD Post Oak Rim, within the City Limits of Bastrop, Texas.

Applicant: James Garon/ James E. Garon & Associates, Inc
Owner: Martha Miles
Address: TBD Post Oak Rim
Legal Description: 1.838 acres out of the Piney Ridge Subdivision
Lots Created: 1 (one lot divided into two)
Zoning Designation: P-2 Rural

The site location map 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 Texas Local Government Code Chapter 212.05(a-1). For more information or to provide comments on this project, you may contact the Planning & Development Department at (512) 332-8840, visit or mail your response card below to the office at 1311 Chestnut Street, Bastrop, Texas 78602. The agenda will be posted 72 hours in advance at https://bastrop-tx.municodemeetings.com/?field=microsite_tid_selective=571



PROPERTY OWNER'S RESPONSE

As a property owner within 200 feet: (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: GREG WARNER & PATRICIA GREEN

Property Address: 133 Post Oak Rim

Mailing Address (if different than property address): _____

Phone (optional): (512) 217-4094 Email (optional): pgreen1@aol.com

Property Owner's Signature: [Signature] Greg Warner

Re: Piney Ridge Subdivision Variance and Replat

PLANNING DEPARTMENT

PROPERTY OWNER'S RESPONSE

As a property owner within 200 feet: (please check one)

- I am in favor of the request.
- I am opposed to the request.
- I have no objection to the request.

Item 10B.

Property Owner Name: Randolph and Stephani Daniel

Property Address: 138 Post Oak Rm, Bastrop, TX 78602

Mailing Address (if different than property address): _____

Phone (optional): 512-303-0337 Email (optional): _____

Property Owner's Signature: [Signature]

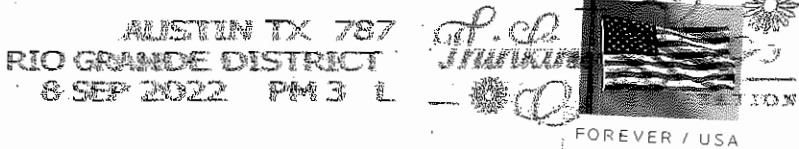
Re: Piney Ridge Subdivision Variance and Replat

PLANNING DEPARTMENT

1311 Chestnut Street • Bastrop, Texas 78602 • 512.332.8840 • www.cityofbastrop.org

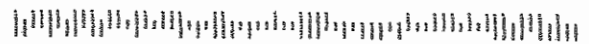
FLOWER SHOPPE.biz

theflowershoppe.biz
138 Post Oak Rm
BASTROP, TX 78602



CITY OF BASTROP PLANNING DEPT
RE: PINEY RIDGE Subdivision
Variance and Replat
1311 CHESTNUT STREET
BASTROP, TX 78602

78602-040411





STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Consider action to approve Resolution No. R-2022-91 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Fabiola de Carvalho, AMP MIAM, Director of Engineering and Capital Project Management

BACKGROUND/HISTORY:

On September 11, 2018, the City of Bastrop City Council authorized the approval of an engineering services agreement for the design and construction administration services for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project with Freese and Nichols, INC. (FNI).

During the design process FNI recommended to the City the use of a Construction Manager at Risk (CM@Risk/CMAR) delivery method. There was a consensus between FNI and City that this delivery method would be a benefit to the City, where the CM@Risk would work as an adviser to the City through the design and construction phases.

On September 22, 2020, the City of Bastrop City Council received a presentation on the benefits of using the CM@Risk delivery method for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project. Please refer to the City Council Regular Meeting on September 22, 2020 (work session item 5A). Here is the link to access that Agenda: <https://www.cityofbastrop.org/page/cc.2020agenda> and the link to the video recording of that presentation: <https://www.youtube.com/watch?v=ghDzuhA4U5Q>. Presentation starts at 36 minutes and 48 seconds of the recording.

Once the presentation was completed, the City Council authorized the approval of an amendment to the FNI task order that increased the overall contract amount by \$60,000.00.

Upon approval of this task order amendment FNI started working with the City Attorney to develop a contract and request for proposal for CM@Risk design phase services. Knowing that time was of the essence, a team composed from key staff at FNI, the City Engineer, Director of Public Works, City Manager and Assistant City Manager for Community Development began working on a schedule to review, score, and select a company to provide CM@Risk design phase services.

The City advertised a Request for Qualifications on June 7, 2021 soliciting construction manager at risk services. The City received 7 Statements of Qualifications.

A selection committee comprised of Tony Buonodono, City Engineer, Curtis Hancock, Director of Public Works, Paul A. Hofmann, City Manager and Trey Job, Assistant City Manager for Community Development, selected Archer Western Construction, LLC. as the most qualified firm and the City began contract negotiations with Archer Western.

On March 23, 2021 the City of Bastrop City Council authorized the approval of a professional services agreement with Archer Western. Upon this approval, Archer Western started working in coordination with City and FNI advising the City during the design phase. These services included, but not limited to, reviewing plans and specifications, providing input on constructability issues, cost estimates, recommendation on materials and equipment for best value for the City, etc.

The overall project is split into multiple bid packages so that bid and construction of the parts of the project needed to be completed first can be started, while design of the rest of the project components are finalized.

The CM@Risk advertised request for proposals on July 6, 2022 for construction services for the Well Field and Clearwell packages (included in the Guaranteed Maximum Price, GMP1). And held a bid opening on July 27, 2022. Archer Western received 3 proposals for the Well Field project, and 2 for the Clearwell project. Archer Western selected Weisinger and Preload, for well drilling and clearwell packages, respectively.

The City of Bastrop City Council approved the construction phase contract with Archer Western, described as Guaranteed Maximum Price (GMP1), in the amount of \$8,931,902, on August 9, 2022, which included CM@Risk's contingency, the Cost of Work, Construction Fee, General Conditions, and City's contingency for the well drilling and clearwell packages.

Archer Western is currently reviewing submittals from the contractors associated with the packages included in the GMP1. And a pre-construction meeting has been scheduled for work associated with GMP1 for October 5th. The Weisinger, contracted by Archer Western, for the well drilling packaged has begun to build the access roads and will begin construction activities beginning of October. And Preload, contracted by Archer Western, for the clearwell work will begin construction activities beginning mid-November.

As mentioned above, the whole Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project was split into different packages within each GMP. GMP1 includes two packages: the well drilling and the clearwell. The GMP2 includes four packages: the water treatment plant equipment, the water treatment plant construction, electrical and instrumentation, and the filter and chemical buildings.

The CM@Risk advertised request for proposals on August 15, 2022 for purchase of water treatment plant equipment, the water treatment plant construction services, the electrical and instrumentation services, and the building construction services for the filter and chemical buildings (included in the Guaranteed Maximum Price, GMP 2). And held a bid opening on September 15, 2022. CM@Risk/Archer Western received:

- 14 proposals for the various pieces of Water Treatment Plant Equipment (package 3)
- 1 proposal for the Water Treatment Plant Construction (package 4)
- 1 proposal for the Electrical and Instrumentation (package 5)

- 1 proposal for the Filter and Chemical Buildings (package 10)

Additional information on each proposal scoring and pricing is included as Exhibit D.

A selection committee comprised of Archer Western staff (the City and FNI participated as being present during the selection process, but did not assist on scoring the firms, as recommended by the City Attorney) reviewed proposals submitted to packages 3, 5 and 10, and selected the following:

- For the Treatment Plant Equipment (package 3): Various vendors (see Exhibit D) with a proposal in the amount of \$1,717,273.
- For the Electrical and Instrumentation (package 5): T. Morales with a proposal in the amount of \$10,744,426.
- Filter and Chemical Buildings (package 10): HMC with a proposal in the amount of \$7,582,598.

Below is a summary of CM@Risk’s proposals evaluation results for each package:

Treatment Plant Equipment (Package 3)	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
Multiple/See Exhibit D	Multiple/See Exhibit D	Multiple/See Exhibit D	Multiple/See Exhibit D	\$1,717,273	Multiple/See Exhibit D

Electrical & Instrumentation (Package 5)	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
T. Morales	40	6	8	\$10,744,426	94

Filter and Chemical Buildings (Package 10)	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
HMC	35	5	4	\$7,582,598	94

Archer Western is a construction contractor and can also self-perform, if chooses to; however, Archer Western is required to notify the City in advance if has an intent on submitting a proposal, and if so, Archer Western would not be part of the selection committee, and the City would score the proposals with FNI.

Archer Western notified the City that it would be submitting a proposal for the construction of the treatment plant (package 4) and in accordance with the contract, Archer Western did not participate in the review process of this package.

A selection committee comprised of City and FNI’s reviewed proposal submitted to the package and selected the following:

- For the Treatment Plant construction (package 4): Archer Western with a proposal of \$11,828,678

Below is a summary of FNI's and City's proposals evaluation results for package 4:

Treatment Plant const. (Package 4)	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
Archer Western	43	8	8	\$11,828,678	99

After selecting the awardees, Archer Western presented the City with their Guaranteed Maximum Price (GMP2), in the amount of \$35,296,217, which includes the Cost of Work, Construction Fee, General Conditions, and CM@Risk's contingency; and a Total Contract Price of \$35,796,217, which includes the GMP 2 and Owner's Contingency.

Because the project was split into different bid packages, the agenda item subject of this Staff Report relates to construction services for the construction of the following packages: the water treatment plant equipment, water treatment plant construction, electrical and instrumentation, and the construction services for filter and chemical buildings, which are part to and necessary for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project, and which we are referring to as GMP2. As FNI finalizes the other design packages, Archer Western will be advertising the other packages, and City Engineering Staff will ask City Council, once again, for consideration and authorization of approval of these other packages.

With your authorization of this GMP2 and Total Contract Price, Archer Western will move forward in awarding a construction contract with the Various equipment manufacturers, T. Morales, and HMC.

Archer Western has 575 calendar days to complete the work associated with the GMP1, which includes the installation of the water treatment plant equipment, the water treatment plant construction, the electrical and instrumentation work, and the construction of the filter and chemical buildings.

FISCAL IMPACT:

FY22 Annual Budget

- New CO Bond Series 2022A: being issued in December

RECOMMENDATION:

Consider action to approve Resolution No. R-2022-91 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Exhibit A: Agreement for CM@Risk Construction Phase Services – GMP2 with Archer Western
- Exhibit B: Resolution No. R-2022-91
- Exhibit C: WTP– location map
- Exhibit D: GMP2 Evaluation Results for Packages 3 and 4



RESOLUTION NO. R-2022-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC. TO PROVIDE CONSTRUCTION MANAGER AT RISK SERVICES FOR A NOT TO EXCEED AMOUNT OF THIRTY-FIVE MILLION, SEVEN HUNDRED NINETY-SIX THOUSAND, TWO HUNDRED SEVENTEEN DOLLARS (\$35,796,217); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop City Council understands the Construction Manager at Risk (CM@Risk) method of delivery generally brings overall value and cost savings to construction projects; and

WHEREAS, the Archer Western Construction, LLC is an Owner advocate and manages the project with the Owner’s best interest in mind at all times; and

WHEREAS, constructability and value to the Owner are afforded by the Value Engineering expertise brought to the process by the CM@Risk; and

WHEREAS, the services provided by Archer Western Construction, LLC are professional services like architectural, engineering, surveying, etc. and the CM@Risk’s purpose is not only to construct the project, but to manage the coordination and all construction activities of the project. This management focus adds much value to the project; and

WHEREAS, the Simbsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities is a complex project that will benefit by these services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The City Council of the City of Bastrop, Texas has determined Archer Western Construction, LLC to be a subject matter expert in the construction manager at risk delivery method and agree to a Guaranteed Maximum Price of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217).

Section 2. The City Manager is hereby authorized to execute a contract with Archer Western Construction, LLC in an amount not to exceed of Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$35,796,217), as well as all other necessary documents.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 11th day of October 2022.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



CITY OF BASTROP, TEXAS

**SIMSBORO AQUIFER WATER TREATMENT PLANT,
WELL FIELD AND TRANSMISSION FACILITIES**

**AGREEMENT FOR
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION PHASE SERVICES**

(Clean Version 2022.24.6)

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**SIMSBORO AQUIFER WATER TREATMENT PLANTWELL FIELD AND TRANSMISSION FACILITIES
CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES**

THIS AGREEMENT made and entered by and between City of Bastrop, a Texas municipal corporation, hereinafter designated the “CITY” or “OWNER”, and Archer Western Construction, LLC, hereinafter designated the “CONSTRUCTION MANAGER AT RISK” or “CM@Risk”, collectively referred to herein as, “the parties”. This Agreement is hereby authorized to be entered into by the City of Bastrop by and through Resolution No. _____, approved and entered into on the _____ day of _____, 2022.

RECITALS

WHEREAS, the City Manager of the City of Bastrop, Texas, is authorized and empowered by provisions of the City Charter to negotiate and execute any and all contracts for construction services for the City of Bastrop; and

WHEREAS, the City intends to construct SIMSBORO AQUIFER WATER TREATMENT PLANT, WELL FIELD AND TRANSMISSION FACILITIES as more fully described in Exhibit A attached, hereinafter referred to as “PROJECT”; and

WHEREAS, the City has entered that certain contract with FREESE AND NICHOLS, INC. hereinafter referred to as the “Design Professional” dated July 17, 2020, to undertake the design, and construction phase services including construction administration, general engineering representation and resident project representation of said Project; and

WHEREAS, the CM@Risk has represented to the City the ability to provide construction management services and to construct the Project, and based on this representation the City intends to engage the CM@Risk to provide these services and construct the Project; and

WHEREAS Resolution No. R-2021-27 executed on the 23rd day of January 2022, authorizing an agreement, by and between City and CM@Risk to perform Design Phase Services, whereby those services shall continue during the administration of this Agreement; and

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, the City and the CM@Risk hereby agree as follows:

Article 1 - Definitions

“Agreement (“Contract”) - shall mean this written document signed by the City and CM@Risk, as may be amended, covering the construction phase of the Project, which shall include any and all other documents referenced herein, attached hereto and made part of this Contract.

“As-Built Drawings” - shall mean the revised set of drawings provided by the CM@Risk, at any stage of the Work.

“Authorized Changes” – shall mean changes to the Work authorized by the City by Change Order, Change Directive or Field Order.

“Change Directive” - shall mean a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time. A sample Change Directive is attached hereto and incorporated by reference herein as Exhibit E.

“Change Order” - shall mean an amendment to this Agreement after execution hereof, including any and all amendments in writing and agreed to by the parties herein, to the GMP Plans and Specifications. A sample Change Order is attached hereto and incorporated by reference herein as Exhibit F.

“Change Proposal” - shall mean a written request by CM@Risk, duly submitted in accordance with the requirements of the Contract Documents requesting an adjustment in the Contract Price and/or Contract Time.

“CM@Risk's Contingency” - shall mean a sum included in the GMP that is not allocated to any item in the Cost of the Work. It shall be for CM@Risk's use as may be required for costs incurred in the Work from unforeseen causes or details that could not have been anticipated by the CM@Risk at the time of the City's approval of the GMP, provided however that the CM@Risk Contingency shall not be used for changes in the Work.

“Contract Documents” - shall mean this Agreement (also referred to as the “Prime Contract”), the Design Phase Contract and any and all modifications and amendments thereto, and all conditions, requirements, specifications, drawings and addendum, and all modifications and amendments, thereto.

“Construction Documents” - shall mean the Project Manual developed for the construction of the Project, including the plans, specifications, and drawings prepared by the Design Professional (herein defined below) and issued as approved for construction, signed and acceptable for permitting by the Design Professional.

“Construction Contract Timeline” - shall mean the Days as set forth herein at Article 4 for the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion and Final Acceptance (as defined herein below) of the Work (as defined herein below).

“Construction Fee” - shall mean the lump sum amount for CM@Risk's administrative costs for branch or home office overhead, and profit.

“Contract Price” – shall mean the value of services provided under this Agreement as defined herein at Article 5 and articulated in the Schedule of Values. Contract Price shall be the total of the amount in the Guaranteed Maximum Price (“GMP”) Proposal as approved by the City, plus an amount for Owner's Contingency as determined by the City, as may be adjusted by a Change Order.

“Cost of the Work” - shall mean the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk’s Construction Fee, General Conditions Costs or CM@Risk’s Contingency.

“Critical Path Schedule” - shall mean the longest sequence of activities from the start of the Work to the Substantial Completion of the Project.

“Day(s)” - shall mean calendar days unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” - shall mean the agreement between the City and CM@Risk for Services provided by the CM@Risk during the design phase of the Project.

“Design Professional” shall mean a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project and is responsible for the design of all portions of the Project and the preparation of drawings and specifications for the construction of the Project.

“Differing Site Conditions” - shall mean concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Field Order” - shall mean a document issued by the Resident Project Representative or Design Professional requiring changes in the Work that do not change the Contract Price or Contract Time except as provided in Section 6.3.4.

“Final Acceptance” - shall mean the completion of the Work in accordance with Section 4.2.8 herein.

“Final Record Drawing” – During the progress of the Work the CM@Risk must keep one set of prints marked to show the final location, final grades, sizes and types of various facilities, equipment, piping, valves, instruments and other major items of the Work. The CM@Risk must furnish to the Design Professional this set of prints, the “As-Built”, which shall include all the redlines, if applicable. That shows the Project as constructed, before the Owner releases the final payment to the CM@Risk. The Design Professional will use this set of “As-Built” drawings to develop the Record Drawings.

“Float” -shall mean the number of Days that an activity can be delayed without lengthening the Critical Path Schedule and extending the Substantial Completion date.

“General Conditions Costs” - shall mean costs for the CM@Risk during the construction phase as defined in Section 5.5.3.

“Guaranteed Maximum Price” or “GMP” shall mean the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, and CM@Risk’s Contingency including authorized adjustments.

“GMP Proposal” shall mean the proposal submitted by CM@Risk that sets forth its Guaranteed Maximum Price and all assumptions and/or clarifications concerning the Contract Documents and Project upon which the GMP is based.

“GMP No. 1” - shall mean the first GMP. Additional GMP Proposals will be indicated by a sequential GMP No. based on the sequence for which they are developed and submitted.

“GMP Plans and Specifications” - shall mean the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

“Legal Requirements” - shall mean all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work or performance of this Contract.

“Notice to Proceed” or “NTP” - shall mean the directive issued by the City, authorizing the CM@Risk to start the Project.

“Owner’s Contingency” -shall mean a fund to cover cost growth during the Project to be used at the discretion of the City for costs associated with the City’s directed changes, or unforeseen site conditions.

“Owner’s Project Team” (“OPT”) – shall mean the Design Professional and consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to City.

“Performance Period” -shall mean the period of time allotted in the Contract Documents to Substantially Complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP Proposal and shown on the Project Schedule.

“Payment Request” - shall mean the City form, attached hereto and incorporated herein for reference as Exhibit F, used by the CM@Risk to request progress payments for Work in accordance with Article 7 herein.

“Product Data” - shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

“Project” - shall mean the Work to be completed under the terms and conditions of this Agreement, and in Exhibit A attached hereto, and as both may be amended by the parties hereof.

“Project Manual” - shall mean a portion of the Contract Documents usually consisting of information published about the Project site and conditions under which the Project Improvements are to be constructed, contractual terms and conditions and technical specifications relating to construction of the Project Improvements.

“Project Record Documents” - shall mean the documents created pursuant to Section 2.10 herein.

“Resident Project Representative” – Resident Project Representative (RPR) shall mean the Design Professional’s representative at the project site, acting as directed by and under the supervision of the Design Professional. RPR shall act as liaison with CM@Risk, and provide construction contract administration, review of work, construction inspection, rejection of defective work, coordination of Quality Control inspections and tests.

“Samples” - shall mean physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

Schedule of Values (SOV) – shall mean the document which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

“Shop Drawings” - shall mean drawings, diagrams, schedules, and other data specially prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” - shall mean the land or premises on which the Project is located.

“Specifications” - shall mean the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP proposal.

“Subcontractor” - shall mean an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

“Substantial Completion” - shall mean when the Work is sufficiently complete pursuant to the requirements of the Contract Documents to the City’s sole satisfaction, to enable City to occupy and use the Project.

“Supplier” - shall mean a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated into the construction phase of the Work by CM@Risk or any Subcontractor.

“Work” - shall mean the entire construction of the Project and/or the various separately identifiable parts thereof required in this Agreement to be furnished during the construction phase. Work shall be performing or furnishing labor and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Article 2 - CM@Risk's Services and Responsibilities

- 2.1.** CM@Risk understands and agrees that it shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work required by the Contract Documents, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Bastrop, Texas. The Work shall be to the sole satisfaction of the City, strictly pursuant to and in conformity with the Project's Contract Documents and as may be modified in writing and agreed to by the Parties herein. It is not required that the services be performed in the sequence in which they are described. The CM@Risk shall not be entitled to an increase in the GMP, as hereinafter described in Article 5, due to the absence of any detail or specification CM@Risk could have reasonably inferred would be required for any construction or that may be reasonably inferred, as the Work progresses in order to complete the construction of the Project, except as otherwise provided in the Contract Documents. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system, necessary to make a complete operating installation shall be provided whether detailed or specified, omitting only such parts as are specifically excepted by the City.
- 2.2. General Services**
- 2.2.1.** CM@Risk understands and agrees that notwithstanding anything to the contrary herein, City and CM@Risk hereby agree and acknowledge that the City is entering into this Agreement in reliance on CM@Risk's special and unique abilities with respect to performing its obligations hereunder, and CM@Risk hereby acknowledges, understands and accepts the relationship of trust and confidence established between it and the City by this Agreement. CM@Risk hereby covenants with City to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of City in accordance with City's requirements and procedures, and in compliance with all applicable, federal, state, and local municipal laws, regulations, codes, ordinances, orders and with those of any other governmental or quasi-governmental body or agency, having jurisdiction over the Project or this Contract. CM@Risk hereby warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the services required hereunder.
- 2.2.2.** CM@Risk hereby warrants that its Representative as defined in Section 8.4.2 herein shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City, which consent shall not be unreasonably withheld.
- 2.2.3.** CM@Risk understands and agrees that it shall utilize the Project Management Information System (PMIS), defined herein as one or more software applications and a methodical process for collecting and using Project information for management, processing, workflow, storage and status reporting of all construction related documentation, said PMIS being provided and maintained by the Design Professional.
- 2.2.4.** The CM@Risk warrants, represents, covenants, and agrees that all persons connected with the CM@Risk who are directly in charge of its services under this Agreement are duly registered and/or licensed under the laws, rules and regulations and have the requisite training and skill to perform their role.

2.3. Government Approvals and Permits

- 2.3.1.** CM@Risk understands and agrees that unless otherwise provided, CM@Risk shall obtain or assist the City in obtaining all permits, approvals and licenses required for the performance of the Work from any government or quasi-governmental entity or agency having jurisdiction over the Project. The CM@Risk shall obtain the required storm water pollution prevention plan permit and the City, with assistance of Design Professional, shall obtain all other environmental permits.
- 2.3.2.** CM@Risk understands and agrees to furnish copies of these permits and notices to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. Notwithstanding anything to the contrary herein, CM@Risk further understands and agrees that City shall not be liable for any violation by CM@Risk of any permits or notice requirements and shall not be liable for CM@Risk's inability to acquire any permits specifically delegated to CM@Risk in the Contract Documents. CM@Risk shall immediately notify City in writing of any difficulties or inability to acquire any permits.
- 2.3.3.** CM@Risk understands and agrees that City shall be responsible for all City of Bastrop review and permit(s) fees for building and demolition permits. City shall pay for review and permit fees for grading and drainage, water, sewer right-of-way and landscaping. City shall also pay for utility design fees for permanent services.
- 2.3.4.** CM@Risk understands and agrees that all other permit and review fees required by City ordinance, not specifically listed in Division 2.3.3 herein above shall also be waived by City. City shall be responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Final Completion of the Project. CM@Risk shall also be responsible for temporary arrangements (e.g., piping, equipment) to provide for construction water.

2.4. Pre-construction Conference

- 2.4.1.** CM@Risk understands and agrees that prior to the commencement of any Work, the RPR shall schedule a pre-construction conference.
- 2.4.2.** CM@Risk understands and agrees that the purpose of this conference is to establish a working relationship between the CM@Risk, OPT, various City agencies, and utility firms. The agenda will include, but may not be limited to, critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and communication protocols, contact information for routine communication and emergency contacts for all parties involved in the course of construction.
- 2.4.3.** The CM@Risk understands and agrees that it shall provide a Schedule of Values based on the categories used in the buyout of the Work but said Schedule of Values shall not be greater than the approved GMP, and shall identify the CM@Risk's Contingency. The Schedule of Values shall subdivide the Work into all items comprising the Work.
- 2.4.4.** CM@Risk understands and agrees that minimum attendance by the CM@Risk shall be by the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the project manager, the job superintendent, and the CM@Risk's safety officer.

2.5. Control of the Work

- 2.5.1.** CM@Risk understands and agrees that unless otherwise provided in the Contract Documents CM@Risk shall provide the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit

completion of the Work consistent with the Contract Documents.

- 2.5.2.** CM@Risk understands and agrees that it shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents to the City's sole satisfaction. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.5.3.** CM@Risk understands and agrees that it shall prepare bid documents and assist the City to publicly advertise and receive proposals from subcontractors for the performance of all major elements of the Work other than the minor work that may be included in the general conditions.
- 2.5.4.** CM@Risk understands and agrees that it may seek to self-perform portions of the Work if it submits its proposal for those portions of the Work in the same manner as all other subcontractors, and if City determines that the CM@Risk's proposal provides the best value for the City. CM@Risk further understands and agrees that in the event CM@Risk submits a proposal for any portion of the Work, it shall not review any subcontractor proposals submitted or determine which proposal provides the best value for the City for that particular portion of the Work.
- 2.5.5.** CM@Risk understands and agrees that for those portions of the Work that CM@Risk does not submit a proposal, CM@Risk shall review all subcontractor proposals in a manner that does not disclose the contents of proposal during the selection process to a person not employed by the CM@Risk, Design Professional, or City. All proposals shall be made available to the City upon request, and to the public after the award of the contract or the seventh day after the date of final selection of proposals, whichever is later.
- 2.5.6.** CM@Risk understands and agrees that for those portions of the Work that CM@Risk does submit a proposal, City shall review all proposals and determine which proposal provides the best value for the City. All proposals shall be made available to the CM@Risk upon request, and to the public after the award of the contract or the seventh day after the date of final selection of proposals, whichever is later.
- 2.5.7.** CM@Risk understands and agrees that if after CM@Risk reviews, evaluates, and recommends to the City a proposal from a subcontractor but the City determines another proposal will provide the best value to the City and requires another proposal to be accepted by the CM@Risk, the City shall compensate the CM@Risk by a change in GMP for any additional cost that the CM@Risk incurs because of the City's requirement that another proposal be accepted. However, this section will only apply if the GMP is provided to City prior to the bids being received. CM@Risk and City both agree that in the event an issue arises regarding a price change, CM@Risk will notify City in writing and the parties shall negotiate any change in price.
- 2.5.8.** CM@Risk understands and agrees that it shall provide written notice to City in advance of the identities of all Subcontractors with which it intends to subcontract. CM@Risk shall not subcontract with any Subcontractor without City's express written approval of said Subcontractor, which said approval shall not be unreasonably withheld. Such notice shall be given sufficiently in advance to permit City adequate time for review without delay to the Project and allowing time for CM@Risk to make substitute selections, but in no event shall such notice be given less than ten (10) days before the intended subcontract date. CM@Risk shall notify City in writing prior to soliciting proposals from potential subcontractors. CM@Risk's shall not change Subcontractors after City approval for constructing the Work without City's prior written approval, which shall not be unreasonably withheld. CM@Risk also understands and agrees that it shall not incur any subcontract costs prior to issuance by City of Notice to Proceed for such Work. CM@Risk further understands and agrees that it shall not receive payment for any unauthorized Work or Work performed prior to issuance by City of the Notice to Proceed.

- 2.5.9.** CM@Risk understands and agrees that its superintendent or other authorized representative with the requisite expertise, skill and competence to execute the work shall be present at the Site at all times during construction activities.
- 2.5.10.** CM@Risk understands and agrees that all elements of the Work shall be under the direct supervision of CM@Risk's designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the Work. Failure to comply with this provision may result in a stop or suspension of the Work by the City, pursuant to and in accordance with Article 9 hereof. CM@Risk understands and acknowledges that where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 2.5.11.** CM@Risk acknowledges and agrees that prior to ordering materials or doing the Work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP shall be allowed because of any differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, that are identified, shall be submitted to the OPT for resolution prior to proceeding with the Work.
- 2.5.12.** The CM@Risk understands and agrees to take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents prior to commencing activities hereunder. Any errors, inconsistencies, or omissions discovered shall be reported to the OPT immediately upon discovery.
- 2.5.13.** The CM@Risk understands and agrees to establish and maintain all primary building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. CM@Risk also agrees that this element of the Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Texas hired by CM@Risk and approved by the City.
- 2.5.14.** CM@Risk understands and agrees that any person employed by the CM@Risk or any Subcontractor who, in the sole opinion of the City, does not perform their work in a proper, skillful, and safe workmanlike manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person and shall not be employed again in any portion of Work without the express written approval of the City.
- 2.5.15.** CM@Risk agrees to assume responsibility for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.5.16.** CM@Risk shall coordinate the activities of all Subcontractors. CM@Risk understands and agrees that if City performs other work unrelated to this Contract on the Project or at the Site with separate contractors under City's control, CM@Risk shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without any disruption in the Work to be performed hereunder.

2.6. Control of the Work Site

- 2.6.1.** CM@Risk understands and agrees that throughout all phases of construction, including suspension of Work, it shall keep the Site reasonably free from debris, trash and construction and any and all other wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. CM@Risk also agrees that upon Substantial Completion of the Work, or a portion of the Work, it shall remove all debris,

trash, construction and any and all other wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

- 2.6.2. CM@Risk understands and agrees that it shall take all reasonable steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the sole satisfaction of the City and in accordance with all Legal Requirements.
- 2.6.3. CM@Risk understands and agrees that it shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk also understands and agrees that it shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 2.6.4. CM@Risk understands and agrees that only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site. CM@Risk also understands and agrees that when equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the CM@Risk.
- 2.6.5. CM@Risk understands and agrees that it shall maintain at the Project site and make available to City when reasonably requested, updated records of subcontractors, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspections procedures (as prepared by others), changes to Contract Documents, time extensions, progress payment data, Final Acceptance procedures, and instructions from City.

2.7. Shop Drawings, Product Data and Samples

- 2.7.1. CM@Risk understands and acknowledges that Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. CM@Risk understands and acknowledges that the purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way CM@Risk proposes to conform to the information provided and the design concept expressed in the Contract Documents.
- 2.7.2. CM@Risk understands and agrees that it shall review, approve, verify, and submit to the Design Professional all Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B. CM@Risk understands and acknowledges that submittals made by the CM@Risk that are not required by the Contract Documents may be returned without action.
- 2.7.3. CM@Risk understands and agrees that it shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the OPT. Such Work shall be in accordance with approved submittals.
- 2.7.4. CM@Risk understands and agrees that by approving, verifying, and submitting Shop Drawings, Product Data, Samples and similar submittals, it represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5. CM@Risk understands and agrees that CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the approval by the OPT of Shop

Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the OPT in writing of such deviation at the time of submittal and the OPT has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the OPT's approval thereof.

- 2.7.6.** CM@Risk understands and agrees that CM@Risk shall inform OPT in writing of any revisions to Shop Drawings, Product Data, Samples, or similar submittals, other than those previously requested by the OPT.
- 2.7.7.** CM@Risk understands and acknowledges that informational submittals upon which the OPT is not expected to take responsive action shall be identified as such in the Document Control Process as set forth in the Contract Documents.
- 2.7.8.** CM@Risk understands and agrees that when professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the OPT shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 2.8. Quality Control, Testing and Inspection**
- 2.8.1.** CM@Risk understands and agrees that all materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents and approved Shop Drawings and Product Data.
- 2.8.2.** CM@Risk understands and agrees that all construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances, or methods to be used in the Work may be subject to the inspection and approval or rejection by the City within City's sole discretion. CM@Risk also understands and agrees that any material rejected by the City shall be removed immediately and replaced in a manner acceptable to City.
- 2.8.3.** CM@Risk understands and agrees that the procedures and methods used to sample and test material shall be solely determined by the City.
- 2.8.4.** CM@Risk understands and acknowledges that the City shall select a pre-qualified Independent Testing Laboratory and shall pay for the initial City acceptance testing. Work of Independent Testing Laboratory shall be observed and coordinated by the Resident Project Representative and interpreted by the OPT.
- 2.8.5.** CM@Risk understands and agrees that any tests indicating noncompliance with the Contract Documents shall be retested, and the cost of retesting shall be the responsibility of CM@Risk. CM@Risk also understands and agrees that CM@Risk's Contingency shall not be utilized for the cost of re-testing.
- 2.8.6.** CM@Risk understands and agrees that all retesting shall be performed by the same testing agency.
- 2.8.7.** CM@Risk understands and agrees to cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide reasonable access to the Work upon request.
- 2.8.8.** CM@Risk understands and agrees that at the option of the City, materials may be approved at the source of supply before delivery begins.
- 2.8.9.** CM@Risk understands and agrees that Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents.

2.8.10. CM@Risk understands and agrees that CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of CM@Risk.

2.9. Trade Names and Substitutions

2.9.1. CM@Risk understands and agrees that substitutions and alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, may be permitted, subject to the following:

2.9.1.1 CM@Risk understands and agrees that the substitution shall be submitted by CM@Risk in writing for approval by the OPT.

2.9.1.2 CM@Risk understands and agrees that it shall certify that the substitution will perform the functions and achieve the results required by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.9.1.3 CM@Risk understands and agrees that the submittal shall state any required changes in the Contract Documents to adapt the design of the proposed substitution.

2.9.1.4 CM@Risk understands and agrees that the submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including an estimate of the cost of design, license fees, royalties, and testing. The submittal shall also include any adjustment in the Contract Time created by the substitution.

2.9.2 CM@Risk understands and agrees that CM@Risk, if requested by the OPT, shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.9.3 CM@Risk understands and agrees that the decision shall be solely the City's decision based on analysis and recommendation of the OPT. OPT shall notify CM@Risk in writing as to whether the substitution has been accepted or rejected. If the OPT does not respond in a timely manner, CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution shall be considered rejected.

2.10. Project Record Documents

2.10.1. CM@Risk understands and agrees that during the construction period, it shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes. Said Construction Document drawings shall be updated and made available to City for verification on a monthly basis from the date of first submission.

2.10.2. CM@Risk understands and agrees that it shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall specifically indicate information on concealed elements that would be difficult to identify or measure and record later. Items required to be indicated and marked shall include, but are not limited to the following:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

2.10.3. CM@Risk understands and agrees that it shall mark completely and accurately Project

Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents' location.

- 2.10.4.** CM@Risk understands and agrees that CM@Risk shall be responsible for the creation of record and as-built drawings as the work progresses, and the procurement of warranties and guarantees. CM@Risk shall also mark Project Record Drawings sets with red erasable colored pencil.
- 2.10.5.** CM@Risk understands and agrees that CM@Risk shall note RFI Numbers, Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- 2.10.6.** CM@Risk understands and agrees that CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the OPT for review and comment.
- 2.10.7.** CM@Risk understands and agrees that upon receipt of the reviewed Project Record Drawings from the OPT, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and re-submit to the OPT within fourteen (14) Days.
- 2.10.8.** CM@Risk understands and agrees that Final Record Drawings shall be produced by Design Professional.

2.11. Project Safety

- 2.11.1.** CM@Risk understands and acknowledges the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.11.2.** CM@Risk understands and agrees that it shall be responsible for implementing and monitoring all safety precautions and programs related to the performance of the Work. CM@Risk also understands and agrees that it shall review the safety programs developed by each of the subcontractors and prepare and submit to the OPT its comprehensive safety program that complies with all Legal Requirements upon completion of the document outlining and describing the program. CM@Risk shall also ensure compliance by the Subcontractors of their contractual safety requirements.
- 2.11.3.** CM@Risk understands and agrees that it shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.
- 2.11.4.** CM@Risk understands and agrees that the Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors, and others as applicable.
- 2.11.5.** CM@Risk understands and agrees that it and its Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate or conflict with any applicable Legal Requirement. In the event of any conflict or violation, the Legal Requirement shall supersede and control.
- 2.11.6.** CM@Risk understands and agrees that CM@Risk shall immediately report in writing to the RPR any safety-related injury, loss, damage, or accident arising from the Work and, to the

extent mandated by Legal Requirements, to all government or quasi-governmental authorities or agencies having jurisdiction over safety- related matters involving the Project or the Work.

2.12. Warranty

- 2.12.1. CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.
- 2.12.2. CM@Risk's warranty obligation for the Work shall be for one (1) year from the date of Substantial Completion of the Work.
- 2.12.3. CM@Risk understands and agrees that nothing in this warranty is intended to limit any manufacturer's warranty that provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk shall provide City with all manufacturers' warranties upon Substantial Completion.

2.13 Correction of Defective Work

- 2.13.1. CM@Risk understands and agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to Section 2.12 above, within a period of one (1) year from the date of Substantial Completion of the Work, or within such longer period to the extent required by the Contract Documents. CM@Risk also understands and agrees that any payments, or partial or the entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in conformance with the Contract Documents.
- 2.13.2. During the Work, CM@Risk understands and agrees that it shall commence correction of such nonconforming Work upon written notification by the OPT. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. CM@Risk further understands and agrees that if it fails to commence correction upon written notice, City, in addition to any other remedies provided under the Contract Documents, may, but shall not be obligated to correct such nonconforming Work itself.
- 2.13.3. CM@Risk understands and agrees that it shall, commence correction of nonconforming Work within seven (7) Days of receipt of written notice from OPT.
- 2.13.4. If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.
- 2.13.5. If City does perform such corrective Work or commence performance within the time prescribed above in Sub-Sections 2.13.3 and 2.13.4, CM@Risk understands and agrees that it shall be responsible for all reasonable costs incurred by City in performing such correction.
- 2.13.6. The one (1) year period referenced in Division 2.13.1 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

Article 3 - City's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations, and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.2** City shall coordinate with and furnish at CM@Risk's request at no cost to the CM@Risk, a CADD file of the Construction Documents in a format compatible with City of Bastrop Engineering CADD technology.

3.2 City's Representative

- 3.2.1** City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.
- 3.2.2** City's Representative shall also provide CM@Risk with written notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default, defect in the Project, non-conformance, or breach of any of the Contract Documents. CM@Risk understands and acknowledges that failure of City to provide notice, in writing or otherwise, of any failure, default, defect, non-conformance, or breach does not waive City's rights to any remedies it possesses at law or in equity against CM@Risk for its failure, default, defect, non-conformance, or breach of the Contract Documents. Likewise, City understands and acknowledges that failure of CM@Risk to provide notice, in writing or otherwise, of any failure, default, defect, non-conformance, or breach does not waive CM@Risk's rights to any remedies it possesses at law or in equity against City for its failure, default, defect, non-conformance, or breach of the Contract Documents.
- 3.2.3** The City may utilize a Resident Project Representative (RPR) of the Design Professional to assist the City during construction in observing the performance of CM@Risk. The RPR is for the purpose of assisting the City and shall not be confused with any inspector from a City regulatory agency.
- 3.2.4** Through onsite observation of the Work in progress and field checks of materials and equipment, the RPR shall monitor CM@Risk's performance for any and all defects and deficiencies in the Work.
- 3.2.5** The RPR shall be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- 3.2.6** The RPR shall not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman or representative for CM@Risk.
- 3.2.7** The RPR shall have the authority to reject work or materials. Any disputes or issues regarding the RPR's rejection of work or materials shall be resolved by the City's representative.
- 3.2.8** CM@Risk understands and agrees that in providing said Construction Management services, City shall not be responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3 Permit Review and Inspections.

3.3.1 CM@Risk understands and acknowledges that agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements. Said enforcement activities are not subject to any of the provisions of this Contract.

Article 4 - Contract Time

4.1. Contract Time.

- 4.1.1.** CM@Risk understands and agrees that Notice to Proceed or “NTP” shall be issued by the City within fourteen (14) days upon agreement between the parties on the GMP, establishing the commencement date for the Project authorizing the CM@Risk to start the Work as described herein. Such notice shall be provided to the CM@Risk at least seven (7) days prior to the commencement date stipulated herein and shall be provided no later than thirty (30) days after the GMP Proposal and all the required documentation is received by the City.
- 4.1.2.** CM@Risk understands and agrees that Contract Time shall start with the commencement date established in the Notice to Proceed and end with Substantial Completion.
- 4.1.3.** CM@Risk understands and agrees that if Project involves more than one GMP, each GMP shall establish a separate commencement date, date of Substantial Completion and Performance Period. The Performance Periods may not be sequential and may run concurrently.
- 4.1.4.** CM@Risk understands and agrees that it shall commence performance of the Work and achieve the Performance Periods and Contract Time by the commencement date specified in the NTP.
- 4.1.5.** CM@Risk understands and agrees that all of the times set forth in this Article 4 shall be subject to adjustment in accordance with and as permitted by Article 6 herein, including but not limited to changes in Contract Times due to Project delays, including errors, discrepancies, omissions, changes in work, Legal Requirements, Change Directives and orders, emergencies and/or acts of God.

4.2. Substantial Completion

- 4.2.1.** CM@Risk understands and agrees that Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed, which may include, but is not limited to:
- 4.2.1.1.** approval by City Fire Marshall and local authorities (issuance of Certificate of Occupancy, if applicable);
- 4.2.1.2.** all systems in place, constructed and functional as required by the contract documents, and displayed to the City or its representative;
- 4.2.1.3.** all materials and equipment installed;
- 4.2.1.4.** all systems reviewed and accepted by the City;
- 4.2.1.5.** all O&M materials, draft O&M manual and As-built documents reviewed and accepted by the City;
- 4.2.1.6.** City operation and maintenance training complete;
- 4.2.1.7.** ability to meet all applicable regulatory permit requirements;
- 4.2.1.8.** HVAC test and balance completed; and
- 4.2.1.9.** site work.
- 4.2.2.** Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter.
- 4.2.3.** CM@Risk understands and agrees that prior to notifying the RPR in accordance with Division 4.2.4 herein below, the CM@Risk shall inspect the Work and prepare and submit to the RPR a comprehensive list of items to be completed or corrected. The CM@Risk shall submit the completed and corrected items on the list within thirty (30) days of the issuance of the Certificate of Substantial Completion or as otherwise agreed to by the parties. CM@Risk further agrees that failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

- 4.2.4.** CM@Risk shall notify RPR when it believes the Work, or to the extent permitted in the Contract Documents, is Substantially Complete.
- 4.2.5.** CM@Risk understands and acknowledges that within five (5) days of RPR's receipt of CM@Risk's notice, City, RPR, Design Professional and CM@Risk shall jointly inspect said Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents.
- 4.2.6.** CM@Risk understands and agrees that if said Work is Substantially Complete, City shall prepare a Certificate of Substantial Completion upon recommendation of the RPR and Design Professional, which shall be defined herein as a document that will set forth:
- 4.2.6.1.** The date of Substantial Completion of the Work or portion thereof, which shall be the date of CM@R's notice if Substantial Completion has been achieved; and
- 4.2.6.2.** A list of remaining items of Work that shall be completed within thirty (30) days before Final Acceptance or as otherwise agreed to by the parties.
- 4.2.6.3.** Provide an acknowledgment that all warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.2.7.** CM@Risk understands and agrees that City, at its option, may use a portion of the Work that has been determined to be Substantially Complete, provided, however, that:
- 4.2.7.1.** A Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.2.6 herein above.
- 4.2.7.2.** CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
- 4.2.7.3.** City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.
- 4.2.8.** CM@Risk understands and agrees that upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City, RPR, Design Professional and CM@Risk shall jointly inspect to verify that the remaining items of Work have been completed as set forth in Division 4.2.6 herein above. The City based on the RPR's and Design Professional's letter of recommendation of Final Acceptance shall issue a Final Acceptance Letter and payment pursuant to Section 7.5 herein below.
- 4.3. Liquidated Damages.**
- 4.3.1.** CM@Risk understands and acknowledges that if Substantial Completion is not accomplished within the Contract Time as adjusted, City will suffer damages difficult to determine and accurately specify. CM@Risk further acknowledges and agrees that if Substantial Completion is not accomplished within the Contract Time as adjusted, CM@Risk shall pay the City \$4,250.00 (Four Thousand, Two Hundred Fifty Dollars) as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted. Such liquidated damages shall be the City's sole and exclusive remedy for CM@R's delay in reaching Substantial Completion.
- 4.3.2.** CM@Risk understands and acknowledges that if Final Completion is not accomplished within the Contract Time as adjusted, City will suffer damages difficult to determine and accurately specify. CM@Risk further acknowledges and agrees that if Final Completion is not accomplished within the Contract Time as adjusted, CM@Risk shall pay the City \$1,500.00 (One Thousand Five Hundred Dollars) as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted. Such liquidated damages shall be the City's sole and exclusive remedy for CM@R's delay in reaching Final Completion.
- 4.4. Project Schedule**
- 4.4.1.** CM@Risk understands and agrees that the Project Schedule approved as part of a GMP

shall be updated and maintained throughout the Work.

- 4.4.2.** CM@Risk understands and agrees that the Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.
- 4.4.3.** CM@Risk understands and agrees that updated Project Schedules shall be submitted monthly to the City as part of the Payment Request as specified in Article 7.1.
- 4.4.4.** CM@Risk understands and agrees that it shall provide OPT with a monthly status report with each Project Schedule detailing the progress of the Work, including:
- 4.4.4.1.** Whether the Work is proceeding in accordance with the Project Schedule.
- 4.4.4.2.** Whether any discrepancies, conflicts, or ambiguities are found to exist in the Contract Documents that require resolution; and
- 4.4.4.3.** Whether other items require resolution so as not to jeopardize CM@Risk's ability to complete the Work as presented in the GMP proposal and within the Contract Time.
- 4.4.5.** CM@Risk understands and agrees that with each Project Schedule submittal, it shall include a transmittal letter including the following:
- 4.4.5.1.** Description of problem tasks (referenced to field instructions, requests for information (RFIs)), as appropriate.
- 4.4.5.2.** Current and anticipated delays including:
- o Cause of the delay
 - o Corrective action and schedule adjustments to correct the delay
 - o Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion.
- 4.4.5.3.** Changes in the sequence of construction of the Work and resulting changes in the Critical Path Schedule logic.
- 4.4.5.4.** Pending items and status
- 4.4.5.5.** Substantial Completion date status:
- o If ahead of schedule, the number of calendar Days ahead.
 - o If behind schedule, the number of calendar Days behind.
- 4.4.5.6.** Other project or scheduling concerns
- 4.4.6.** CM@Risk understands and agrees that OPT's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. Said review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.
- 4.4.7.** CM@Risk understands and acknowledges that the Project Schedule shall include a Critical Path Method (CPM) diagram schedule, as described herein below, that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path activities. Any delay in the start or completion of a Critical Path activity by definition will impact the Substantial Completion date of the project.
- 4.4.8.** CM@Risk understands and acknowledges that the CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 4.4.8.1.** CM@Risk understands and acknowledges that the CPM diagram schedule shall indicate all relationships between activities.
- 4.4.8.2.** CM@Risk understands and acknowledges that the activities making up the schedule shall be in sufficient detail to assure that adequate planning has been completed for proper

execution of the Work and that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

- 4.4.8.3.** CM@Risk understands and acknowledges that the CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.
- 4.4.8.4.** CM@Risk understands and acknowledges that the CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.4.8.5.** CM@Risk understands and acknowledges that the Project Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 4.4.8.6.** CM@Risk understands and acknowledges that the Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of this Agreement and/or the Contract Documents. CM@Risk further acknowledges that the duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. CM@Risk agrees that weather data shall be based on information provided by the National Weather Services or other approved source.
- 4.4.8.7.** CM@Risk understands and acknowledges that the Project Schedule shall consider the Contract Times in accordance with Article 6 hereunder.

- 4.4.9.** Float time shall be as prescribed below.
- 4.4.9.1.** CM@Risk understands and acknowledges that the total Float within the overall Project Schedule is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project Contract Time.
- 4.4.9.2.** CM@Risk understands and agrees that it shall not sequester shared Float through such tactics as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. CM@Risk further agrees that since Float time within the Project Schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs that extends the Work beyond the Substantial Completion date.
- 4.4.9.3.** CM@Risk understands and agrees that since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes that result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk agrees it shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

Article 5- Contract Price

- 5.1. Contract Price**
- 5.2.** CM@Risk understands and agrees to perform all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP Proposal at its own proper cost and expense.
- 5.3.** CM@Risk understands and agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total Work will be made based on the indicated amount(s), per the terms and conditions of this Agreement.
- 5.4.** CM@Risk understands and agrees that Contract Price shall be as approved in the Guaranteed Maximum Price Proposal, attached hereto as Exhibit B, plus an amount for Owner's Contingency as determined by the City, as adjusted by change order.
- 5.5.** CM@Risk understands and agrees that the Guaranteed Maximum Price shall be composed of the following not-to-exceed cost reimbursable or lump sum amounts, including Authorized Changes in Contract Price by Change Order as defined in Article 6 herein below:
- 5.5.1.** CM@Risk understands and agrees that Cost of the Work shall mean the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee, General Conditions Costs or CM@Risk's Contingency.
- 5.5.2.** CM@Risk understands and agrees that Construction Fee is the lump sum amount for CM@Risk's administrative costs for branch or home office overhead, and profit.
- 5.5.3.** CM@Risk understands and agrees that General Conditions Cost is the lump sum amount for the CM@Risk costs during the construction phase including:
- 5.5.3.1** Payroll costs for project manager for CM@Risk for work conducted at the site.
- 5.5.3.2** payroll costs for the superintendent and full-time general foremen.
- 5.5.3.3** payroll costs for other management personnel resident and working at the site.
- 5.5.3.4** workers not included as direct labor costs engaged in support (e.g., loading/unloading, clean-up, etc.).
- 5.5.3.5** costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses.
- 5.5.3.6** costs of utilities, fuel, sanitary facilities, telephone and data services at the site.
- 5.5.3.7** costs of liability insurance premiums not included in labor burdens for direct labor costs.
- 5.5.3.8** costs of bond premiums; and
- 5.5.3.9** costs of consultants not in the direct employ of the CM@Risk or Subcontractors.
- 5.5.4.** CM@Risk understands and agrees that CM@Risk's Contingency shall mean the lump sum amount included in the GMP that is not allocated to any item in the Cost of the Work. It shall be for CM@Risk's use as may be required for costs incurred in the Work from unforeseen causes or details that could not have been anticipated by the CM@Risk at the time of the City's approval of the GMP, provided however that the CM@Risk Contingency shall not be used for changes in the Work.

5.6. Contract Price

Guaranteed Maximum Price

	29,616,768
Cost of Work	\$
Construction Fee	\$ 2,369,341
General Conditions	\$ 2,310,108
CM@Risk's Contingency	\$ 1,000,000
Total GMP Price	\$ 35,296,217
Owner's Contingency	\$ 500,000
Total Contract Price	\$ 35,796,217

(Contract Price - Written Amount)

Thirty-Five Million, Seven Hundred Ninety-Six Thousand, Two Hundred Seventeen and no/00

- 5.6.1. CM@Risk agrees that the Cost of the Work is actual costs and is a not-to-exceed reimbursable amount except for changes as otherwise provided in the Agreement.
- 5.6.2. CM@Risk understands and agrees to be at risk to cover any additional Project costs except for changes as otherwise provided in the Agreement.
- 5.6.3. CM@Risk understands and agrees that any amounts in excess of the actual Cost of the Work and/or CM@Risk's Contingency shall revert to the City except for changes as otherwise provided in the Agreement.
- 5.7.4. CM@Risk understands and agrees that the General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the Contract Documents.
- 5.7.5. CM@Risk understands and agrees that its Contingency is an amount it may use under the following conditions:
 - 5.7.5.1 for increases in the Cost of the Work, upon written approval from City, that are not due to changes in the Work; or
 - 5.7.5.2 for increases in General Condition Costs, upon written approval from City, that are not due to changes in the Work.
- 5.7.6. CM@Risk understands and acknowledges that its Contingency is assumed to be a direct Project cost, so it has received all markups at the time of GMP submission.
- 5.7.7. CM@Risk understands and acknowledges that when it utilizes its Contingency funds, it shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk agrees that it shall deduct the amount of CM@Risk's Contingency funds used from its Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. CM@Risk agrees that if its Contingency funds are used for a new line item that was not given with the original Schedule of Values, that it will be so indicated.
- 5.7.8. CM@Risk understands and acknowledges that taxes are deemed to include all sales, use, consumer, and other taxes that are applicable to purchases made for the City, legally enacted when negotiations of the GMP were concluded, whether yet effective or merely scheduled to go into effect. CM@Risk further acknowledges that taxes are actual costs and is a not-to-exceed reimbursable amount.
- 5.7.9. CM@Risk understands and acknowledges that when City authorizes use of Owner's Contingency funds, it shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk agrees that it shall deduct the amount of Owner's Contingency funds used from the Owner's Contingency line item and add the same

amount to the line item on the Schedule of Values where the funds were used. CM@Risk agrees that if Owner's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that it will be so indicated. CM@Risk further acknowledges that markups for Construction Fee and taxes shall be applied by the CM@Risk at the time that Owner's Contingency is used.

- 5.7.10.** CM@Risk understands and acknowledges that the GMP is subject to adjustments made in accordance with Article 6 herein below, and by GMP amendments to this Agreement.
- 5.7.11.** CM@Risk understands and acknowledges that GMP amendments are accumulative except for Contingency. CM@Risk further acknowledges that the amount of Contingency for each GMP amendment shall be negotiated separately.
- 5.7.12.** CM@Risk understands and acknowledges that if the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined in accordance with Article 6 herein below. CM@Risk further acknowledges that the markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

Article 6 - Changes to the Contract Price and Time

6.1. Delays to the Work

- 6.1.1.** CM@Risk understands and agrees that if CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.2.** The CM@Risk shall request an increase in the Contract Time by written change proposal including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.
- 6.1.3.** CM@Risk understands and agrees that the events that will entitle CM@Risk to an extension of the Contract Time shall include, but not be limited to, upon City's written approval and in accordance with the Contract Documents, acts or omissions of City or anyone under City's control including separate contractors (collectively Owner-Caused Delay), certain changes in the Work that result in additional scope, Differing Site Conditions, Hazardous Materials, delays by regulating agencies, Force Majeure, which shall mean herein unforeseeable circumstances that prevent someone from fulfilling a contract obligation, and unusual delays in transportation, not reasonably anticipated.
- 6.1.4.** CM@Risk understands and agrees that if adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period and that weather conditions had an adverse effect on progress of Critical Path activities required to be completed on schedule to achieve Substantial Completion.
- 6.1.5.** CM@Risk understands and agrees that permitting CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights or remedies to which the City is entitled at law or in equity.

6.2. Errors, Discrepancies and Omissions

- 6.2.1.** CM@Risk understands and agrees that if CM@Risk observes errors, discrepancies, or omissions in the Contract Documents, it shall promptly notify the Design Professional and request clarification.
- 6.2.2.** CM@Risk understands and agrees that if CM@Risk proceeds with the Work affected by said known errors, discrepancies, or omissions, without receiving such clarifications, it does so at its own risk. CM@Risk further agrees that adjustments involving such circumstances made by CM@Risk prior to clarification by the Design Professional shall be at CM@Risk's risk.

6.3. City Requested Change in Work

- 6.3.1.** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.
- 6.3.2.** Such alterations and changes in the Work shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents subject to an adjustment to the Contract Price and/or Contract Times in accordance with this Article 6.

- 6.3.3.** The City shall request a Change Proposal from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made in writing and shall be based upon a mutually agreed cost and time.
- 6.3.4.** Design Professional may require minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order through RPR. RPR may issue a Field Order for non-technical, administrative issues. CM@Risk shall submit a Change Proposal if it believes that a Field Order justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work described in the Field Order.
- 6.3.5.** If the City and Contractor agree that the change increases or decreases the Contract Price or the time to achieve Substantial Completion, the City will issue a Change Order within thirty (30) days of the decision to equitably adjust the Contract Price or Contract Time. The Contractor must continue the Work pending Contractor's receipt of the City's executed Change Order. Minor changes that are consistent with the scope of Work or do not affect the time for Substantial Completion will not result in a Change Order to increase the Contract Price or to extend the time to achieve Substantial Completion.

6.4. Legal Requirements

- 6.4.1.** The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP proposal, affecting the performance of the Work.

6.5. Change Directives and Change Orders

- 6.5.1.** City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.
- 6.5.2.** All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents.

6.6. Minor Changes in the Work

- 6.6.1.** The City shall have authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly provided that CM@Risk shall submit a Change Proposal if it determines, along with the concurrence of the RPR, that a minor change justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work at issue.
- 6.6.2.** CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.
- 6.6.3.** CM@Risk understands and agrees minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.7. Contract Price Adjustments

- 6.7.1.** CM@Risk understands and agrees the increase or decrease in Contract Price resulting from a change in the Work, Differing Site Conditions, or hazardous materials that could not have been reasonably foreseen by CM@Risk, shall be determined by one or more of the following

methods:

- 6.7.1.1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties; or
- 6.7.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or
- 6.7.1.3. Cost of the Work, General conditions costs, if applicable, and Construction fee.

CM@Risk understands and agrees that if CM@Risk has reasonable knowledge of Hazardous Materials and neither Engineer or CM@Risk recommended further investigation, which causes damage or further damage to the property, than both parties shall share the costs.

- 6.7.2. CM@Risk understands and agrees that the markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal as shown on Exhibit B.
- 6.7.3. CM@Risk understands and agrees that if an increase or decrease cannot be agreed to as set forth in Subsections 6.7.1.1 through 6.7.1.3 herein above, and City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as set forth in this Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.
- 6.7.4. CM@Risk understands and agrees that if City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 herein below.
- 6.7.5. As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.7.6. CM@Risk understands and agrees that if the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk as follows:
 - 6.7.6.1. directs CM@Risk to proceed; and
 - 6.7.6.2. specifies City's interpretation of the services that are to be performed.
- 6.8. **Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

Article 7- Procedure for Payment

- 7.0.** City agrees to pay CM@RISK the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, and CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work hereunder shall be made in accordance with payment provisions detailed below.
- 7.1. GMP Payment Request**
- 7.1.1.** CM@Risk understands and agrees that at the pre-construction conference provided in Section 2.4 hereof, CM@Risk shall submit for City, RPR and Design Professional review and approval a Schedule of Values. The Schedule of Values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2.** CM@Risk understands and agrees that at least five (5) working days prior to the date established for a Payment Request, CM@Risk shall submit an updated Project Schedule and meet with the RPR to review the progress of the Work as reflected on the Payment Request.
- 7.1.3.** CM@Risk understands and agrees that the Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work shall pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment, therefore.
- 7.1.4.** CM@Risk understands and agrees that the Payment Request may request payment for stored equipment and materials, so long as CM@Risk provides evidence of said storage to City's satisfaction, if construction progress is in reasonable conformance with the approved Project Schedule.
- 7.1.5.** CM@Risk understands and agrees that for equipment and materials suitably stored at the Site, the equipment and materials shall be protected by insurance in accordance with the insurance requirements set out in Article 10 hereof, and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment, therefore. CM@Risk shall comply with City's requirements herein and all Legal Requirements on storing and protecting material on Site.
- 7.1.6.** CM@Risk understands and agrees that for materials and equipment stored off the Site and included in the Payment Request, City shall approve the storage in writing upon submission to City of evidence satisfactory to City of said storage. The material and equipment shall be stored within Bastrop County and shall be reasonably accessible for City's inspection. CM@Risk further understands and agrees that it must protect the City's interest and shall include applicable insurance, bonding, storage, and transportation to the Site. CM@Risk shall comply with City's requirements herein and all Legal Requirements on storing and protecting material off Site.
- 7.1.7.** CM@Risk understands and agrees that in addition to any other insurance requirements in Article 10 below, all bonds and insurance required for stored materials shall name the City as the loss payee and an additional insured to the extent of its interest in the stored materials.
- 7.1.8.** CM@Risk understands and agrees that it shall submit payment requests to the City on or about the **5th** day of each month beginning with the first month after the construction Notice To Proceed.
- 7.1.9.** CM@Risk understands and agrees that in addition to the payment procedures described herein, CM@Risk shall submit with each application for payment a Schedule of Values

percent complete along with any receipts, invoices with check vouchers or other documentation of payment, petty cash account information, payrolls, and any and all other documentation that City shall deem necessary to support the amount requested.

7.2. Payment of GMP

7.2.1. CM@Risk understands and agrees that payment shall be made no later than thirty (30) calendar Days after the Payment Request is certified and approved, but in each case less the total of payments previously made and less amounts properly retained under Section 7.3 herein below.

7.2.2. CM@Risk understands and agrees that City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a Payment Request, it shall notify CM@Risk in writing within fourteen (14) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns to City's satisfaction. If the parties cannot resolve said concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.2.3. City shall have the right to withhold from payments due CM@Risk such sums as are necessary to protect City at the City's sole discretion, against any loss or damage which may result in negligence by CM@Risk or failure of CM@Risk to perform CM@Risk's obligations under this Agreement.

7.3. Retention on GMP

7.3.1. CM@Risk understands and agrees that progress payments shall be made in an amount equal to ninety-five percent (95%) of the total earned value to date for completed Work and properly stored materials. The remaining five percent (5%) of the total earned value to date will be held as retainage. City may increase retainage to ten percent (10%) if progress on the Project is considered to be unsatisfactory. City will deposit retainage in excess of 5 percent in an interest-bearing account. Interest earned by that account will be paid to CM@Risk in accordance with Tex. Gov't Code Chapter 2252.

7.3.2. CM@Risk understands and agrees that upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire Work or substantially completed portion of the Work, less an amount up to two- and one-half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.4. Final Payment

7.4.1. CM@Risk understands and agrees that after receipt of a final Payment Request, City shall make final payment sixty (60) days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.4.2. CM@Risk understands and agrees that at the time of submission of its final Payment Request, CM@Risk shall provide the following information:

7.4.2.1. An affidavit, a sample of which is attached hereto as Exhibit "H", that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Work that will in any way affect City's interests. A general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

7.4.2.2. Consent of CM@Risk's surety to final payment in writing.

7.4.3. CM@Risk understands and agrees that it shall not claim damages for any delay or hindrance other than a delay or hindrance for which the Contract Documents permit an adjustment to the Contract Price. CM@Risk understands and agrees that in the event of delay or hindrance that is no fault of CM@Risk, an extension of time shall be the CM@Risk's sole remedy unless the Contract Documents otherwise provide for an adjustment to the Contract Price for such delay or hindrance.

7.5. Payments to Subcontractors or Suppliers

7.5.1. CM@Risk understands and agrees that it shall pay its Subcontractors or suppliers within ten (10) Days of receipt of each progress payment from the City and shall provide City evidence of same in writing with the next payment application. CM@Risk shall pay for Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction in retention to Subcontractors or suppliers who have performed work to City's satisfaction. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.5.2. CM@Risk understands and agrees that if CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions:

7.5.2.1. provide CM@Risk with a notice of default in accordance with Article 9 hereunder.

7.5.2.2. withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.

7.5.2.3. reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or

7.5.2.4. terminate this Agreement in accordance with Article 9 hereunder.

7.5.3. Intentionally omitted.

7.5.4. CM@Risk understands and agrees that should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

7.5.5. CM@Risk understands and agrees that it shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.6. Record Keeping and Finance Controls

7.6.1. CM@Risk understands and agrees that records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.

7.6.2. CM@Risk understands and agrees that City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

7.6.3. CM@Risk understands and agrees that City reserves the right to decrease Contract Price and/or payments made hereunder if, upon audit of the CM@Risk's records, the audit discloses that CM@Risk has provided false, misleading, or inaccurate cost and pricing data and/or information.

- 7.6.4.** CM@Risk understands and agrees that it shall include a similar provision in all its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.6.5.** CM@Risk understands and agrees that City reserves the right to decrease Contract Price and/or payments made hereunder if the above provision is not included in CM@Risk's Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City access to audit their records to verify the accuracy and appropriateness of pricing data.

Article 8- Claims and Disputes

8.1. Requests for Contract Adjustments and Relief

- 8.1.1.** The parties understand and agree that if either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to this Contract, said party shall provide written notice to the other party of the basis for its claim for relief.
- 8.1.2.** The parties understand and agree that said notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of this Contract.
- 8.1.3.** The parties understand and agree that in the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) Days, after the occurrence giving rise to the claim for relief or after the claiming party should have reasonably recognized the event or condition giving rise to the request, whichever is later.
- 8.1.4.** The parties understand and agree that said notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.2. Dispute Avoidance and Resolution

- 8.2.1.** The parties hereby fully agree to communicate on a regular basis regarding the Project to avoid or minimize disputes. If a dispute arises, CM@Risk and City shall each commit to resolving said dispute in an amicable, professional, and expeditious manner to avoid delays and disruptions to the Work.
- 8.2.2.** CM@Risk and City agree to first attempt to resolve disputes at the field level between CM@Risk's Representative and RPR.
- 8.2.3.** CM@Risk understands and agrees that if a dispute cannot be resolved through CM@Risk's Representative and RPR, CM@Risk's Senior Representative, RPR, Design Professional and City's Senior Representative, shall upon the request of either party, meet promptly, but in no case later than thirty (30) days after said request is made to resolve said dispute. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that will assist the parties in resolving the dispute.
- 8.2.4.** If said meeting fails to resolve the dispute, the CM@Risk understands and agrees that the City may elect to conduct non-binding mediation in an effort to resolve the dispute.

8.3. Duty to Continue Performance

- 8.3.1.** CM@Risk understands and agrees that unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute between CM@Risk and City.

8.4. Representatives of the Parties

8.4.1. City's Representatives

- 8.4.1.1.** City Manager designates the individual listed below or his/her designee as Senior

Representative ("City's Senior Representative"):

CITY'S SR. REPRESENTATIVE

Director of Engineering and Capital Project Management
1311 Chestnut/P.O. Box 427-1311
Bastrop, Texas 78602
(512) 332-8847

- 8.4.1.2. City Manager designates the individual listed below as its Representative ("City's Representative"):

CITY'S REPRESENTATIVE

Director of Public Works
1311 Chestnut/P.O. Box 427-300
Bastrop, Texas 78602
(512) 332-8960

8.4.2. **CM@Risk's Representatives**

- 8.4.2.1. CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for resolving disputes under Division 8.2.3 hereof:

CM@Risk's SR. REPRESENTATIVE

Mark Tepera, Program Manager
1411 Greenway Drive
Irving, TX 75038
(972) 457-8535

- 8.4.2.2. CM@Risk designates the individual listed below as its Representative ("CM@Risk's Representative"), which individual has the authority and responsibility set forth in Division 8.2.2 hereof:

CM@Risk's REPRESENTATIVE

Thor Bensen, Senior Project Manager
1411 Greenway Drive
Irving, TX 75308
(512) 563-2669

Article 9 – Suspension and Termination

9.1. City’s Right to Stop Work

9.1.1. CM@Risk understands and agrees that City may, in its sole discretion and with or without cause, order CM@Risk in writing to stop and suspend the Work. Said suspension shall not exceed one hundred and eighty (180) consecutive Days. If said suspension is an Owner-Caused Delay, CM@Risk’s sole remedy shall be an extension of time if it affects the Critical Path Schedule.

9.2. Termination for Convenience

9.2.1. CM@Risk understands and agrees that upon receipt of written notice to CM@Risk, City may, in its sole discretion, and with or without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to said termination. CM@Risk understands and agrees that it shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead.

9.2.2. CM@Risk understands and agrees that if the City suspends the Work for one hundred and eighty-one (181) consecutive Days or more, such suspension shall be deemed a termination for convenience.

9.2.3. CM@Risk understands and agrees that upon said termination, the CM@Risk shall proceed with the following obligations:

9.2.3.1. Stop Work as specified in the notice.

9.2.3.2. Place no further subcontracts or orders.

9.2.3.3. Terminate all subcontracts to the extent they relate to the Work terminated.

9.2.3.4. Assign to the City all right, title and interest of the CM@Risk under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

9.2.3.5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and that the City has or may acquire an interest.

9.2.4. CM@Risk understands and agrees that CM@Risk shall submit complete termination inventory schedules no later than one hundred twenty-one (121) Days from the date of the notice of termination.

9.2.5. CM@Risk understands and agrees that City shall pay CM@Risk the following:

9.2.5.1. The direct value of its completed Work and materials supplied as of the date of termination.

9.2.5.2. The reasonable costs and expenses attributable to such termination.

9.2.6. CM@Risk understands and agrees that it shall be entitled to profit and overhead on completed Work only but shall not be entitled to anticipated profit or anticipated overhead. If City reasonably determines that the CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

9.2.7. CM@Risk understands and agrees that it shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Section 7.6 hereof.

9.3. City’s Right to Perform and Terminate for Cause

9.3.1. CM@Risk understands and agrees that if the City provides the CM@Risk with a written order

to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources, and CM@Risk shall be responsible for such costs.

- 9.3.2.** CM@Risk understands and agrees that if CM@Risk persistently fails to:
- 9.3.2.1.** provide a sufficient number of skilled workers, or
 - 9.3.2.2.** supply the materials required by the Contract Documents, or
 - 9.3.2.3.** comply with applicable Legal Requirements, or
 - 9.3.2.4.** timely pay Subconsultants and/or Subcontractors, provided Contractor has been paid by Owner for such work or materials, or
 - 9.3.2.5.** perform the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or
 - 9.3.2.6.** perform material obligations under the Contract Documents, City shall consider the aforementioned an Event of Default ("Event") and may, following a period for CM@Risk to cure such Event as specified herein, in addition to any other rights and remedies provided in the Contract Documents or by law, exercise its rights set forth in Divisions 9.3.3 and 9.3.4 herein below.
- 9.3.3.** CM@Risk understands and agrees that upon the occurrence of an Event as set forth in Division 9.3.2 herein above, City shall provide written Notice of Event of Default to CM@Risk that it intends to terminate this Agreement unless the Event cited is cured, or CM@Risk commences to cure within seven (7) Days of CM@Risk's receipt of such notice.
- 9.3.4.** CM@Risk understands and agrees that if it fails to cure, or commences to cure said Event, then City shall give a second written Notice of Event of Default to CM@Risk of its intent to terminate within an additional seven (7) Day period.
- 9.3.5.** CM@Risk understands and agrees that if it, within such second seven (7) Day period, fails to cure, or commences to cure, said Event, then City may declare this Agreement terminated for failure to cure an Event of Default by providing written Notice of Default to CM@Risk.
- 9.3.6.** CM@Risk understands and agrees that upon declaring this Agreement terminated pursuant to Subsection 9.3.5 herein above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk shall hereby transfer, assign and set over to City for said purpose, and may employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 9.3.7.** CM@Risk understands and agrees that in the event of said termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk shall only be entitled to be paid for Work performed and accepted by the City prior to Event of Default.
- 9.3.8.** CM@Risk understands and agrees that if City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Said costs and expenses shall include, but not be limited to, the cost of completing the Work, including any losses, damages, costs and expense, incurred by City in connection with the procurement to complete the Project, and any other remedies afforded to City provided by law.
- 9.3.9.** CM@Risk understands and agrees that if City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience, in accordance with the provisions of Section 9.2 hereof.

Article 10 - Insurance and Bonds

10.1. Insurance Requirements

10.1.1 CM@Risk understands and agrees that CM@Risk and Subcontractors shall procure and maintain until their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of the Work hereunder by the CM@Risk, its agents, representatives, employees or Subcontractors.

10.1.2 CM@Risk understands and agrees that the insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.1.3 CM@Risk understands and agrees that the City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM@Risk, its agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

10.2. Minimum Scope and Limits of Insurance. CM@Risk understands and agrees that CM@Risk shall provide coverage with limits of liability not less than those stated below:

10.2.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

• General Aggregate/for this Project	\$2,000,000/\$1,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: **"The City of Bastrop shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk"**.

10.2.2 Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: **"The City of Bastrop shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk"**.

10.2.3 Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

The policy shall contain a **waiver of subrogation** against the City of Bastrop.

10.2.4 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

The City of Bastrop, the CM@Risk, and Subcontractors, shall be Named Insureds on the policy.

Coverage shall be written on an all risk, replacement cost basis and shall include coverage for, flood and earth movement.

Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or (ii) until no person or entity, other than the City of Bastrop, has an insurable interest in the property required to be covered.

Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

Policy must provide coverage from the time any covered property becomes the responsibility of the CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

Policy shall contain a waiver of subrogation against the City of Bastrop.

CM@Risk shall be responsible for the payment of all policy premiums and deductibles.

10.3 Additional Insurance Requirements

- 10.3.1** The policies shall include, or be endorsed to include the following provisions:
- 10.3.1.1** on insurance policies where the City of Bastrop is named as an additional insured, the City of Bastrop shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.
- 10.3.1.2** the CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- 10.3.1.3** coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.4 Notice of Cancellation

- 10.4.1** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

10.5 Acceptability of Insurers

- 10.5.1** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Texas and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

10.6 Verification of Coverage

- 10.6.1** CM@Risk shall provide the City with certificates of insurance (ACORD form or equivalent approved by the City in writing) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 10.6.2** All certificates and endorsements are to be received and approved by the City in writing before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. **Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall be a material breach of this Agreement and an Event of Default.**
- 10.6.3** All certificates required by this Agreement shall be sent directly to City's Representative. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 10.6.4** **If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must Submit a current insurance certificate (dated within fifteen (15) Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.**
- 10.7 Subcontractors**
- 10.7.1** CM@Risks' certificate(s) shall include all Subcontractors as additional insureds under the Builder's Risk policy and CM@Risk shall provide to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.
- 10.8 Approval**
- 10.8.1** Any modification or variation from the insurance requirements in this Contract shall be made by the City's Sr. Representative, whose decision shall be final. Said action shall not require a formal Contract amendment but may be made by administrative action.
- 10.9 Bonds and Other Performance Security.**
- 10.9.1** Prior to execution of this Agreement, the CM@Risk shall provide a performance bond and a labor and materials bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement.
- 10.9.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Texas, issued by the Director of the Texas Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.
- 10.9.3** The bonds shall be made payable and acceptable to the City of Bastrop.
- 10.9.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Texas or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- If one Power of Attorney is submitted, it shall be for twice the total Contract Price of the GMP.
 - If two Powers of Attorney are submitted, each shall be for the total Contract Price of the GMP. Personal or individual bonds are not acceptable.
- 10.9.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.

10.9.6 All bonds submitted for this project shall be provided by a company that has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

Article 11 - Indemnification

11.1. Indemnification

- 11.1.1 CM@RISK covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY to the extent directly or indirectly arising out of, resulting from or related to CM@RISK's activities under this AGREEMENT, including any acts or omissions of CM@RISK, any agent, officer, director, representative, employee, or subcontractor of CM@RISK, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL NOT APPLY WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OR FAULT OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.**
- 11.1.2 It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section shall apply to the fullest extent permitted by applicable law. CM@RISK further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**
- 11.1.3 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 11.1.4 CM@RISK shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CM@RISK or known to CM@RISK or related to or arising out of CM@RISK's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CM@RISK's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CM@RISK of any of its obligations under this paragraph.**

Article 12 – General Provisions

12.1 Contract Documents

12.1.1 In the event of any inconsistency, conflict, or ambiguity between or among the drawings, given dimensions shall control over scaled measurements, and large-scale drawings shall control over small-scale drawings.

12.1.2 In the event of any inconsistency, conflict, or ambiguity between or among Specifications and Plans, Specifications shall control over Plans

12.1.3 In the event of any inconsistency, conflict, or ambiguity between the Agreement and the Design Phase Contract, the Agreement shall control over the Design Phase Contract.

12.1.4 The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.1.5 The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.2 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.3 **Time is of the Essence.** City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.4 **Mutual Obligations.** City and CM@Risk commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.5 **Cooperation and Further Documentation.** The CM@Risk agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.

12.6 **Assignment.** Neither CM@Risk nor City shall, without the written consent of the other, assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

12.7 **Successorship.** CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.8 **Third Party Beneficiary.** Nothing hereunder or under any of the other Contract Documents shall be construed to give any rights or benefits to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.

12.9 **Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Texas without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Bastrop County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

12.10 **Severability.** If any provision of the Contract Documents or the application thereof to any

person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

- 12.11 Compliance with Federal Laws.** CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.
- 12.12 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 12.13 Fair Treatment of Workers.** The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. CM@Risk shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA).
- 12.14 Independent Contractor.** The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.
- 12.15 Survival.** All warranties, representations and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.
- 12.16 Covenant Against Contingent Fees.** The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Bastrop has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Bastrop shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.
- 12.17 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.18 Notice**
- 12.18.1** Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	Fabiola De Carvalho, MIAM Director Engineering and Capital Project Management 1311 Chestnut Street Bastrop, TX 78602
To CM@Risk	Mark Tepera, Program Manager Archer Western Construction, LLC 1411 Greenway Drive Irving, TX 75306 Copy to Peter Glimco, General Counsel
Copy to: Design Professional (if applicable)	Kendall King, Project Principal Freese and Nichols, Inc. 10431 Morado Circle Austin, TX 78759

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.18.2 Notices Related to Payment, Bonds. Any notice, request, instruction, or other document to be given under this Agreement by any party to any other party related to payment, bonds, or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	Fabiola De Carvalho, MIAM Director Engineering and Capital Project Management 1311 Chestnut Street Bastrop, TX 78602
To CM@Risk	Mark Tepera, Program Manager Archer Western Construction, LLC 1411 Greenway Drive Irving, TX 75306
Copy to: Design Professional (if applicable)	Kendall King, Project Principal Freese and Nichols, Inc. 10431 Morado Circle Austin, TX 78759

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

12.19 Equal Opportunity/Affirmative Action

12.19.1 The CM@Risk shall comply with the provisions of this Agreement pertaining to discrimination and accepting applications or hiring employees. The CM@Risk shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement. The CM@Risk further agrees that this clause will be incorporated in all

subcontracts, job-consultant contracts of this Contract entered into by the CM@Risk.

12.19.2 The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Woman-owned business to reflect both the industry and community ethnic composition.

12.19.3 The following two paragraphs apply to the CM@Risk named herein and shall appear in all contracts between the CM@Risk and any and all Subcontractors who are employed on this Project. The CM@Risk further agrees that the two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

"Any Party (Subcontractor), in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

The Party (Subcontractor) will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship."

The CM@Risk further agrees that the above two paragraphs will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

12.20 Confidentiality of Plans & Specifications

12.20.1 Any plans or specifications CM@Risk receives from City regarding this Project are for official use only. CM@Risk may not share them with others except as required to fulfill the obligations of this Contract.

12.20.2 All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: "These plans are for official use only and may not be shared with others except as required to fulfill the obligations of the Agreement by and between Archer Western Construction, LLC and the City of Bastrop".

12.21 CM@Risk and Subcontractor Employee Security Inquiries

12.21.1 The parties acknowledge that security measures required in this Section are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, CM@RISK shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

12.21.2 Security Inquiries. CM@Risk acknowledges that all of the employees that it provides pursuant to this Agreement shall be subject to background and security checks and screening ("Security Inquiries"). CM@Risk shall perform all such security inquiries and shall make the results available to City for all employees considered for performing work (including supervision and oversight) under this Agreement. City may make further security inquiries. Whether or not further security inquiries are made by City, City may, at its sole, absolute, and unfettered discretion, accept or reject any or all of the employees proposed by CM@Risk for performing work under this Agreement. Employees rejected by City for performing services under this Agreement may still be engaged by CM@Risk for other work not involving the City of Bastrop. An employee rejected for work under this Agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.

- 12.21.3 Criteria for Evaluating Security Inquiries.** Once formally adopted by City, criteria for excluding an individual from performing work under this Agreement shall be communicated by City to CM@Risk and used by CM@Risk as a factor in making its decision. Prior to such adoption, CM@Risk shall use its best judgment in making its decision.
- 12.21.4 Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, City reserves the right to: (1) have an employee/prospective employee of CM@Risk be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@Risk 's employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@Risk performing work (including supervision and oversight) under this Agreement.
- 12.21.5 Terms of This Provision Applicable to all of CM@Risk Contracts and Subcontracts.** CM@Risk shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.
- 12.21.6 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Agreement, as set forth above, are material to City 's entry into this Agreement and any breach thereof by CM@Risk may, at City's option, sole and unfettered discretion, be considered to be an Event of Default.
- 12.22 Hazardous Materials**
- 12.22.1** Unless included in the Work, if the CM@Risk encounters onsite material that he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it shall immediately stop work and report the condition to the City.
- 12.22.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.
- 12.22.3** An extension of Contract Time and an adjustment to the Contract Price may be granted in accordance with Article 6 hereof.
- 12.22.4** The CM@Risk shall comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery. The City shall be deemed the generator of all Hazardous Materials at the Site and CM@Risk shall have no liability to the City or third parties for losses arising out of Hazardous Materials except to the extent CM@Risk is negligent in handling such Hazardous Materials.
- 12.23 Traffic Control.** CM@Risk shall comply with all provisions of the City of Bastrop Design Manual and any other traffic control provisions as may be provided in the technical specifications.
- 12.24 Other Requirements**
- 12.24.1 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations.**
- 12.24.1.1** Tex. Gov't Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.
- 12.24.1.2** By signing this Agreement, CM@Risk hereby certifies that it is not ineligible to be awarded this Contract under Chapter 2252, Subchapter F.

12.24.2 Prohibition on Contracts with Certain Companies that Boycott Israel

12.24.2.1 Tex. Gov't Code Chapter 2271 prohibits the award of governmental contracts to companies boycotting Israel.

12.24.2.2 By signing this Agreement, CM@Risk hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

12.1.1 Certificate of Interested Parties: Contractor shall complete and submit a Certificate of Interested Parties (Form 1295) to the City with the signed Agreement as required by Tex. Gov't Code Section 2252.908.

13 Consequential Damages. Notwithstanding any other provisions of this Agreement to the contrary and to the fullest extent permitted by law, the City and CM@Risk, on behalf of themselves, their affiliates and their directors, officers and employees, mutually waive all claims against the other for any loss of funding, loss of profits, loss of revenue, loss of opportunity, and any other special, consequential or indirect losses.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

ARCHER WESTERN CONSTRUCTION, LLC
By: [Signature]
Title: VP/BUSINESS GROUP LEADER

CITY OF BASTROP
By: _____
Date: _____



(Corporate Seal)

[Signature]
ATTEST: (Signature and Title)

Recommended:
By: _____
(Department)

ATTEST:
City Clerk _____

Approved by City Council:
Date:

APPROVED AS TO FORM:
City Attorney _____

Attachments: EXHIBIT A – PROJECT DESCRIPTION
EXHIBIT B – APPROVED GMP PROPOSAL
EXHIBIT C – TECHNICAL SPECIFICATIONS
EXHIBIT D – CONSTRUCTION DRAWINGS
EXHIBIT E – SAMPLE CHANGE DIRECTIVE
FORM
EXHIBIT F – SAMPLE CHANGE ORDER FORM
EXHIBIT G – SAMPLE PAY REQUEST FORM
EXHIBIT H – SAMPLE AFFIDAVIT FOR FINALPAYMENT OF DEBTS AND
CLAIMS

EXHIBIT A - PROJECT DESCRIPTION

The City of Bastrop is in the process of converting its water supply source from shallow alluvial wells primarily fed by the Colorado River to deep wells that draw from the Simsboro Aquifer; which will provide the City with a reliable, resilient, drinking water supply. The project consists of the following:

- ❖ A new well field and production facilities
 - Three additional wells will be needed to meet Phase 1 flows, which consist of an average production capacity of 3 MGD and a peak capacity of 6 MGD. Water collection piping and access roads will also be installed to each of the new wells.
- ❖ Groundwater treatment facilities
 - Based on water quality sampling, a WTP primarily focusing on iron and manganese removal will be needed. It will consist of chemical addition facilities housed in a chemical building and gravity filters housed in a filter building.
- ❖ Low Lift pump station
 - Once treated, water will be pumped from the filter effluent to a 0.5 MG clearwell through the Low Lift pump station
- ❖ Ground Storage Tank (clearwell)
 - 0.5 MG clearwell,
- ❖ Backwash pump station
 - Backwash pumps will pull water from the clearwell and send it through the treatment plant to clean the filters
- ❖ Transmission piping – water will be conveyed through the 24-inch diameter, 21,500 lf transmission pipeline to GSTs at the Willow Site.
- ❖ Lift Station and Force Main
 - A 21,500 lf wastewater forcemain will run along the same route as the transmission pipeline to convey wastewater generated during filter backwash and in the Filter Building to the City's wastewater collection system.
- ❖ Associated services
 - Electrical and instrumentation
 - Site development and access
- ❖ Various site improvements, paving, grading, fencing, landscaping.

EXHIBIT B – APPROVED GMP PROPOSAL

GMP 1 Proposal is made part of this agreement by reference and on file with the:

- Design Professional
- City of Bastrop Project Manager
- CM@Risk Contractor

EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this agreement by reference and on file with the:

- Design Professional
- City of Bastrop Project Manager
- CM@Risk Contractor

EXHIBIT D – CONSTRUCTION DRAWINGS

Construction Drawings as specified in EXHIBIT B – APPROVED GMP PROPOSAL are made part of this agreement by reference and on file with the:

- Design Professional
- City of Bastrop Project Manager
- CM@Risk Contractor

EXHIBIT E – SAMPLE CHANGE DIRECTIVE FORM

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number	
Owner	City of Bastrop, Texas	BAS18568	
Contractor	Archer Western Construction		
Const. Manager	Freese and Nichols, Inc.		
Design Professional	Freese and Nichols, Inc.		
Work Change Directive			
No.	Description		
Specification			
Drawing No.	Detail	Description	
<p>Make the following additions, modifications, or deletions to the Work described in the Contract Documents:</p>			
<p><i>Owner directs Contractor to proceed with Work described in this Work Change Directive. Compensation for this Work will be determined using the methods described below. Costs for the Work Change Directive may not exceed the total authorized compensation shown for this Work Change Directive shown below without authorization of the Owner by other Work Change Directives or by Change Order. Contractor is to submit a Change Proposal when impacts on Contract Price and Contract Times can be determined. A Change Order will be issued to incorporate changes in Contract Price or Contract Times.</i></p>			
Basis of Compensation			
<input type="checkbox"/> Unit			
Prices <input type="checkbox"/> Lump Sum calculated using Cost of Work provisions in the Contract			
<input type="checkbox"/> Time and Materials using Cost of Work provisions in the Contract			
Compensation for this Work Change Directive may not exceed			\$ __
Required Documentation			
<input type="checkbox"/> Detailed cost breakdown attached showing labor, materials, equipment, and all other costs for this change			
<input type="checkbox"/> Schedule attached to show impacts and justification for requested change in Contract Times			
Reason for Work Change Directive			
Recommended by Design Professional		Recommended by Resident Project Representative	
Name _____ Date _____		Name _____ Date _____	
Approved by Owner		Received by Contractor	
Name _____ Date _____		Name _____ Date _____	

EXHIBIT F – SAMPLE CHANGE ORDER FORM

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number
Owner	City of Bastrop, TX	BAS18568
Contractor	Archer Western Construction	
Const. Manager	Freese and Nichols, Inc.	
Design Professional	Freese and Nichols, Inc.	
Change Order No. _____ Date _____		
Make the following modifications to the Contract Documents:		
Item	Description	Change Amount
1		\$ _____
2		\$ _____
3		\$ _____
4		\$ _____
5		\$ _____
Net Change in Contract Price this Change Order		\$ _____
Net Change in Contract Times this Change Order		_____ days
<p><i>The compensation in this Change Order is the full, complete, and final compensation for all costs Contractor may incur because of or relating to this change whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any cost for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged Work because of this Change Order. The changes in Contract Times are the complete and final adjustments for impacts from this change to the ability of Contractor to complete the Work within the Contract Times and are the only adjustments to which Contractor is entitled. All terms and provisions of the Contract Documents remain in effect except as specifically modified by this Change Order.</i></p>		
a. Original Contract Price		\$ _____
b. Previously Approved Change Order/Contract Amendment Amounts		\$ _____
c. Adjusted Contract Price (a + b)		\$ _____
d. Contract Amendment Amount		\$ _____
e. Revised Contract Price (c + d)		\$ _____
f. Percent Change in Contract Price to Date		_____ %
	Original	Previous
	Current	
Substantial Completion Date _____		
Final Completion Date _____		
Recommended by Design Professional		Recommended by Resident Project Representative
_____ <i>Name</i>	_____ <i>Date</i>	_____ <i>Name</i>
Approved by Contractor		Approved by Owner
_____ <i>Name</i>	_____ <i>Date</i>	_____ <i>Name</i>
		_____ <i>Date</i>

EXHIBIT G – SAMPLE PAY REQUEST FORM

Standard AIA G702/G703 Forms to be used with additional spreadsheets included for tracking CMAR and Owner Contingencies and their usage.

EXHIBIT H – SAMPLE AFFIDAVIT FOR FINAL PAYMENT OF DEBTS AND CLAIMS

Project	Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities	Project Number
Owner	City of Bastrop	BAS18568
Contractor	Archer Western Construction	
Construction Manager	Freese and Nichols, Inc.	
Design Professional	Freese and Nichols, Inc.	

Contractor, in accordance with the Contract Documents, hereby certifies that, except as listed below, all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which Owner or its property might in any way be held responsible have been paid in full or have otherwise been satisfied in full.

Exceptions
If none, write "None." Contractor must furnish a bond, acceptable to the Owner, for each exception.

By _____
(signature)

Date _____
(date signed)

Name _____
(typed or printed)

Title _____
(typed or printed)

Representing _____
(typed or printed)

Notary Attest
 Sworn to (or affirmed) and subscribed before on _____
(month, day, year)

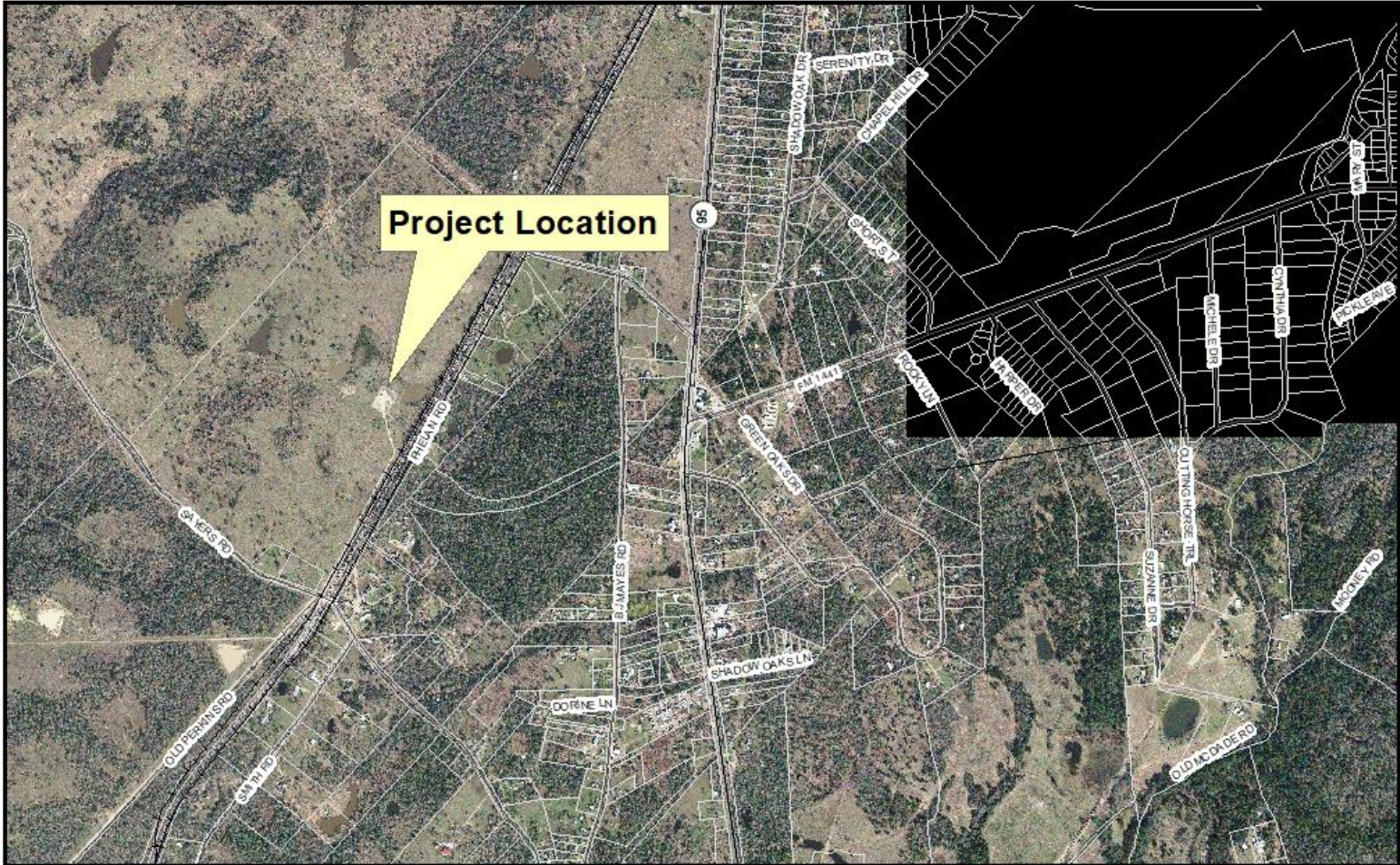
Personally Known Produced Identification, Type and No. of ID _____

By _____
(notary's signature)

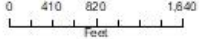
Name _____
(typed or printed)

Notary Public - State of _____
(typed or printed)

My commission expires _____
(expiration date) *(Notary Seal)*



**SIMSBORO AQUIFER WATER TREATMENT PLANT,
WELL FIELD AND TRANSMISSION FACILITIES
PROJECT LOCATION
CITY OF BASTROP, TX**



Date: 7/29/2022

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 assume any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.



EXHIBIT D

Treatment Plant Equipment (Package 3)	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
				\$1,717,273 (Equipment Total)	
Blower					
Universal PAC Blower	30	9	8	\$88,281.73	97
VT Pumps					
Sulzer	30	6	8	\$675,906	94
Flowserve	30	6	10	\$831,073.32	86.6
Chem. Tanks					
Poly-Processing	30	10	10	\$107,262.08	100
Assman	30	10	10	\$129,198.30	89.8
Dry Media Scrubber					
Pure Air	29	8	10	\$199,430	97
De Nora	30	7	10	\$278,770.8	81.9
Purafil	30	5	10	\$371,910	70.8
Chlorine Gas Feed					
De Nora	30	10	10	\$94,864	100
Evoqua	30	10	10	\$172,423.94	77.5
Metering Pump Skid					
McCauley	30	10	10	\$86,126.81	100
EI2	30	10	10	\$118,445.25	86.4
Filter Equipment Complete					
Leopold	30	6	10	\$465,402.78	94
WesTech	29	8	6	\$491,853.67	82.9

Note: the highlighted in yellow on the table above represent the vendors selected for each equipment. Total of equipment selected: \$1,717,273.



STAFF REPORT

MEETING DATE: October 11, 2022

TITLE:

Consider action to approve Resolution No. R-2022-89 of the City Council of the City of Bastrop, authorizing proceeding with issuance of certificates of obligation and further directing the publication of notice of intention to issue City of Bastrop, Texas Combination Tax and Revenue Certificates of Obligation, Series 2022A.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

During the FY2023 planning sessions and workshops, the City Manager communicated with City Council on the need to issue City of Bastrop, Texas certificates of obligation for paying all or a portion of the City’s contractual obligations incurred or to be incurred for constructing, improving, designing, acquiring, including acquiring land, easements and right of way, and equipping the City’s: (1) water and waste water system; (2) streets including related drainage, sidewalks, traffic improvements, lighting and acquisition of land; (3) public safety improvements including acquisition of land for a future fire station, and (4) payment of professional services in connection therewith including legal, engineering, architectural and fiscal fees (collectively the “Project”).

This Certificate of Obligation, Series 2022A is for \$57,000,000 and is split \$13M for General Fund debt and \$44M Water/Wastewater debt.

Issuance Timeline for Competitive Sale:

Oct. 11, 2022	City Council to approve resolution directing publication of notice of intent
Week of Oct. 17 th	First Notice of Intent appears in the newspaper
Week of Oct. 24 th	Second Notice of Intent appears in the newspaper Specialized Public Finance makes application to S&P to obtain ratings on the CO’s
Week of Nov. 14 th	Rating Conference Call
Dec. 6, 2022	The Preliminary Official Statement is distributed to the bidders
Dec. 13, 2022	The City Council adopts an ordinance authorizing the issuance of the CO’s
Jan. 10, 2023	Closing of the sale

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:

Tracy Waldron, Chief Financial officer recommends approval of Resolution No. R-2022-89 of the City Council of the City of Bastrop, authorizing proceeding with issuance of certificates of obligation and further directing the publication of notice of intention to issue City of Bastrop, Texas Combination Tax and Revenue Certificates of Obligation, Series 2022A.

ATTACHMENTS:

- Resolution R-2022-89



RESOLUTION NO. R-2022-89**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AUTHORIZING PROCEEDING WITH THE ISSUANCE OF CITY OF BASTROP, TEXAS CERTIFICATES OF OBLIGATION; DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CITY OF BASTROP, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION; AND OTHER RELATED MATTERS**

WHEREAS, the City Council (the "Council") of the City of Bastrop, Texas (the "City ") has determined it to be in the City 's best interest to issue certificates of obligation for paying all or a portion of the City's contractual obligations incurred or to be incurred for constructing, improving, designing, acquiring, including acquiring land, easements and right of way, and equipping the City's: (1) water and waste water system; (2) streets including related drainage, sidewalks, traffic improvements, lighting and acquisition of land; (3) public safety improvements including acquisition of land for a future fire station, and (4) payment of professional services in connection therewith including legal, engineering, architectural and fiscal fees and the costs of issuing the Certificates (collectively the "Project"); and

WHEREAS, the Council has deemed it advisable to give notice of intention to issue the Certificates in a maximum principal amount not to exceed \$57,000,000 pursuant to the provisions of the Certificate of Obligation Act of 1971, Section 271.041 et seq., Local Government Code, as amended (the "Act"), for the purpose of financing the Project; and

WHEREAS, prior to the issuance of the Certificates, the Council is required under Section 271.041 et seq., Local Government Code to publish notice of its intention to issue the Certificates in a newspaper of general circulation in the City and on the City's internet website, the notice stating: (i) the time and place tentatively set for the passage of the order authorizing the issuance of the Certificates, (ii) the maximum amount and purpose of the Certificates to be authorized; and (iii) the manner in which the Certificates will be paid; and

WHEREAS, the meeting at which this Resolution is adopted was open to the public and public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, Government Code, as amended.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1. Form of Notice. Attached hereto is a form of "Notice of Intention to Issue Certificates of Obligation," (the "Notice") the form and substance of which are hereby adopted and approved.

SECTION 2. Publication of Notice. The Notice shall be published, in substantially the form attached hereto, in a newspaper, as defined in Tex. Gov't Code Ann. §2051.044,

of general circulation in the City, once a week for two consecutive weeks, the date of the first publication thereof to be before the 45th day before the date tentatively set for passage of the ordinance authorizing the issuance of such Certificates. Further, said notice shall be continuously published in substantially the form attached hereto on the City's website for at least 45 days before the date tentatively set for passage of the ordinance authorizing the issuance of the Certificates.

SECTION 3. Attorney General Fee. The City Council hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of each series of obligations being issued or (ii) \$9,500 for each series, provided that such fee shall not be less than \$750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The appropriate member of the City's staff is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Certificates and general obligation bonds, respectively.

SECTION 4. Effective Date. This Resolution shall become effective immediately upon adoption. The City Secretary is hereby authorized and directed to execute the certificate to which this Resolution is attached on behalf of the City and the Mayor, City Secretary, the City Manager and Director of Finance are further authorized to do any and all things proper and necessary to carry out the intent of this Resolution including approving appropriate changes to the notice and approving the final form of any Preliminary Official Statement for distribution to the market in connection with the sale of the Certificates.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 11th, day of October 2022.

APPROVED:

Connie Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**NOTICE OF INTENTION TO ISSUE
CITY OF BASTROP, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION**

NOTICE is hereby given that it is the intention of the City Council of the City of Bastrop, Texas to issue Certificates of Obligation (the "Certificates") of the City in one or more series for the purpose of providing funds for paying contractual obligations incurred or to be incurred for constructing, improving, designing, acquiring, including acquiring land, easements and right of way, and equipping the City's: (1) water and waste water system; (2) streets including related drainage, sidewalks, traffic improvements, lighting and acquisition of land; (3) public safety improvements including acquisition of land for a future fire station,, and (4) payment of professional services in connection therewith including legal, engineering, architectural and fiscal fees and the costs of issuing the Certificates. The City Council tentatively proposes to authorize the issuance of the Certificates at its regular meeting place in the City Hall, 1311 Chestnut Street, Bastrop, Texas to be commenced at 6:30 p.m., on the 13th day of December 2022. The maximum principal amount of Certificates that may be authorized for the above listed purposes is \$57,000,000. The City Council presently proposes to provide for the security and payment of the Certificates by a pledge of ad valorem taxes upon all taxable property within the City within the limits allowed by law and from a limited pledge of the City's surplus water and sewer system revenues not to exceed \$1,000.

The following information is required pursuant to Texas Local Government Code, Section 271.049(b)(4): As of October 11, 2022 principal of all outstanding debt obligations of the City is \$70,965,000. As of October 11, 2022 combined principal and interest required to pay all outstanding debt obligations of the City on time and in full is \$91,507,137. The maximum principal amount of the Certificates to be authorized is \$57,000,000. The estimated combined principal and interest required to pay the Certificates to be authorized on time and in full is \$113,318,750. The estimated interest rate for the Certificates to be authorized is 5.0%. Such estimate takes into account a number of factors, including the issuance schedule, maturity schedule and the expected bond ratings of the proposed bonds. Such estimated maximum interest rate is provided as a matter of information, but is not a limitation on the interest rate at which the bonds, or any series thereof, may be sold. The maximum maturity date of the Certificates to be authorized is August 1, 2052.