

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



August 09, 2022
Regular City Council Meeting at 6:30 PM

Executive Session at 4:30 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 BEFORE 5:00 P.M. ON THE DATE OF THE MEETING. COMMENTS SUBMITTED BY THIS TIME WILL BE DISTRIBUTED TO THE CITY COUNCIL PRIOR TO MEETING COMMENCEMENT, REFERENCED AT THE MEETING, AND INCLUDED WITH THE MEETING MINUTES. COMMENTS FROM EACH INDIVIDUAL WILL BE LIMITED TO THREE (3) MINUTES WHEN READ ALOUD.

1. CALL TO ORDER - EXECUTIVE SESSION - 4:30 P.M.

2. EXECUTIVE SESSION

2A. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.074 regarding the personnel matter of recruiting a new city manager.

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

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

5. PLEDGE OF ALLEGIANCE - Trey Job, Acting City Manager

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

6. INVOCATION - Lynda Sparks, Police Chaplain

7. PRESENTATIONS

7A. Mayor's Report

7B. Council Members' Report

7C. City Manager's Report

8. WORK SESSIONS/BRIEFINGS

8A. Receive presentation on proposed amendments to the Rules of Procedure for the City Council and Boards and Commissions.

Submitted by: Ann Franklin, City Secretary

9. STAFF AND BOARD REPORTS

9A. Receive presentation on the FY 2022 Third Quarterly Report.

Submitted by: Rebecca Gleason, Assistant City Manager

10. 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 before 5:00 p.m. on August 9, 2022. Comments submitted by this time will be distributed to the city council prior to meeting commencement, referenced at the meeting, and included with the meeting minutes. Comments from each individual will be limited to three (3) minutes when 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.

11. 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.

- [11A.](#) Consider action to approve City Council minutes from the July 26, 2022, Regular meeting.

Submitted by: Ann Franklin, City Secretary

- [11B.](#) Consider action to approve the second reading of Ordinance No. 2022-19 approving a Zoning Concept Scheme for 2.395 acres of Farm Lot 62, changing the zoning for 2.395 acres out of Farm Lot 62 East of Main St., from P2 Rural to P4 Mix, located east of Pecan Street, within the city limits of Bastrop, Texas, as shown in Exhibit A, providing for findings of fact, adoption, repealer, severability and enforcement, proper notice and meeting; and establishing an effective date.

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

- [11C.](#) Consider action to approve Resolution No. R-2022-70 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with Hunt Communities for The Colony MUD 1F Section 2, 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: Jennifer Bills, Director of Planning and Development

12. ITEMS FOR INDIVIDUAL CONSIDERATION

- [12A.](#) Consider action to approve Resolution No. R-2022-69 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 Eight Million, Nine Hundred Thirty-One Thousand, Nine Hundred and Two Dollars (\$8,931,902); 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

- [12B.](#) Consider action to approve Resolution No. R-2022-71 of the City of Bastrop, Texas, conveying the Bastrop City Council's expectations and directives to the city's Diversity, Equity & Inclusion Board, as requested by Council Members Kevin Plunkett and John Kirkland.

Submitted by: Rebecca Gleason, Assistant City Manager

- [12C.](#) Consider action to approve Resolution No. R-2022-68 to place a proposal to adopt a tax rate for Fiscal Year 2022-2023 (FY2023) on the September 13, 2022 meeting agenda as an action item and schedule a public hearing on the proposal; and providing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

13. 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, August 4, 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: August 9, 2022

TITLE:

City Council shall convene into closed executive session pursuant to Texas Government Code section 551.074 regarding the personnel matter of recruiting a new city manager.

STAFF REPRESENTATIVE:

Submitted by: Trey Job, Acting City Manager





STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:
Mayor's Report

AGENDA ITEM SUBMITTED BY:
Submitted by: Trey Job, Acting 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:

- PowerPoint

Mayor's Report

August 9, 2022



Library
End of Summer



Latest Activities

July 22 – Aug 3

Events in 2022: 181



Bastrop Elected
Officials



Bike Rack Dedication



BISD's Groundbreaking



Ora Moore 91 years young

Planned Events

Aug 4 - 9

Item 7A.

- Aug 4 –
 - Special Council Meeting
 - Farm Street Opry
- Aug 5 – Employee Appreciation Luncheon
- Aug 6 – Homecoming Parade
- Aug 9
 - Government Affairs
 - Gravity District Ribbon Cutting
 - City Council Meeting

Upcoming Events & City Meetings

Item 7A.

- Aug 10 – CAPCOG Executive Committee Meeting
- Aug 11
 - River Loop Sidewalk Ribbon Cutting
 - Alive After Five
- Aug 15 – BEDC Board Meeting
- Aug 16 -
 - City Council Budget Workshop
 - Right at Home Grand Opening
- Aug 17 – City Council Budget Workshop (if needed)
- Aug 19
 - Ambassador's Meeting
 - Greater Texas Credit Union Ribbon Cutting
- Aug 21 – Mount Rose 136th Anniversary
- Aug 22 – TML Municipal Policy Summit
- Aug 23
 - TML Municipal Policy Summit
 - City Council Meeting



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Council Members' Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Trey Job, Acting 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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- (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.



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

City Manager's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Trey Job, Acting 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;
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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: August 9, 2022

TITLE:

Receive presentation on proposed amendments to the Rules of Procedure for the City Council and Boards and Commissions.

AGENDA ITEM SUBMITTED BY:

Submitted by: Ann Franklin, City Secretary

BACKGROUND/HISTORY:

The Rules of Procedure for the City Council and Boards and Commissions, contains Section 1.4 Annual Review, which states:

"Following the municipal elections each year, Council will review these rules of procedure annually, make changes as appropriate, and adopt their own rules of procedure in accordance with the Charter at the first scheduled meeting in July. In the event no annual review occurs, the standing rules of procedure continue in effect. This does not limit the Council's right and ability to amend the rules at any other time during the year, in accordance with the Charter."

Rules of Procedure for the City Council and Boards & Commissions of the City of Bastrop, Texas



Adopted: August 23, 2005

Revised: October 10, 2017

Revised: July 24, 2018

Revised: July 9, 2019

Revised: September 8, 2020

Revised: July 27, 2021 [City Atty Alan B's compilation of edits August 3, 2022](#)

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ARTICLE 1. AUTHORITY, APPLICABILITY, AMENDMENT, AND ANNUAL REVIEW

1.1 Authority.

Article III, Section 3.13 of the City Charter of the City of Bastrop, Texas grants the City Council the right to determine its own rules of procedure. The following rules are enumerated under and by authority of said provision.

1.2 Applicability.

The rules of procedure adopted by the City Council are applicable not only to the City Council, but also to all boards, commissions, and committees of the City of Bastrop. When applied to boards, commissions and committees, the term Mayor means the chairperson and the terms City Council or Council Members means the members of the board, commission, or committee.

1.3 Amendment.

These rules may be amended or new rules adopted by a majority of the three (3) of the five (5) voting members of the City Council present.

Commented [AB1]: Must all members be present in order to amend the rules? Or should we simplify this to say that it can be amended by a majority (period)?

1.4 Annual Review.

Following the municipal elections each year, Council will review these rules of procedure annually, make changes as appropriate, and adopt their own rules of procedure in accordance with the Charter at the first scheduled meeting in July. In the event no annual review occurs, the standing rules of procedure continue in effect. This does not limit the Council's right and ability to amend the rules at any other time during the year, in accordance with the Charter.

ARTICLE 2. GENERAL RULES OF PROCEDURE AND POLICIES

2.1 Construction of Authority.

The construction of authority in all matters associated with the meetings and activities of the City Council, including the agenda, shall be: (1) the U.S. Constitution and Statutes of the United States of America; (2) ~~the~~ the Texas Constitution and Statutes of the State of Texas; (3) the City Charter; (4) the Code of Ordinances of the City of Bastrop, Texas; and (5) these rules. are a preferred source of guidance for matters not addressed herein as amended and set forth herein. ~~and, (6) Rosenberg's Rules of Order~~

2.2 Meetings Shall Be in Compliance.

All meetings of the City Council shall be in compliance with the Texas Government Code, Chapter 551, Open Meetings Act. Except in the case of an emergency meeting, notice of all meetings shall be given 72 hours before the time set for any meeting.

If meetings are held at Bastrop City Hall, they shall be televised live on the City's television channel via the appropriate cable providers and live-streamed via social media. If unable to televise meetings live due to technical difficulties, the meeting shall be recorded for a later broadcast. The Council meetings shall be rebroadcast as a part of the City's on-going channel programming.

The Bastrop City Hall is wheelchair accessible and special parking is available on the west side of the building. If special accommodations are required, please contact the City Secretary a minimum of 24 hours in advance at 512-332-8800.

2.3 Conduct of Meetings.

Meetings of the City Council shall be conducted according to the rules adopted by the City Council, ~~as well as the terms and provisions of~~ For additional guidance (non-binding), the City Council may refer to Rosenberg's Rules of Order as amended herein and when not inconsistent with these rules.

2.4 Regular Meetings.

Regular meetings of the City Council shall be on the second and fourth Tuesday of each month at 6:30 p.m. The Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate. Per the City Charter, the Council shall meet regularly and at least once each month.

2.5 Special Meetings.

The City Council may hold as many additional, special meetings as may be necessary for the transaction of the business of the City. Special meetings of the City Council may be called as necessary upon written notice to the City Secretary by the Mayor or by any ~~two (2)~~ three (3) members of the City Council unless made at a regular meeting at which a quorum of Council Members is present. The City Manager and all Council Members shall be notified of all special meetings.

Commented [AB2]: This change brings the rules into compliance with the Charter, § 3.12.

2.6 Emergency Meetings.

In case of an emergency or urgent public necessity, which shall be expressed in the meeting notice, it shall be sufficient if members receive and notice is posted one (1) hour before the meeting is convened. Notice shall be provided also to the media as requested in accordance with the Texas Government Code, Section 551.047.

2.7 Workshops (Work Session).

Workshops are special meetings called for the purpose of conducting a detailed and thorough exploration of matters that may properly come before the City Council. Citizen comments on agenda items listed for open portions of the workshop can be addressed to the City Council (i.e., not executive session) before or during the City Council's consideration of the item.

Commented [AB3]: Normally, the City Council does not seek Citizen Comments at Workshops / Work Sessions, but the TOMA provides an opportunity to speak on any open session agenda item

2.8 Executive Sessions.

Executive sessions are meetings closed to the public. These sessions are only permitted for the purpose of discussing matters enumerated in Texas Government Code Chapter 551, the Open Meetings Act. Disclosure of topics to be discussed shall be made to the public in accordance with the requirements of the Open Meetings Act.

Commented [AB4R3]: Whether to list "Citizen Comments" on an agenda for a Workshop is an option / choice.

The City Council can retire into an executive session during a regular or special meeting as stated on a posted agenda or when deemed necessary by the presiding officer or a majority of the City Council. However, before said session begins, the presiding officer shall announce that the executive session is commencing, the items to be discussed, and the section of the Open

Meetings Act that justify the executive session(s). The order in which an executive session may appear on the agenda is subject to the discretion of the Mayor. A certified record of the meeting will be created by the presiding officer or their designee, sealed and permanently kept, subject to opening by court order. No voting or action shall be taken by the City Council during an executive session. No other subject but that posted on the agenda is to be considered. Adjournment of the executive session and any vote needed shall be made during the open public meeting.

2.9 Recessed Meetings.

No meeting shall be recessed for a longer period of time than until the next regular meeting except when required information has not been received, or, in the case of work sessions or special meetings, to a date certain by motion duly passed.

2.10 Quorum.

Four (4) members of the Council shall constitute a quorum to do business.

2.11 Conflict of Interest.

A Council Member prevented from voting by a conflict of interest shall file a conflict of interest affidavit with the City Secretary as soon as possible after the posting of an agenda, which contains a conflict, unless an applicable conflict of interest affidavit has already been filed.

A Council Member prevented from voting by a conflict of interest shall step down from the dais and leave the Council Chambers, shall not vote on the matter, shall not participate in discussions regarding the matter or attempt to influence the Council's deliberation of the matter in any way (during meetings or outside of meetings), shall not attend Executive Sessions regarding the matter, and shall otherwise comply with the state law and City ordinances concerning conflicts of interest including Chapter 171 of the Texas Local Government Code.

2.12 Presiding Officer.

The Mayor shall serve as the Presiding Officer for all meetings of the City Council. In the absence of the Mayor, the Mayor Pro Tem shall serve as the Presiding Officer. In the absence of the Mayor and Mayor Pro Tem, the City Manager shall call the meeting to order, if a quorum of the Council is present, and the first order of business shall be for Council to elect by majority vote, a temporary presiding officer from the members then seated and in attendance. The temporary presiding officer shall serve in such capacity until the meeting is adjourned.

The Presiding Officer shall serve as the chair of all meetings and shall make final rulings on all questions pertaining to these rules. All decisions of the presiding officer are final unless overruled by the City Council through a motion to appeal as described in Article 3.9 – Courtesy, Decorum and Order of these rules.

The Mayor, as Presiding Officer, is entitled to participate in the discussion and debate, but may not vote, except in elections, to break a tie, and as otherwise provided in the City's Charter. Because the Presiding Officer conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the Council in debates and discussions. This practice in no way precludes the presiding officer from participating in the meeting fully and freely.

The presiding officer of boards and commissions shall be the person selected by the board or commission as the chair, co-chair, or vice chair. If these persons are not in attendance, the board or commission shall choose a temporary presiding officer from among the members in attendance.

2.13 Minutes of Meetings.

The City Secretary shall keep minutes of all proceedings of the City Council and they shall be open to public inspection in accordance with the laws of the State of Texas. Staff Liaisons will take minutes of proceedings of the various Boards & Commissions and provide them to the City Secretary as Records Custodian.

2.14 Suspension and Amendment of Rules.

Any provisions of these rules not governed by federal, state law or the City Charter may be temporarily suspended by a supermajority vote (see Article 3.7 of these rules) of the City Council. Any provisions of these rules may be amended by majority vote if such amendment is appropriately posted on an agenda of a regular meeting of the City Council and receives approval of the majority of City Council at such meeting.

2.15 Rules for the Press and Media.

The use of media equipment, such as lights, cameras and/or microphones must be coordinated with the City Manager prior to the meeting to ensure that the equipment does not disturb or otherwise conflict with or disrupt the meeting or the Council's activities.

ARTICLE 3. PARLIAMENTARY PROCEDURE

3.1 Purpose.

The purpose of these rules of parliamentary procedure is to establish orderly conduct of the meetings. Simple rules lead to a wider understanding and participation. Complex rules create two classes: (1) those who understand the rules, and (2) those who do not fully understand and those who do not fully participate. The ultimate purpose of these rules of parliamentary procedure is to encourage and facilitate decision-making by the City Council. In a democracy, the majority opinion carries the day.

These rules enable the majority to express their opinion and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

3.2 Model Format for an Agenda Item Discussion.

The following ten (10) steps may be used as a model or guidebook by the Presiding Officer. The meeting is governed by the agenda and the agenda constitutes the only items to be discussed. Each agenda item can be handled by the Presiding Officer (Mayor) in the following basic format:

1. *Announce the Item.* The Mayor should clearly announce the agenda item number and should clearly state what the subject matter of the agenda item by reading the caption for the item being considered.
2. *Receive a Report.* The Mayor should invite the appropriate people to report on the item,

Commented [AB5]: Should this be changed to require the City Secretary to read the caption, instead?

including any recommendation they might have.

3. *Ask Clarifying Questions.* The Mayor should ask the Council Members if they have any technical questions for clarification. At this point, members of the City Council may ask clarifying questions to the people who reported on the item, and they should be given time to respond.
4. *Seek Citizen Input.* The Mayor should invite citizen comments – or if a public hearing, open the public hearing. Upon conclusion, the Mayor should announce that public input is closed, or if a public hearing, close the public hearing.
5. *Motion First.* The Mayor should invite a motion from the City Council before debate is given on the merits of the item. The Mayor should announce the name of the member who makes the motion.
6. *Motion Second.* The Mayor should determine if any member of the City Council wishes to second the motion. The Mayor should announce the name of the member who seconds the motion. If no member of the City Council wishes to second the motion, then the motion fails, and should be so stated by the Mayor.
7. *Repeat Motion.* If the motion is made and seconded, the Mayor should make certain that everyone (including the audience) understands the motion. This is done in three ways:
 - a. The Mayor can ask the maker of the motion to repeat it;
 - b. The Mayor can repeat the motion; or
 - c. The Mayor can ask the City Secretary to repeat the motion.
8. *Discuss the Motion.* The Mayor should now invite the members of the City Council to discuss the motion. If there is no desired discussion, the Mayor may call for a vote. If there has been no discussion or a brief discussion, then there is no need to repeat the motion before taking a vote. If the discussion has been lengthy, it is a good idea to repeat the motion before calling for the vote.
9. *Vote.* The Mayor may ask the City Secretary to call roll. Unless a super-majority is required for passage of the motion, a simple majority vote determines whether the motion passes or fails. Unless a member of the Council seeks recusal from voting on any question where the vote would constitute a conflict of interest, and that recusal is consented to by a majority of the remainder of the Council, all members of the Council shall vote upon every question, ordinance or resolution. Action items require a vote.
10. *Announce the Outcome.* The Mayor announces the results of the vote and should also state what action (if any) the Council has taken. The Mayor should announce the name of any member who voted in the minority on the motion.

3.3 The Basic Motions.

The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move for approval of the ordinance as submitted," or "I make a motion that we deny the resolution." Multiple motions may be made on the same agenda item provided they are made and voted on sequentially.

Commented [AB6]: The City Council can consider and act upon more than one motion per item. If one motion fails, others can be considered.

3.4 The Motion to Amend.

If a member wants to change a basic motion, the member would have to motion to amend the

original or previously amended motion. A motion to amend might be: “I move that we amend the motion to include the changes we discussed to the ordinance.” A motion to amend seeks to retain the basic motion on the floor (a motion made and seconded), but to modify it in some way. A motion to amend requires the agreement of the person making the original motion. If the basic motion has already been seconded, the motion to amend must be acknowledged and accepted by the member who seconded the basic motion.

3.5 Discussion and Debate.

The basic rule of motions is that they are subject to discussion and debate. Accordingly, the basic motion and the motion to amend are all eligible, each in their turn for full discussion by and before the City Council. Discussion and debate can continue as long as the members wish to discuss it, or until the Mayor decides that it is time to move on and call a vote on the motion.

3.6 Other Motions.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the Council to move on. The following motions are NOT debatable, and the Mayor must immediately call a vote on the motion, if seconded by another member.

- *Motion to Adjourn.* This motion, if passed, requires the Council to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.
- *Motion to Recess.* This motion, if passed, requires the Council to immediately take a recess. Normally the Mayor will determine the length of the recess which could last for a few minutes to several hours. It requires a simple majority vote.
- *Motion to Fix the Time to Adjourn.* This motion, if passed, requires the Council to adjourn the meeting at the specific time set in the motion. For example, “I move we adjourn this meeting at Midnight.” It requires a simple majority vote.
- *Motion to Table.* This motion, if passed, requires discussion of the agenda item to be halted immediately, and the agenda to be placed on hold. The motion may contain a specific time to bring the item up again, or it may not specify a time. If no time is specified, the item shall be placed on the agenda at the following Council meeting.
- *Motion to Remove from Table.* This motion, if passed, allows the Council to remove an item previously placed on hold. A vote in favor of removing an item from the table must be made before the Council can take action on an item that was tabled.

3.7 Motions Requiring a Supermajority Vote to Pass.

A supermajority vote consists of at least four votes (three to pass as a simple majority, plus one more). This requirement applies regardless of the number of members present and voting.

- *Motion to Limit Debate.* This motion is sometimes referred to as, “moving the question” or, “calling the question.” When a member of the Council makes such a motion, the member is saying, “I have had enough discussion, let’s vote on the issue.” When such a motion is made, the Mayor should ask for a second, stop the discussion and vote on the motion to limit debate. The motion requires a supermajority vote to pass. Meaning, the number of council members voting for the motion must equal four or more.

Commented [AB7]: As is common, our rules provide that there should be a thorough discussion after a motion has been made and seconded BEFORE a vote is called.

Commented [AB8R7]: It has been common in Bastrop to allow an open discussion by the City Council prior to a motion being made

- *Motion to Object to the Consideration of an Item.* This motion, if passed, precludes the City Council from even considering the item on the agenda. It does not preclude the item from appearing on a future agenda. The motion requires a supermajority vote to pass. (Normally, this motion is unnecessary, because the objectionable item can be defeated outright or tabled.)
- *Motion to Suspend the Rules.* This motion is debatable, but requires a supermajority vote to pass. This motion allows the Council to suspend its own rules for a particular purpose. For example, the Council may desire to give a particular speaker more time than normally allowed. A “motion to suspend the rules and give the speaker ten additional minutes,” accomplishes this desire.

3.8 Motion to Reconsider.

There is a special motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. As such, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a simple majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

The first issue involves timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next regular meeting (if properly noticed and on the posted agenda). A motion to reconsider made at a later time is considered untimely and it may not be considered unless the Council suspends the rules to consider it.

Secondly, the motion to reconsider can only be made by a member of the Council who voted in the majority on the original motion. The motion to reconsider may be seconded by any member of the City Council regardless of how they voted on the original motion. If a member of the Council who voted in the minority on the original motion seeks to make a motion to reconsider, it **MUST** be ruled out of order by the Mayor. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back again and again, which would defeat the purpose of finality.

If a motion to reconsider passes, then the original matter is back before the Council, and a new original motion is in order. The matter may be discussed as if it were on the floor for the first time. The City Attorney should be consulted prior to making a motion to reconsider so that potential legal implications can be evaluated in advance.

3.9 Courtesy, Decorum and Order.

These rules of order are meant to promote an atmosphere of courtesy and decorum appropriate for the efficient discussion of business. It is the responsibility of the Mayor (and the members of the City Council) to maintain that atmosphere of courtesy and decorum. The Mayor should always ensure that debate and discussion focus on the item and the policy in question, not on the personalities of the participants of the discussion. Debate on policy is healthy; debate on

Commented [AB9]: It may be difficult or inappropriate to Reconsider an item at the "next" meeting if that would be a Special (aka, "Called") meeting on a specific, unrelated topic.

Commented [AB10]: Reconsidering an action and changing the result could have legal consequences (e.g., contracts, regulations, funds, employment actions).

personalities is not. In order to assist in the creation and maintenance of that atmosphere, the following rules shall govern all meetings:

1. *Request to Speak.* Before a Council Member, staff member or an audience member may speak on open session agenda items, they must first be recognized by the Mayor. Upon recognition the person requesting to speak shall hold the floor and shall make their point clearly and succinctly. Public comments must be kept relevant to agenda items or other matters over which the city council has jurisdiction. The Mayor shall rule on the relevance of comments. Persons making irrelevant, impertinent, overly redundant or slanderous remarks may be barred by the Mayor from further comment before the Council during the meeting. Audience members may criticize the city council, including criticism of any act, omission, policy, procedure, program, or service. The Mayor has the right to cut a speaker off if the discussion becomes too personal to an individual, loud, crude, irrelevant, impertinent, redundant, or slanderous.
2. *Order.* While the Council is in session, all Council Members must preserve order and decorum. If a person fails to request to speak before speaking, the Mayor shall rule them 'out of order' and remind them that they do not have the floor. A person shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the meeting, nor disturb any other person while speaking or refuse to obey the orders of the Mayor. Members of the City Council should not leave their seats during a meeting without first recusing themselves, obtaining permission of the Mayor, or making a motion to recess.
3. *Improper References Prohibited.* Every person desiring to speak shall address the entire Council and shall not single out a member of the Council, the audience or a staff member. Speakers shall confine themselves to the question under debate, avoiding all personal attacks and indecorous language.
4. *Interruptions.* A Council Member, once recognized, shall not be interrupted when speaking unless it is to call the member to order, or other such interruption expressed below. If the Council Member, while speaking, is called to order, the member shall cease speaking until the question of order is determined, and if the Council Member is found to be in order, the member shall be permitted to proceed speaking. Allowable interruptions or points of order are as follows:
 - a. *Point of Privilege.* The proper interruption would be: "Point of Privilege." The Mayor would then ask the interrupter to, "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room might be too hot or cold, or a fan motor might interfere with a Council Members ability to hear.
 - b. *Point of Order.* The proper interruption would be: "Point of Order." The Mayor would then ask the interrupter to, "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the Mayor called for a vote on a motion that permits debate without allowing any discussion.
 - c. *Motion to Appeal.* If the Mayor makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the Mayor by stating, "motion to appeal." If the motion is seconded and after debate if it passes by a simple majority

vote, the ruling of the Mayor is reversed.

- d. *Call for orders of the day.* If a council member believes the discussion has strayed from the agenda, the member may say, "let's return to the agenda." The motion does not require a vote. If the Mayor discovers that the discussion has strayed from the agenda, the Mayor simply returns to the business of the day.
- e. *Withdraw a Motion.* During the debate and discussion of a motion, the original maker of the motion on the floor, at any time, may interrupt the speaker to withdraw his or her motion. The motion is immediately deemed withdrawn and discussion on the motion shall cease. Council members are free to make the same motion or another motion.

3.10 City Council and Board Member Disruptions.

As stated in Resolution R-2017-20, when members of the City Council or other Board Members become engaged in heated discussions that could be construed as not following parliamentary procedures. It will be the responsibility of the Presiding Officer (Mayor or Board Chair) to restore order to the meeting. In the event that order cannot be immediately restored, the Presiding Officer should call for a recess. When the recess is called, a sufficient number of the City Council or Board Members should depart the room so that a quorum is no longer present. Information Technology personnel will ensure that the microphones and audio for the television channel are turned off. The Presiding Officer will determine what action to take and will resume the meeting, when appropriate. Law enforcement personnel will not become involved unless a crime (i.e. assault, terroristic threat, etc.) is committed.

3.11 Audience Disruptions.

It is against the laws of the State of Texas for anyone to intentionally or recklessly disrupt official proceedings. As stated in Resolution R-2017-20, if a member of the audience (gallery) becomes disruptive, the Presiding Officer will inform that person that their conduct is not permissible and to cease. If that person receives a second warning, the Chief of Police or the Chief's designee will position themselves in proximity to that person. On the third warning (when appropriate), the Presiding Officer will inform the person that their actions are disrupting this lawful meeting and they must depart immediately. The Chief of Police or the Chief's designee has the discretion to escort the person out of the chambers and off of City property. In the event the person does not leave the chambers, the person may be subject to being arrested under Section 42.05 of the Texas Penal Code (TPC) and/or Section 38.13 of TPC, or punished as provided in an ordinance enacted under Section 217.003 of the Texas Local Government Code. The person will be subject to arrest under Section 30.05 TPC if the person does not leave the property. In the event the same person comes to a subsequent meeting and disrupts that meeting to the point they are requested to leave again, a criminal trespass warning can be issued.

3.12 Council May Discipline its Own Members.

In the event a Council Member violates the Charter, these rules or any other ordinance of the city, or acts in a manner that causes embarrassment or disgrace to the City of Bastrop, the City Council on supermajority vote may discipline the offending member. To consider such an action, the Mayor or two Council Members may place the item on an agenda.

Such action may only take place after an executive session is held to discuss the offense. The offending member shall be present at the executive session to answer any questions asked by members of the City Council or make other statements as the member may desire to make in their defense. If the offending member refuses to attend the executive session, the remaining members of the City Council may proceed in their absence.

The outcome of the executive session may be as follows and shall be made publicly in open session in accordance with the Texas Open Meetings Act:

1. *No Action.* The City Council chooses to take no action.
2. *Private Censure.* The City Council may choose to privately censure the offending member, leaving their comments to the offending member left in the confines of the executive session.
3. *Public Censure.* The City Council may choose to publicly censure the offending member through a resolution passed by supermajority vote and entered into the public record.

ARTICLE 4. AGENDA ORDER

The Mayor and the City Manager or an appropriate designee shall prepare an agenda and cause the same to be posted in accordance with the Texas Open Meetings Act. Agendas and packet material shall be delivered to the City Council via electronic format uploaded into a cloud storage service—such as Dropbox, One Drive. City Council shall be notified via email that the agenda and packet have been uploaded and available for review. The goal would be to upload the agenda and packet on Thursday prior to a regularly scheduled Council Meeting. In the event of an emergency meeting of the City Council, this provision shall be suspended when not inconsistent with the provisions of federal or state law or the City Charter.

In order to facilitate the agenda process, the Mayor, two Council Members, or the City Manager may place an item on the agenda. Staff assistance, if required, should be requested through the City Manager (City Charter, Article III, Section 3.05 Prohibitions). Agenda items must be provided to the City Manager's Office at City Hall by 12:00 noon on the 7th calendar day preceding the date of the regular meeting. If the agenda topic does not allow for staff to adequately prepare information for Council's consideration, the item may be postponed until the next regular meeting.

4.1 Call to Order.

The Mayor shall call the meeting to order. The Mayor shall announce that a quorum of the City Council is present and shall state for the record the names of all members of the City Council that are absent.

4.2 Pledges of Allegiance to the United States & Texas Flags.

The Council shall recite the Pledge of Allegiance, first to the United States Flag, and then to the state Flag of Texas. The Council welcomes individuals and organizations, young and old, to lead the Pledges.

4.3 Invocation.

All regular meetings of the City Council shall include an invocation.

Commented [AB11]: Technology changes rapidly, so the platform should not be specified here.

4.4 Presentations.

Presentations may be made by the Mayor, City Council, or Staff. The Mayor may deliver any proclamation as may be required from time to time. Outside entities and organizations granted permission to make a presentation shall be placed in this section. Presentations are limited to a maximum of five minutes.

Commented [AB12]: My recommendation. Council can opt for a shorter/ longer time

Proposed proclamations and resolutions will not be placed on an agenda or brought before the City Council for discussion or action that:

- (a) Take a position on a matter of religious or spiritual values or principles, including ones that advance one religion, denomination or article of faith over another;
- (b) Promote political partisanship favoring one party over another;
- (c) Advocate outcomes in legal matters in which the City of Bastrop is not a party and are pending before a court or administrative law body (e.g., State Office of Hearings Examiners);
- (d) Is contrary to a policy position stated in an ordinance previously adopted by the Council (unless the Council is in the process of amending or repealing the prior ordinance).

4.5 Work Session/Briefings.

Items may be included in this section for the purpose of conducting a detailed and thorough exploration of matters that may subsequently come before City Council as an item for individual consideration. All questions of a technical nature, which require a detailed explanation for understanding, may be considered in a work session. Council may, through the City Manager, request the attendance of such staff members or outside experts as may be required to answer such questions. No formal action may be taken on items. Council may provide staff direction on the matter being considered. Citizen comments and questions will be considered at the end of the prepared presentation and after Council has asked questions.

4.6 Staff and Board Briefings.

Items that are provided to Council on a routine basis, such as monthly financial statements and quarterly investment reports, should be included in this section. Appointed boards of the City, who have been requested to provide periodic updates, such as the Bastrop Economic Development Corporation and Visit Bastrop, will be included in this section.

4.7 Citizen Comments Item.

Every agenda must include the following language for purposes of open and transparency to inform the public of how to appropriately address the City Council:

~~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. 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.~~

~~Alternately, if you are unable to attend the council meeting, you may complete a citizen comment form with your comments at Error! Hyperlink reference not valid. before 5:00 p.m. on~~

~~(insert the date of the meeting). Comments submitted by this time will be distributed to the city council prior to meeting commencement, referenced at the meeting, and included with the meeting minutes.~~

~~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 anyone. Accordingly, profane, insulting or threatening language directed toward anyone will not be tolerated.~~

~~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 before 5:00 p.m. on June 28, 2022 the night of the meeting. Comments submitted by this time will be distributed to the city council prior to meeting commencement, referenced at the meeting, and included in the official record of the meeting with the meeting minutes. Comments from each individual will be limited to three (3) minutes when 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.~~

4.8A Approval of the Minutes.

The Council shall consider the minutes of any meeting presented for their review since the last regular meeting. This heading will only be used when there are no other items listed on a consent agenda; otherwise, this heading may take the form of one item among others on the Consent Agenda.

4.8B Consent Agenda Items.

There is hereby established, as a part of every agenda for regular and/or special called meetings of the City Council, a portion of said agenda that shall be labeled "consent agenda." Said consent agenda may consist of any and all business regularly coming before the City Council including approval of the minutes of previous meetings.

Any member of the City Council or a citizen may request that any item be removed from the consent agenda and considered separately prior to the City Secretary reading the caption of each item. If any item was removed from the consent agenda, it will be considered immediately following approval of the remainder of the consent agenda.

The City Secretary shall read the caption of each item and/or ordinance prior to a motion being made to approve the Consent Agenda. Once a second is received on the motion, the Council shall vote.

All items set out in the consent agenda shall be deemed passed upon passage of an affirmative motion, by a vote of the majority of the members of the City Council, that the consent agenda be adopted. No further action shall be deemed necessary, and all such items appearing on the consent agenda, upon passage of such motion, shall be deemed adopted as if voted upon separately.

4.9 Items for Individual Consideration.

Items for individual consideration shall be considered by the City Council individually and approved by either a simple majority vote or a supermajority vote as the case may be.

Public hearings, which are statutorily required, shall be included in this section. The Mayor shall first request staff comments. The Mayor shall open the public hearing and receive citizen input. While the public hearing is open, Council may ask questions of the speakers, but may not deliberate or argue with the public on the matter at hand. Those speaking at a public hearing are required to follow the rules established herein for citizen comments. Upon conclusion of citizen comments, the Mayor shall close the public hearing. Council may deliberate or take action on the matter at hand upon the closing of the public hearing.

Items listed for individual consideration shall be removed at the request of the item's sponsor(s) unless a majority of the City Council votes to proceed with the item.

Commented [AB13]: Once an item is on the agenda, can one person remove it? The sponsor? The applicant/ vendor who is the subject of the item?

4.10 Executive Session Items.

This section is only used when it is known in advance that it is necessary for the Council to convene in executive session. Executive sessions are sessions closed to the public. They are only permitted for the purpose of discussing matters enumerated in Chapter 551, Open Meetings Act of the Texas Government Code. Disclosure of topics to be discussed shall be made to the public in accordance with the requirements of the Open Meetings Act.

If the subject of the executive session warrants, the executive session may be held prior to the regular session. Council may agree in Executive Session what can be shared in public prior to concluding the Executive Session. Nothing herein shall limit the ability of the Council to adjourn into Executive Session at any time during a meeting to discuss any agenda item.

4.11 Action on Executive Session Items.

This section is only used if Council conducts an executive session. As a general rule, action on executive session items must be taken during public/open session of the Council, unless as authorized by law. Action may include the taking of no action at all.

4.12 Adjournment.

The Mayor shall adjourn the meeting upon passage of the appropriate motion.

ARTICLE 5. RULES GOVERNING CITIZEN COMMENTS

5.1 Purpose.

It is the desire of the City Council to hear from the citizens of Bastrop and to stimulate discussion and offer a forum for a cordial and meaningful public debate on matters that are properly a

concern of the City Council. The following rules shall control and govern audience comments.

5.2 Rules for Audience Comments during Public Hearing.

Immediately preceding the opening of a public hearing, the Mayor may direct the City Secretary to read the rules governing citizen comments during a Public Hearing. Generally, the rules for a Public Hearing are the same as for Citizen Comments (below); however, the rules for Public Hearings may be altered by the Mayor in advance of the hearing if reasonably necessary to facilitate audience input, Council deliberations, and an efficient meeting.

5.3 Rules Governing Citizen Comments.

1. Citizen comments are limited to those speakers who have been acknowledged by the Presiding Officer and who speak from the dais.
2. Each speaker is limited to a maximum timed limit of three minutes on any item except for a public hearing item for which the Presiding Officer has announced a longer time period is allowed. Speakers cannot pool or donate their time allotment to other speakers.
3. No individual may address the Council without submitting a speaker card, which may be done online or in person. The card must clearly state the subject or issue on which the citizen wishes to speak. If the subject matter does not pertain to city business, the Mayor shall advise the individual and/or make recommendations as to how they may get the issue addressed.
4. Citizens speaking on agenda items shall restrict their comments to the subject matter listed. Citizens speaking on agenda items may make comments either during the Citizen Comment portion of the agenda or when the City Council takes up that particular agenda item.
5. Citizens speaking on non-agenda items shall only speak during the Citizens Comment portion of the agenda.
6. Council may not act upon or discuss any issue brought forth as a non-agenda item, except to:
 - a. Make a statement of specific factual information given in response to the inquiry, or
 - b. A recitation of existing policy in response to the inquiry.

Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.
7. Proper respect, decorum, and conduct shall prevail at all times. Impertinent, slanderous, or personal attacks are strictly prohibited and violators may be removed from the Council Chambers.
8. No placards, banners or signs may be displayed in the Council Chambers or City Hall. Exhibits relating to a presentation are acceptable provided that copies are given to the City Secretary to be included in the official records of the meeting.
9. Because of cyber-security concerns, citizens are not allowed to utilize the City's audio-visual equipment for electronic multi-media presentations unless permission is granted by the City Secretary at least 24 hours in advance (at the City Secretary's sole discretion). Hard copies must be provided to the City Secretary to be included in the official records of the meeting.
10. Arguing loudly or forcefully, efforts at intimidation of speakers or attendees, or other disruptive behavior is prohibited. Civil discussion and/or debate are acceptable on items specifically listed on the agenda.
11. Unauthorized remarks from the audience, stomping of feet, applauding, whistles, yells, or

Commented [AF14]: Are the online speaker cards to be used to register comments or should they also be used along side cards filled out at Council to speak before Council?

Commented [AB15R14]: We have a choice. The law does not specify an answer.

any type of disruptive behavior is prohibited. Applause of appreciation may be acceptable when recognizing a significant event or achievement.

12. Council meetings are the workplace to carry out the business of the City of Bastrop; therefore, any conduct that could constitute harassment in the workplace is prohibited.

5.4 Preservation of Order.

As referenced in Article 3.11 above, the Mayor shall preserve order and decorum and, if necessary, shall cause to be silenced or removed from the Council Chambers any non-Council Member speaking out of order or disrupting the order of the meeting.

5.5 Applicants.

An applicant appearing before the Council seeking approval for items such as contracts or development authorizations is limited to a maximum time of ten minutes. An applicant who has made a presentation to the Council must again be recognized before being allowed to return to the podium to make additional comments or answer questions.

ARTICLE 6. COUNCIL LIAISONS TO BOARDS AND COMMISSIONS

One Council Member will be appointed as the council liaison to each of the city's boards and commissions annually as a part of the Board & Commission Member appointment process, except for the Ethics Commission, Bastrop Housing Authority, Zoning Board of Adjustments, and the Hunters Crossing Local Government Corporation (Council Members are appointed to this board). The Mayor will appoint council liaisons with consideration given to applicable expertise. Council liaisons are asked to make every effort to attend the meetings of the boards or commissions to which they have been appointed as liaison. Board and commission members may contact their council liaison concerning items of concern or interest with regard to their appointed board.

ARTICLE 7. TABLE OF MOTIONS AND POINTS OF ORDER

MOTION/ORDER	REQUIRES SECOND	DEBATABLE	AMENDABLE	VOTE TYPE
Basic Motion	Yes	Yes	Yes	Simple
Motion to Amend	*	No	Yes	N/A
Motion to Adjourn	Yes	No	No	Simple
Motion to Recess	Yes	No	Yes	Simple

Motion to Fix the Time to Adjourn	Yes	No	No	Simple
Motion to Table	Yes	No	No	Simple
Motion to Limit Debate	Yes	No	No	Super
Motion to Object to the Consideration of an Item	Yes	No	No	Super
Motion to Suspend Rules	Yes	No	No	Super
Motion to Reconsider	Yes	Yes	Yes	Simple
Point of Privilege	No	No	No	N/A
Point of Order	No	No	No	N/A
Motion to Appeal	Yes	Yes	No	Simple
Call for Orders of the Day	No	No	No	N/A
Withdraw a Motion	No	No	No	N/A
Motion to Enforce	Yes	No	No	Simple

* For the purposes of these rules, Amendments are not debatable and only require the approval of the member who made the original motion. An amendment to an amendment, requires first the approval of the member who made the original amendment and secondly the approval of the member who made the original motion.



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Receive presentation on the FY 2022 Third Quarterly Report.

AGENDA ITEM SUBMITTED BY:

Submitted by: Rebecca Gleason, Assistant City Manager

BACKGROUND/HISTORY:

The Assistant City Manager for Community Engagement will be providing the City Council a Quarterly Report overview to include updates on Financial Reports, Investment Reports, Capital Improvement Projects, Management Projects, and projects supporting Council's 9 Focus Areas for the Fiscal Quarter that just ended.

The objectives of preparing and presenting a Quarterly Report are to track trends across our ongoing data sources in a single place, as well as to communicate to Council the progress that is being made under each of the 9 Focus Areas. The reports can be used as a resource by council for making decisions and setting priorities during the budget season.

The report was largely compiled by one of our cross functional teams. The Communications & Special Events Team (CSET) is made up of staff members across all Departments that come together several times a month to push several projects forward including the Quarterly Report.

ATTACHMENTS:

1. <https://www.cityofbastrop.org/upload/page/0472/docs/FY22%20Q3%20Report%20final%20842022.pdf>



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Consider action to approve City Council minutes from the July 26, 2022, Regular meeting.

AGENDA ITEM SUBMITTED BY:

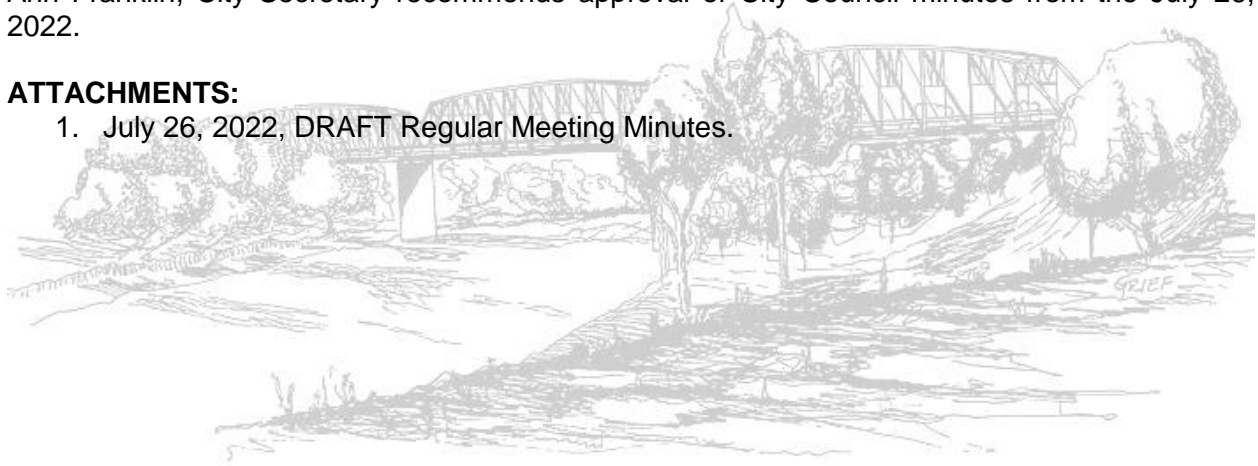
Submitted by: Ann Franklin, City Secretary

RECOMMENDATION:

Ann Franklin, City Secretary recommends approval of City Council minutes from the July 26, 2022.

ATTACHMENTS:

1. July 26, 2022, DRAFT Regular Meeting Minutes.



JULY 26, 2022

The Bastrop City Council met in a regular meeting on Tuesday, July 26, 2022, at 5:30 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 City Manager, Paul A. Hofmann; City Secretary, Ann Franklin; and City Attorney, Alan Bojorquez.

CALL TO ORDER – EXECUTIVE SESSION

Mayor Schroeder called the meeting to order at 5:30 p.m. with a quorum present.

EXECUTIVE SESSION

The City Council met at 5:31 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:

- 2A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071, 551.074, and 551.087 to seek the advice of legal counsel regarding potential real estate, land use development, and economic development alternatives for the Pine Forest Unit 6 subdivision.
- 2B. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071, .074 Real Property, and .087 Economic Development to seek the advice of legal counsel regarding public-private partnerships for possible multipurpose lodging projects, including the development of a hotel, update to the City Bastrop Convention & Exhibit Center, development of associated kitchen facilities, and supportive retail.

Mayor Schroeder recessed the Executive Session at 6:30 p.m.

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

- 2A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071, 551.074, and 551.087 to seek the advice of legal counsel regarding potential real estate, land use development, and economic development alternatives for the Pine Forest Unit 6 subdivision.
A motion was made by Council Member Plunkett to approve the non-binding letter of intent with an amendment on page 2, 7A to replace the word “shall” with the word “may”, seconded by Council Member Lee, motion was approved on a 5-0 vote.

CALL TO ORDER – REGULAR SESSION

Mayor Schroeder called the Regular Council Meeting to order at 6:31 p.m.

PLEDGE OF ALLEGIANCE

Dominic Fahrenthold, Vincent Fahrenthold, Luke Paysee, John Morrow, and Tristan Gaines, Boy Scouts of America Troop 2010 led the pledges.

INVOCATION

Mayor Connie Schroeder, gave the invocation.

PRESENTATIONS

- 7A. Mayor's Report
- 7B. Council Members' Report
- 7C. City Manager's Report

CONSENT AGENDA

- 11B. Consider action to approve Resolution No. R-2022-62 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with Great West Development, Inc. for River Crest Subdivision, 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: Jennifer C. Bills, Director of Planning & Development
This item was withdrawn from the agenda.

ITEMS FOR INDIVIDUAL CONSIDERATION

- 12C. Consider action to approve Resolution No. R-2022-67 of the City Council of the City of Bastrop, Texas for the approval of the Diversity, Equity, and Inclusion Board Implementation Recommendations including the creation of a Diversity, Equity, and Inclusion Board, as requested by Council Member Cheryl Lee.
Submitted by: Rebecca Gleason, Assistant City Manager
Presentation was made by Rebecca Gleason, Assistant City Manager.

The following names were read into record by the Mayor as in support:

**Judah Ross
Anne-Marie McKaskle-Davis
Dock Jackson
Charles Washington Jr.
Kevin Mawby
Ryan Holiday**

SPEAKERS

**Steve Chamberlain
230 Oak Forest Dr.
Cedar Creek, Tx 78612
817-360-0678**

**Glenn Carlisle
169 High Gove Rd
Cedar Creek, Tx 78612
512-689-9620**

A motion was made by Mayor Pro Tem Rogers to approve Resolution No. R-2022-67, seconded by Council Member Lee, motion was approved on a 3-2 vote. Those voting aye were: Mayor Pro Tem Rogers and Council Members Lee and Plunkett. Those voting nay were Council Members Crouch and Kirkland.

Mayor Schroeder recessed the Council Meeting at 7:18 p.m.

Mayor Schroeder called the Council Meeting back to order at 7:20 p.m.

WORK SESSION/BRIEFINGS

- 8A. Receive presentation of the Proposed FY2023 Budget and announce that the Budget Workshops will be held on August 16 & 17, 2022, at 5:00 p.m. and the Public Hearing on the FY2023 budget will be held on September 13, 2022, at 6:30 p.m. at City Hall 1311 Chestnut Street.

Submitted by: Paul A. Hofmann, City Manager and Tracy Waldron, Chief Financial Officer

Presentation was made Paul A. Hofmann, City Manager.

- 8B. Receive presentation regarding the renegotiated contract with the current solid waste provider and provide direction as necessary.

Submitted by: Tracy Waldron, Chief Financial Officer

Presentation was made Tracy Waldron, Chief Financial Officer and Lynn Lantrip, Solid Waste Specialist.

A motion was made by Council Member Crouch giving direction to staff to take steps towards preparing an Request For Proposal (RFP), seconded by Council Member Kirkland, motion was approved on a 5-0 vote.

Mayor Schroeder recessed the Council Meeting at 9:21 p.m.

Mayor Schroeder called the Council Meeting back to order at 9:27 p.m.

STAFF AND BOARD REPORTS

- 9A. Receive presentation on the unaudited Monthly Financial Report for the period ending June 30, 2022.

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 presentation on the unaudited Monthly Financial Report, seconded by Council Member Lee, motion was approved on a 5-0 vote.

CITIZEN COMMENTS - NONE

CONSENT AGENDA

A motion was made by Council Member Lee to approve Items 11A, 11C, 11D, 11E, 11F, and 11G as listed on the Consent Agenda after being read into the record by City Secretary, Ann Franklin. Seconded by Council Member Crouch, motion was approved on a 4-0 vote.

- 11A. Consider action to approve City Council minutes from the July 12, 2022, Regular meeting.

Submitted by: Ann Franklin, City Secretary

- 11C. Consider action to approve Resolution No. R-2022-63 of the City Council of the City of Bastrop, Texas, awarding a contract with Brannan Paving Co., LTD for the Street Maintenance Project to an amount of Six Hundred Three Thousand Seven Hundred Ninety-Eight Dollars and Sixty-Five Cents (\$603,798.65); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
Submitted by: Fabiola de Carvalho, MIAM, Director of Engineering and Capital Project Management
- 11D. Consider action to approve Resolution No. R-2022-64 of the City Council of the City of Bastrop, approving the Certification of Additional Sales and Use Tax to Pay Debt Services; providing for a repealing clause; and providing for an effective date.
Submitted by: Tracy Waldron, Chief Financial Officer
- 11E. Consider action to approve the second reading of Ordinance No. 2022-18 of the City of Bastrop, Texas updating and amending Bastrop Code of Ordinances, Chapter 13, Article 13.12, entitled "Impact Fees", updating the land use assumptions, capital improvement plan and amending impact fees for water and wastewater utilities, and providing for an effective date.
Submitted by: Tracy Waldron, Chief Financial Officer
- 11F. Consider action to approve Resolution No. R-2022-66 appointing Trey Job as acting city manager; providing for a severability clause; and establishing an effective date.
Submitted by: Ann Franklin, City Secretary
- 11G. Consider action to approve Resolution No. R-2022-65 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Trey Job 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

ITEMS FOR INDIVIDUAL CONSIDERATION CONTINUED

- 12A. Hold a public hearing and consider action to approve the first reading of Ordinance No. 2022-19 approving a Zoning Concept Scheme for 2.395 acres of Farm Lot 62, changing the zoning for 2.395 acres out of Farm Lot 62 East of Main St., from P2 Rural to P4 Mix, located east of Pecan Street, within the city limits of Bastrop, Texas, as shown in Exhibit A, providing for findings of fact, adoption, repealer, severability and enforcement, proper notice and meeting; and establishing an effective date and move to include on the August 9, 2022 Consent Agenda.
Submitted by: Jennifer C. Bills, Director of Planning & Development
Presentation was made by Jennifer C. Bills, Director of Planning & Development.

Open public hearing.

Closed public hearing.

A motion was made by Mayor Pro Tem Rogers to approve the second reading of Ordinance No. 2022-19, seconded by Council Member Lee, motion was approved on a 5-0 vote.

- 12B. Consider action to approve a Letter of Intent between the City of Bastrop and Sunway Hospitality to establish a partnership toward the development of a 130-150 room hotel, update to the City Bastrop Convention & Exhibit Center façade, development of associated kitchen facilities, and supportive retail.

Submitted by: Rebecca Gleason, Assistant City Manager

Presentation was made by Rebecca Gleason, Assistant City Manager.

A motion was made by Mayor Pro Tem Rogers to approve a Letter of Intent between the City of Bastrop and Sunway Hospitality, seconded by Council Member Lee, motion was approved on a 5-0 vote.

Adjourned at 9:47 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie Schroeder

City Secretary Ann Franklin

The Minutes were approved on August 9, 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: August 9, 2022

TITLE:

Consider action to approve the second reading of Ordinance No. 2022-19 approving a Zoning Concept Scheme for 2.395 acres of Farm Lot 62, changing the zoning for 2.395 acres out of Farm Lot 62 East of Main St., from P2 Rural to P4 Mix, located east of Pecan Street, within the city limits of Bastrop, Texas, as shown in Exhibit A, providing for findings of fact, adoption, repealer, severability and enforcement, proper notice and meeting; and establishing an effective date.

STAFF REPRESENTATIVE:

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

BACKGROUND:

The applicant has submitted an application for a Zoning Concept Scheme for 2.395 acres of Farm Lot 10 East of Main Street (Attachment 2). The development is proposed to be Place Type P4 – Mix zoning which allows the opportunity for either commercial or residential to occupy to the lot as long as they remain in a residential form and scale.

Staff recommends requiring a Neighborhood Regulating Plan be completed prior to any further development of these three tracts in the future. During this review process, the 10% Civic Space requirement will be required to be met on the site with public amenities. See the attached Background Memo for additional information.

PLANNING & ZONING COMMISSION RECOMMENDATION:

At their regular meeting on June 30, 2022, the P&Z recommended approval of the request by a vote of 7-0.

RECOMMENDATION:

Consider action to approve the second reading of Ordinance No. 2022-19 approving a Zoning Concept Scheme for 2.395 acres of Farm Lot 62, changing the zoning for 2.395 acres out of Farm Lot 62 East of Main St., from P2 Rural to P4 Mix, located east of Pecan Street, within the city limits of Bastrop, Texas, as shown in Exhibit A, providing for findings of fact, adoption, repealer, severability and enforcement, proper notice and meeting.

ATTACHMENTS:

- Background Memo
- Ordinance 2022-19
- Exhibit A: Location Map
- Attachment 1: Zoning Concept Scheme
- Attachment 2: Applicant's Project Description Letter
- Attachment 3: Property Owner Notice
- Attachment 4: Proposed Zoning Map
- Attachment 5: Proposed Future Land Use Map

TO: Paul A. Hofmann, City Manager
 From: Jennifer C. Bills, Director of Planning & Development
 Date: July 19, 2022
 Subject: Council Item Description



=====

ITEM DETAILS:

Site Address: East of Pecan St (Exhibit A)
 Total Acreage: 2.395 acres
 Acreage Rezoned: 2.395 acres
 Legal Description: 2.395 acres out of Farm Lot 62 East of Main Street

Property Owner: Gene Brown

Existing Use: Vacant/Undeveloped
 Existing Zoning: P2 Rural
 Proposed Zoning: P4 Mix (Attachment 4)
 Character District: North End
 Future Land Use: Neighborhood Residential (Attachment 5)

BACKGROUND:

The applicant has submitted an application for a Zoning Concept Scheme for 2.395 acres of Farm Lot 62 East of Main Street (Attachment 2). The development is proposed to be Place Type P4 – Mix zoning which allows the opportunity for either commercial or residential to occupy the lot as long as they remain in a residential form and scale.

Place Type P4 – Mix is defined in the code as:

“More intense Building Types that provide more lifestyle choices. It provides for a mix of Residential Building Types. Commercial and Office uses are allowed in this District only in House form Structures. Because P4 is a transition area, the Street Types consists of multimodal Streets, but are primarily Residential urban fabric.”

The Future Land Use Plan for Industry shows this area as Neighborhood Residential:

“The Neighborhood Residential character area is for single-family residential subdivision development, associated amenities such as parks, trails, open spaces, and public uses such as schools, fire stations, and more. Although individual developments may exhibit common features including home size, lot size, setbacks, impervious surface coverage, etc., the character area supports variations of these spatial and aesthetics characteristics, subject to appropriate transitions in form, scale, and density between blocks or adjacent developments. In some instances, transitions between developments and adjacent character areas may include higher density housing types or neighborhood oriented commercial uses of limited scale.”

While the FLUP calls for the area to be primarily single-family, the 2.395-acre tract is contiguous with property already zoned P4 Mix (which allows single and multi-family building types) and is located in close proximity to Mesquite Street which is a Primary Multimodal Street on the Master

Transportation Plan and to State Highway 95. With these considerations, the proposed P4 Mix and Zoning Concept Scheme will be in compliance with the intents of Future Land Use Plan. During the Zoning Concept Scheme review, the applicant requested to push many of the requirements from the ZCS to a later process, as the current owner does not plan to develop the property, his intention is to get all three tracts he owns under the same zoning designation.

Staff recommends requiring a Neighborhood Regulating Plan be completed prior to any further development of these three tracts in the future. During this review process, the 10% Civic Space requirement will be required to be met on the site with public amenities.

Drainage

A Zoning Concept Scheme must be accompanied by a Conceptual Drainage Plan to ensure that the proposed development is feasible. A Conceptual Drainage Plan has been reviewed and approved by the City Engineer. The Conceptual Drainage Plan shows that the three parcels owned by the property owner will be developed as on site, with the detention area at the southern boundary of the property at Pecan Street and Mesquite Street. The future developer will still have to complete a Preliminary Drainage Plan prior to Preliminary Plat and Final Drainage Plans before Final Plats and Site Development Plans. At each stage, the drainage and flood plain will be studied in more detail in relation to the intended development.

Traffic Impact Analysis

The Zoning Concept Scheme anticipates providing the streets required by the Master Transportation Plan and Street Grid Map and the Building Block grid. No Traffic Impact Analysis is anticipated to be required.

PUBLIC COMMENTS:

A notice was placed in the Bastrop Advertiser on June 15, 2022. Property owner notifications were sent to 4 adjacent property owners on June 15, 2022 (Attachment 3). At the time of this report, no responses have been received (Attachment 6).

POLICY EXPLANATION:

Texas Local Government Code

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

Notice was published in Austin American Statesman and notice was sent to property owners within 200 feet of the property boundary.

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

N/A. Bastrop is not a general-law municipality.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

Notice of the meeting was posted at least 72 hours in advance.

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

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

At the time of this report, no protest has been received. If a valid protest is received, a three-fourths vote of the City Council members would be required to approve the rezoning request.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

The Planning & Zoning Commission recommends approval of the ZCS request by a vote of 7-0.

At least 5 members of the Planning & Zoning Commission must vote to make an official recommendation to the City Council. Failure to reach five vote means no official recommendation can be forwarded, but this does not impact the City Council's vote requirement to approve or deny the request.

Compliance with 2036 Comprehensive Plan:

Future Land Use Plan – The Neighborhood Residential character area is for single-family residential subdivision development, associated amenities such as parks, trails, open spaces, and public uses such as schools, fire stations, and more. Although individual developments may exhibit common features including home size, lot size, setbacks, impervious surface coverage, etc., the character area supports variations of these spatial and aesthetics characteristics, subject to appropriate transitions in form, scale, and density between blocks or adjacent developments. In some instances, transitions between developments and adjacent character areas may include higher density housing types or neighborhood oriented commercial uses of limited scale.

While the FLUP calls for the area to be primarily single-family, the 2.395-acre tract is contagious with property already zoned P4 Mix (which allows single and multi-family building types) and is located in close proximity to Mesquite Street which is a Primary Multimodal Street on the Master

Transportation Plan and to State Highway 95. With these considerations, the proposed P4 Mix and Zoning Concept Scheme will be in compliance with the intents of Future Land Use Plan.

Compliance with Bastrop Building Block (B³) Code:

B³ CODE INTENT (See Executive Summary)

The code is built around three core intents:

- **Fiscal Sustainability**

New development and redevelopment must be done with a focus on the intersection of the Public and Private Realms. This is the area where city and utility infrastructure are maintained in an efficient manner and the commercial development creates a complete neighborhood.

This 2.395-acre tract is to be developed with the adjacent tracts as one parcel. By zoning to P4 Mix, it will allow this area to provide a mix of single-family and multi-family or house style commercial, that will provide for a complete neighborhood and fiscal sustainability over time.

- **Geographically Sensitive Developments**

Development will retain its natural form and visual character, which is derived from the topography and native environment.

A part of this development is within the 1% Annual Chance Floodplain (previously 100-year Floodplain). P4 Mix allows for a greater diversity of building types with greater density, that will allow the floodplain to remain undisturbed.

- **Perpetuation of Authentic Bastrop**

The B³ Code will perpetuate the built form that has been predominate over the City's 189-year history. The recent trend of allowing parking and automobile traffic as the predominate feature has created a pattern that is contrary to the historical building patterns of the city and creates sites/buildings that are not adaptable and sustainable in the long-term.

The proposed style of development is Traditional Neighborhood Development Pattern, which will provide a gridded network of streets that will provide connectivity for the area.

B³ Code ARTICLE 5.1 INTENT OF DEVELOPMENT PATTERNS

(b) The Development Pattern type will be used to guide the creation of the Zoning Concept Scheme and Neighborhood Regulating Plan (see Article 2-3 Neighborhood Regulating Plans in B3 Technical Manual) configurations suitable for different geographies and Character Districts.

SEC. 5.2.002 TND STANDARDS

1. Detail the block perimeters, block lengths, pedestrian shed area, place type allocations per B³ Code 3.2.002b.

For P4 Mix in the North End Character District, a 330-foot block grid (Building Blocks) are the preferred development type. The applicant has demonstrated that the road network is

possible, with the development of this tract and the other two under the same ownership. When developed in the future, a Neighborhood Regulating Plan will be required to establish the street network.

RECOMMENDATION:

Hold public hearing and consider action to approve the first reading of Ordinance No. 2022-19 approving a Zoning Concept Scheme for 2.395 acres of Farm Lot 62, changing the zoning for 2.395 acres out of Farm Lot 62 East of Main St., from P2 Rural to P4 Mix, located east of Pecan Street, within the city limits of Bastrop, Texas, as shown in Exhibit A, providing for findings of fact, adoption, repealer, severability and enforcement, proper notice and meeting; and establishing an effective date and move to include on the August 9, 2022 Consent Agenda.

ORDINANCE 2022-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING A ZONING CONCEPT SCHEME FOR 2.395 ACRES OF FARM LOT 62, CHANGING THE ZONING FOR 2.395 ACRES OUT OF FARM LOT 62 EAST OF MAIN ST., FROM P2 RURAL TO P4 MIX, LOCATED EAST OF PECAN STREET, WITHIN THE CITY LIMITS OF BASTROP, TEXAS, AS SHOWN IN EXHIBIT A, PROVIDING FOR FINDINGS OF FACT, ADOPTION, REPEALER, SEVERABILITY AND ENFORCEMENT, PROPER NOTICE AND MEETING; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop, Texas (City) is a Home-Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, on or about January 17, 2022, the Gene Brown ("Property Owner") has submitted a request for zoning modifications; and,

WHEREAS, City Council has reviewed the request for zoning modifications, and finds the request to be reasonable and proper under the circumstances; and,

WHEREAS, the City Staff has reviewed the request for zoning modifications, and finds it to be justifiable based upon the Future Land Use Designation for this Property is Neighborhood Residential, which allows for residential uses and other uses that support residential development; and

WHEREAS, in accordance with Texas Local Government Code Chapter 211, public notice was given, and a public hearing was held before the City of Bastrop Planning and Zoning Commission (P&Z) on June 30, 2022, which made a recommendation to City Council by a vote of 7-0 to recommend approval; and

WHEREAS, in accordance with Texas Local Government Code Chapter 211, public notice was given, and a public hearing was held before the City Council regarding the requested zoning modification; and

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

WHEREAS, after consideration of public input received at the hearing on July 26, 2022, the information provided by the Applicants, and all other information presented, City Council finds that it necessary and proper to enact this Ordinance.

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

Section 1: The Property, 2.395 acres out of Farm Lot 62 is rezoned from P2 Rural to P4, Mix, and a Neighborhood Regulating Plan will be established before development, located east of Pecan Street, within the City Limits of Bastrop, Texas as more particularly shown on Exhibit A.

Section 2: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 3: 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: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

Section 5: The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance. Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

Section 6: 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.

Section 7: This Ordinance shall be effective immediately upon passage and publication.

READ & ACKNOWLEDGE on First Reading on this the 26th day of July 2022.

READ & ADOPTED on Second Reading on this the 9th day of August 2022.

APPROVED:

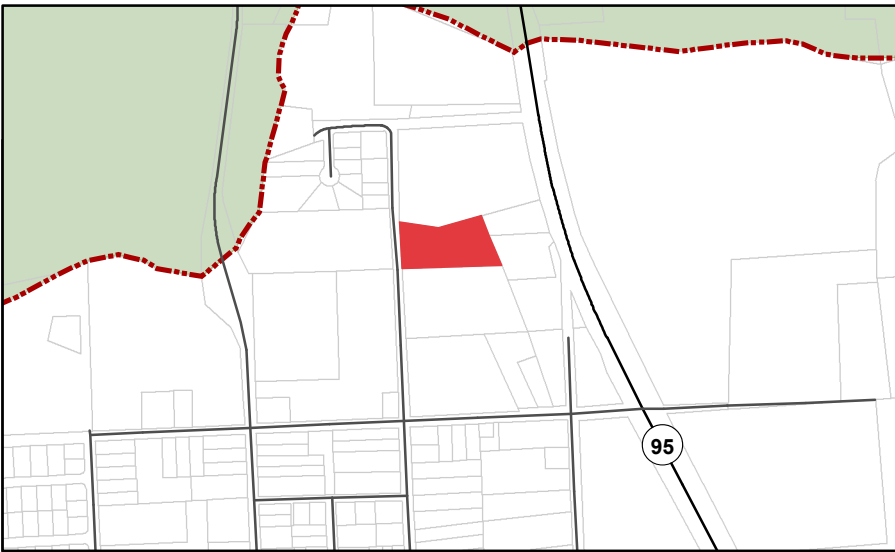
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



0 90 180 360
Feet

Zoning Concept Scheme 2.395 acres out of Farm Lot 10 East of Main St

1 inch = 400 feet

Date: 6/10/2022

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



NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL



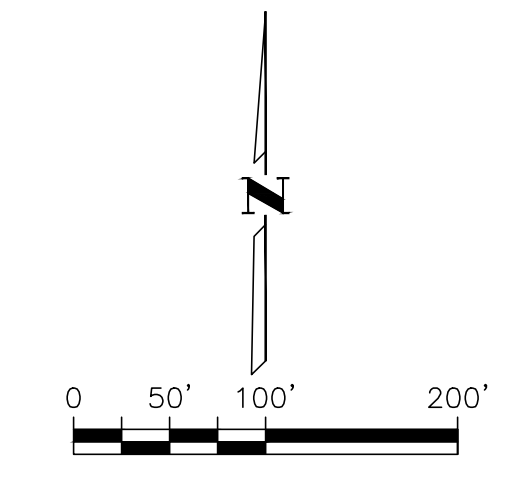
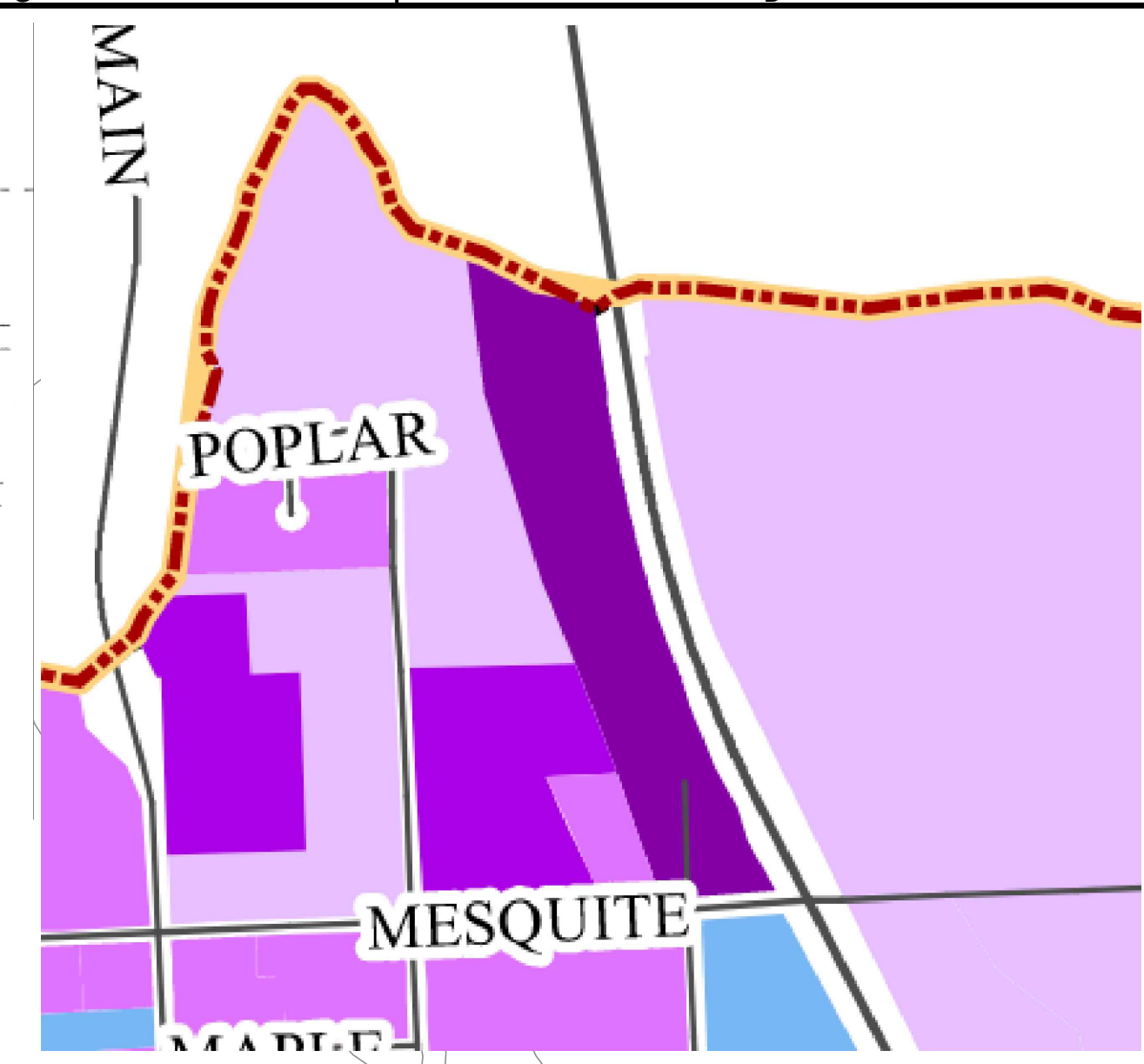
PRELIMINARY

NOT FOR CONSTRUCTION,
BIDDING, OR PERMIT
PURPOSES.

PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

RE-ZONING FROM P2 TO P4
2603 PECAN STREET
BASTROP, BASTROP COUNTY, TEXAS 78660

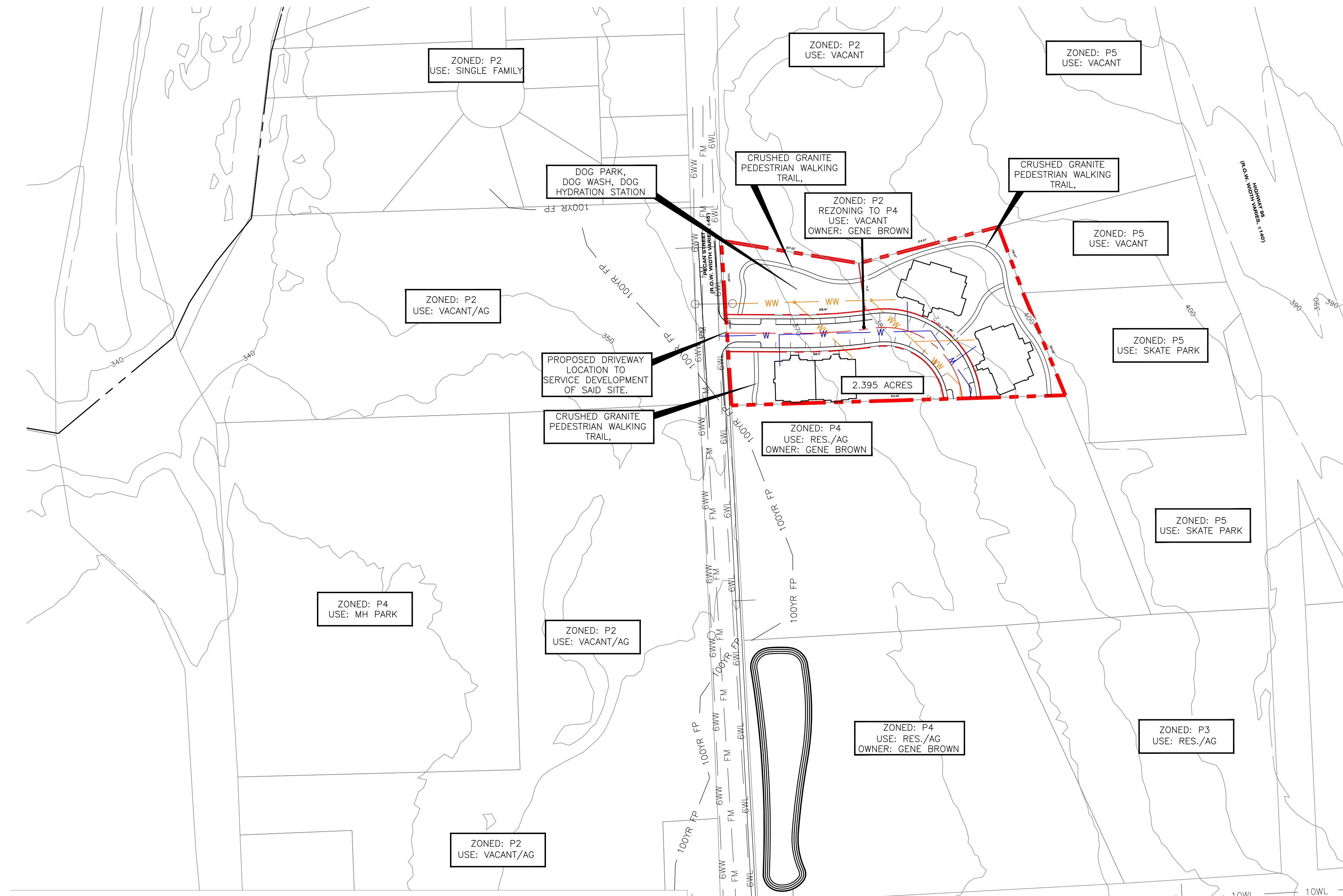
ZONING EXHIBIT



- Legend**
- City Limit
 - Historic Districts
 - Development Agreements
 - Place Type**
 - Overlay
 - P1 - Nature
 - P2 - Rural
 - P3 - Neighborhood
 - P4 - Mix
 - P5 - Core
 - PCS - Civic Space
 - PEC - Employment Center
 - PDD - Planned Development



TYPICAL BUILDING FRONT ELEVATION
NOTE: BUILDING HEIGHT IS MEASURED FROM AVERAGE SITE GRADE. 1"=16'



CLUBHOUSE FRONT ELEVATION
NOTE: BUILDING HEIGHT IS MEASURED FROM AVERAGE SITE GRADE. 1"=16'

NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL



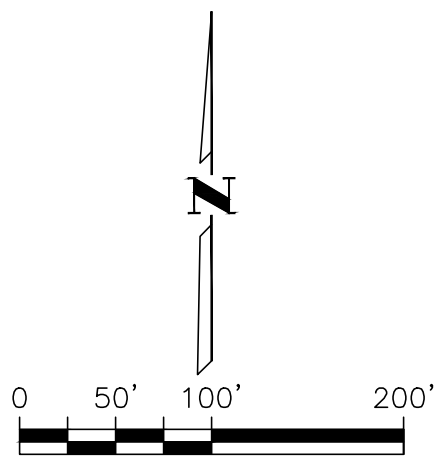
PRELIMINARY

NOT FOR CONSTRUCTION,
BIDDING, OR PERMIT
PURPOSES.

PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

RE-ZONING FROM P2 TO P4
2603 PECAN STREET
BASTROP, BASTROP COUNTY, TEXAS 78660
CHARACTER DISTRICT EXHIBIT

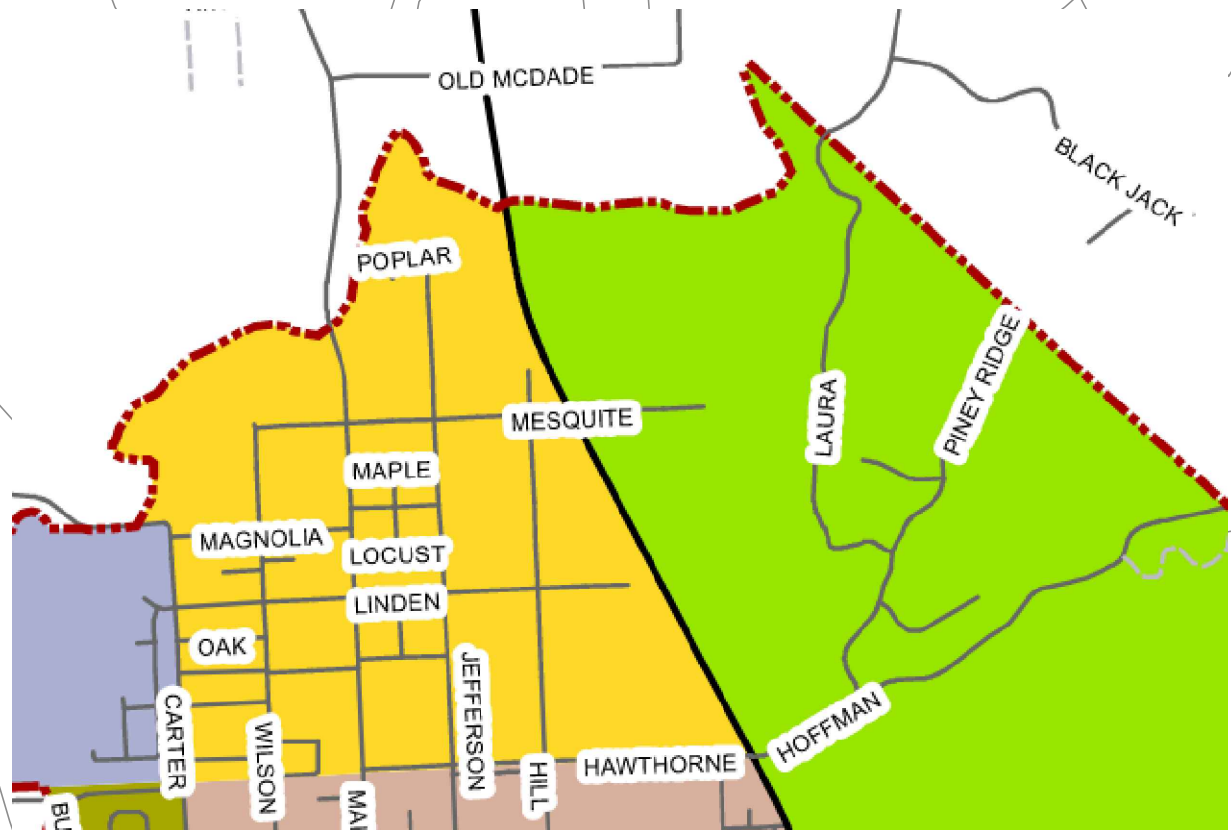
SHEET
CS200
2 OF 6



Legend

Character Districts

- Bastrop State Park
- Cattleman's
- Cultural Arts
- District 71
- Downtown
- Ferry
- Historic Highway
- Lost Pines
- Mayfest Hill
- Meadows
- New Addition
- North End
- Old Town
- PDD
- Pine Village
- River District
- Riverside Grove
- South River District
- The Vistas



NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

LOST PINES
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

PEDESTRIAN CONNECTIVITY
EXTERIOR OF OVERALL SITE,
WITHIN THE R.O.W. OF PECAN
STREET.

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

PEDESTRIAN CONNECTIVITY
EXTERIOR OF OVERALL SITE,
WITHIN THE R.O.W. OF PECAN
STREET.

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

NORTH END
CHARACTER
DISTRICT

LOST PINES
CHARACTER
DISTRICT

PEDESTRIAN CONNECTIVITY
EXTERIOR OF OVERALL SITE,
WITHIN THE R.O.W. OF PECAN
STREET.

NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL



PHONE NO:

PRELIMINARY

NOT FOR CONSTRUCTION,
BIDDING, OR PERMIT
PURPOSES.

PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

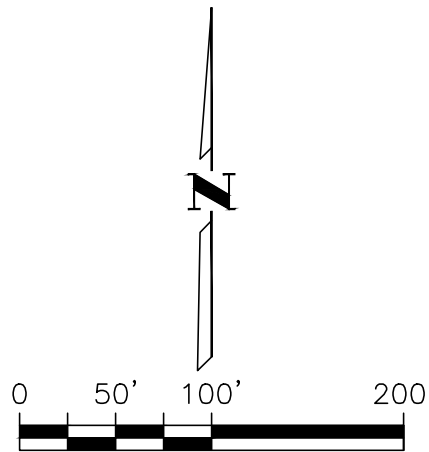
RE-ZONING FROM P2 TO P4
2603 PECAN STREET
BASTROP, BASTROP COUNTY, TEXAS 78660

EXISTING DRAINAGE AREA MAP

SHEET

CG100

3 OF 6



LEGEND

- BOUNDARY / RIGHT OF WAY
- EASEMENT / SETBACK
- CURB / EDGE OF PAVEMENT
- DRAINAGE AREA BOUNDARY
- EXIST. GRADE ELEVATIONS
- PROP. GRADE ELEVATIONS
- STORM DRAIN LINE
- DIRECTION OF FLOW
- ANALYSIS POINT
- E27
0.65 Ac.
10.32%
EXISTING DRAINAGE AREA #
DRAINAGE AREA
IMPERVIOUS COVER
- Tc
TIME OF CONCENTRATION

NOTE:
NO PORTION OF THE SITE INTENDED FOR RE-ZONING
RESIDES WITHIN THE 100-YEAR FLOODPLAIN ELEVATIONS,
PER FEMA FIRMETTE 48021C0215E, DATED 01/19/2006

COMPOSITE C CALCULATIONS - ANALYSIS POINT A							
D.A. #	Impervious (%)	Pervious (%)	Runoff Coefficient				
			2-yr	10-yr	25-yr	100-yr	
E1	0.0%	100.0%	0.33	0.38	0.42	0.49	

FLOW CALCULATIONS (RATIONAL METHOD) - ANALYSIS POINT A																	
D.A. #	T _c (min)	2-Year				10-Year				25-Year				100-Year			
		C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)
E1	21	0.3	3.3	4.2	4.6	0.4	4.9	4.2	7.9	0.4	5.9	4.2	10.5	0.5	7.7	4.2	15.9

NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL



PHONE NO:

PRELIMINARY

NOT FOR CONSTRUCTION,
BIDDING, OR PERMIT
PURPOSES.

PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

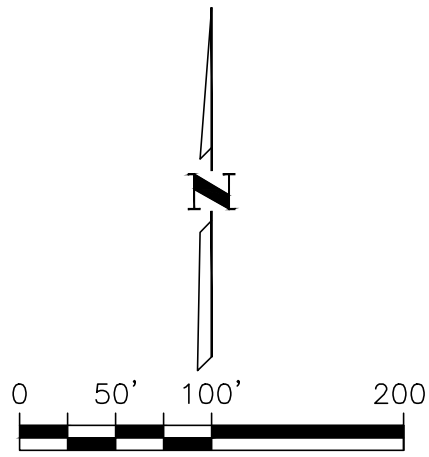
RE-ZONING FROM P2 TO P4
2603 PECAN STREET
BASTROP, BASTROP COUNTY, TEXAS 78660

PROPOSED DRAINAGE AREA MAP

SHEET

CG200

4 OF 6



LEGEND

- BOUNDARY / RIGHT OF WAY
- EASEMENT / SETBACK
- CURB / EDGE OF PAVEMENT
- DRAINAGE AREA BOUNDARY
- EXIST. GRADE ELEVATIONS
- PROP. GRADE ELEVATIONS
- STORM DRAIN LINE
- DIRECTION OF FLOW
- ANALYSIS POINT
- E27
- 0.65 Ac.
- 10.32%
- EXISTING DRAINAGE AREA #
- DRAINAGE AREA
- IMPERVIOUS COVER
- Tc
- TIME OF CONCENTRATION

WARNING!
THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE
ACCURACY OF THE LOCATION OF UNDERGROUND UTILITIES.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR AVOIDING
ALL EXISTING UTILITIES BY CALLING TEXAS ONE CALL
SYSTEM @ 811 FOR LOCATION OF ALL UTILITIES, AT LEAST
72 HOURS PRIOR TO BEGINNING CONSTRUCTION.

NOTE:
NO PORTION OF THE SITE INTENDED FOR RE-ZONING
RESIDES WITHIN THE 100-YEAR FLOODPLAIN ELEVATIONS,
PER FEMA FIRMETTE 48021C0215E, DATED 01/19/2006

COMPOSITE C CALCULATIONS - ANALYSIS POINT A							
D.A. #	Impervious (%)	Pervious (%)	Runoff Coefficient				
			2-yr	10-yr	25-yr	100-yr	
E1	60.00%	40.00%	0.57	0.64	0.68	0.77	

FLOW CALCULATIONS (RATIONAL METHOD) - ANALYSIS POINT A																	
D.A. #	T _c (min)	2-Year				10-Year				25-Year				100-Year			
		C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)	C	I (in/hr)	A (Acres)	Q (cfs)
E1	5	0.6	5.76	4.20	13.80	0.64	8.57	4.20	22.98	0.68	10.11	4.20	29.08	0.77	12.54	4.20	40.40

PROPOSED POND
LOCATION ACCOUNTING
FOR INCREASE OF
IMPERVIOUS COVERAGE,
PLAT, UDA, OR SIMILAR
TYPE LEGAL DOC. TO
TIE LOTS TOGETHER.

P1
2.395 AC.
70% (F)

2.395 ACRES

A



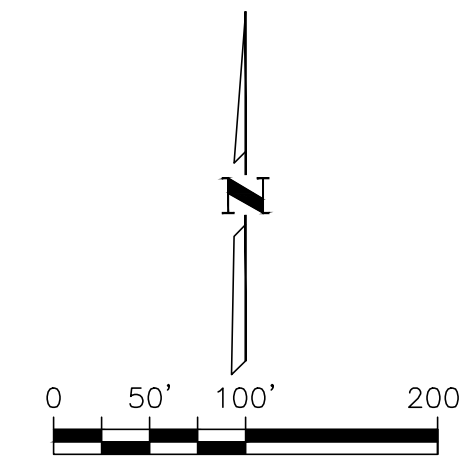
wgi[®]
WGInc.com




NOT FOR CONSTRUCTION
BIDDING, OR PERMIT
PURPOSES.

PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

WATER UTILITY EXHIBIT

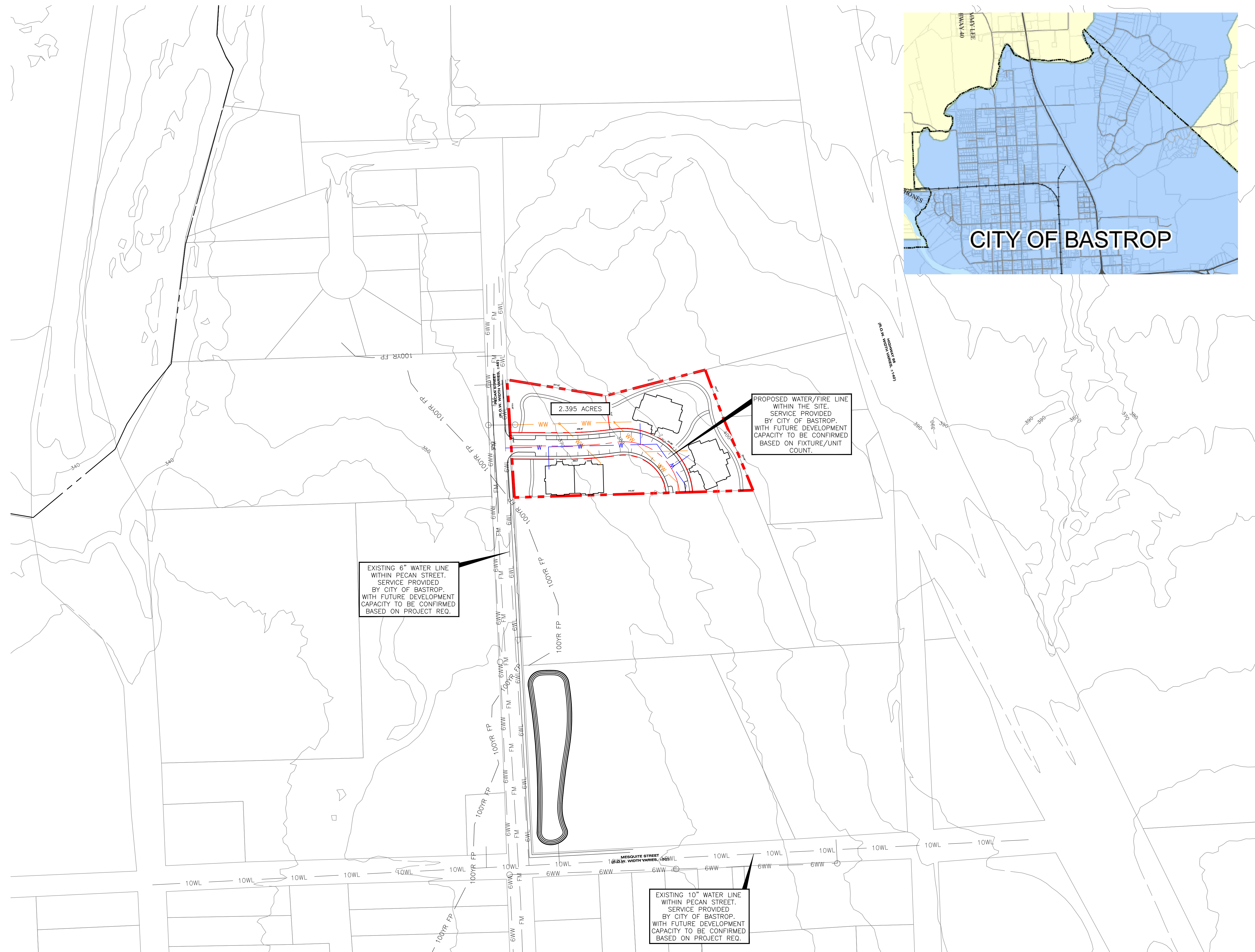
5 OF 6



 City of Bastrop
 WCID #2
 Aqua WSC

- ☐ Statutory
- ☐ Area A
- ☐ Area B

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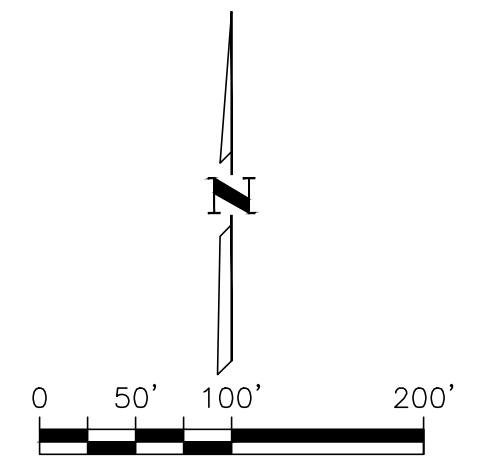


NOT AUTHORIZED FOR
CONSTRUCTION PRIOR TO
FORMAL CITY APPROVAL



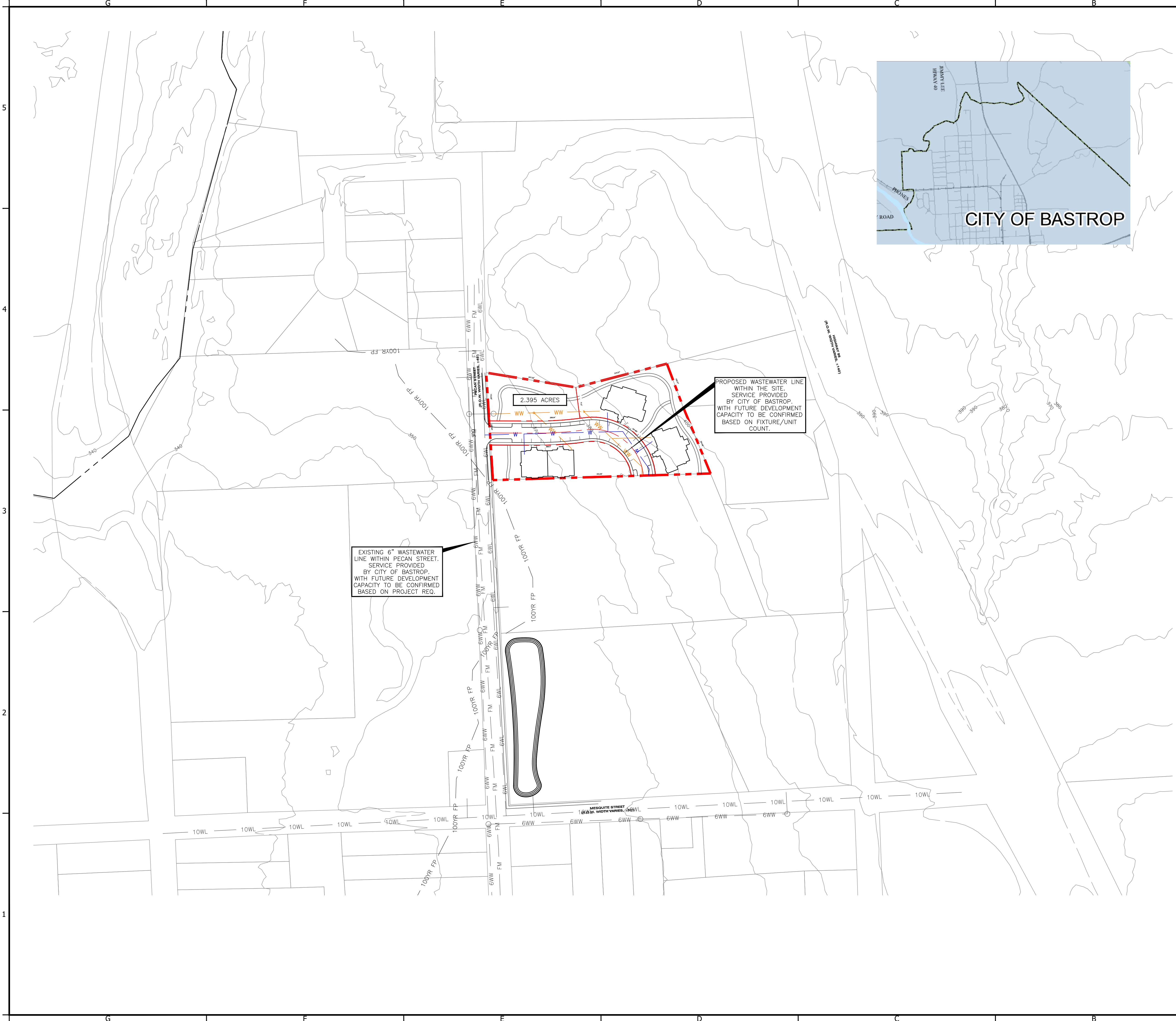
PRELIMINARY
NOT FOR CONSTRUCTION,
BIDDING, OR PERMIT
PURPOSES.
PREPARED UNDER THE
SUPERVISION OF
WGI, INC.

RE-ZONING FROM P2 TO P4
2603 PECAN STREET
BASTROP, BASTROP COUNTY, TEXAS 78660
WASTEWATER UTILITY EXHIBIT



- Legend**
- City of Bastrop
 - Aqua WSC
 - WCID #2
 - Chasco
 - LCRA
 - Bastrop ETJ**
 - Statutory
 - Area A
 - Area B

WARNING!
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THE CONTRACTOR SHALL BE RESPONSIBLE FOR AVOIDING
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72 HOURS PRIOR TO BEGINNING CONSTRUCTION.





January 2022

City of Bastrop Planning Department – Allison Land
1311 Chestnut Street
Bastrop, TX 78602

RE: Written Justification Letter for Rezoning Application – 2603 Pecan Street
2603 Pecan Street (Gene Brown Owner) (2.395 acres)
Bastrop, Bastrop County, Texas

Dear Ms. Land:

WGI is providing the following justification for re-zoning for the site located at 2603 Pecan Street and owned by Gene Brown. Site itself is undeveloped and consists of 2.395 acres of land, which is less than what is required as part of the Neighborhood Regulating Plan. That being said, our submittal should clarify/quantify/identify what the City needs to process the re-zoning request accordingly.

- **Is the zoning change consistent with the Concept Scheme (Comprehensive Plan)?**
The change is consistent with the General Land Use Policies found in the Concept Scheme.
- **Does the zoning change promote the health, safety, or general welfare of the City and the safe, orderly, and healthful development of the City?**
The zoning change is in accordance with the purpose and intent of the Unified Development Code of the City of Bastrop (growth management, environmental protection, economic development, circulation, urban design).
- **Is the zoning change compatible with and conforms to with the uses of nearby property and the character of the neighborhood?**
The zoning change is also in accordance with existing development/property and character of the community.
- **Is the property affected by the zoning change suitable for uses permitted by the proposed amendment to the zoning map?**
Property is proposing to extend the boundary of an existing zoning district (from P2 to P4). Mr. Brown current owns the property directly to the south, which is currently zoned P4, desiring to have their property zoned alike. The overall property, once sold, would be developed in a unified, and uniformly.

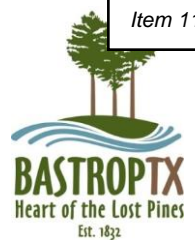
Sincerely,

WGI

Texas Engineering Firm No. F-15085

A handwritten signature in blue ink, appearing to read 'Cliff Kendall', is written over a light blue horizontal line.

Cliff Kendall - Market Leader



**Notice of Pending Zoning Change
City of Bastrop
Planning & Zoning Commission
and City Council**

Dear Property Owner:

The **Planning and Zoning Commission** will conduct a public hearing on **Thursday, June 30, 2022 at 6:00 p.m.** and the **City Council** will conduct a public hearing **Tuesday, July 26, 2022 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** on the following request: Public hearing and consider action on a rezoning for 2.395 acres out of Farm Lot 10 East of Main Street, located East of Pecan Street from P2 Rural to P4 Mix, within the city limits of Bastrop, Texas.

Applicant(s): Cliff Kendall / WGI

Owner(s): Gene Brown

Legal Description: 2.395 acres of land out of Farm Lot 10 East of Main Street

The site location map and a letter from the property owner is attached for reference.

As a property owner within 200 feet of the above referenced property, you are being notified of the upcoming meetings per the Bastrop Code of Ordinances. For more information or to provide comments on this project, you may contact the Planning & Development Department at (512) 332-8840, plan@cityofbastrop.org, visit the office or mail the response card below to 1311 Chestnut Street, Bastrop, Texas 78602.

Meeting details will be available on the posted agenda found on our website 72 hours before the meeting at: https://www.cityofbastrop.org/page/cs.board_agendas-pz



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: _____

Property Address: _____

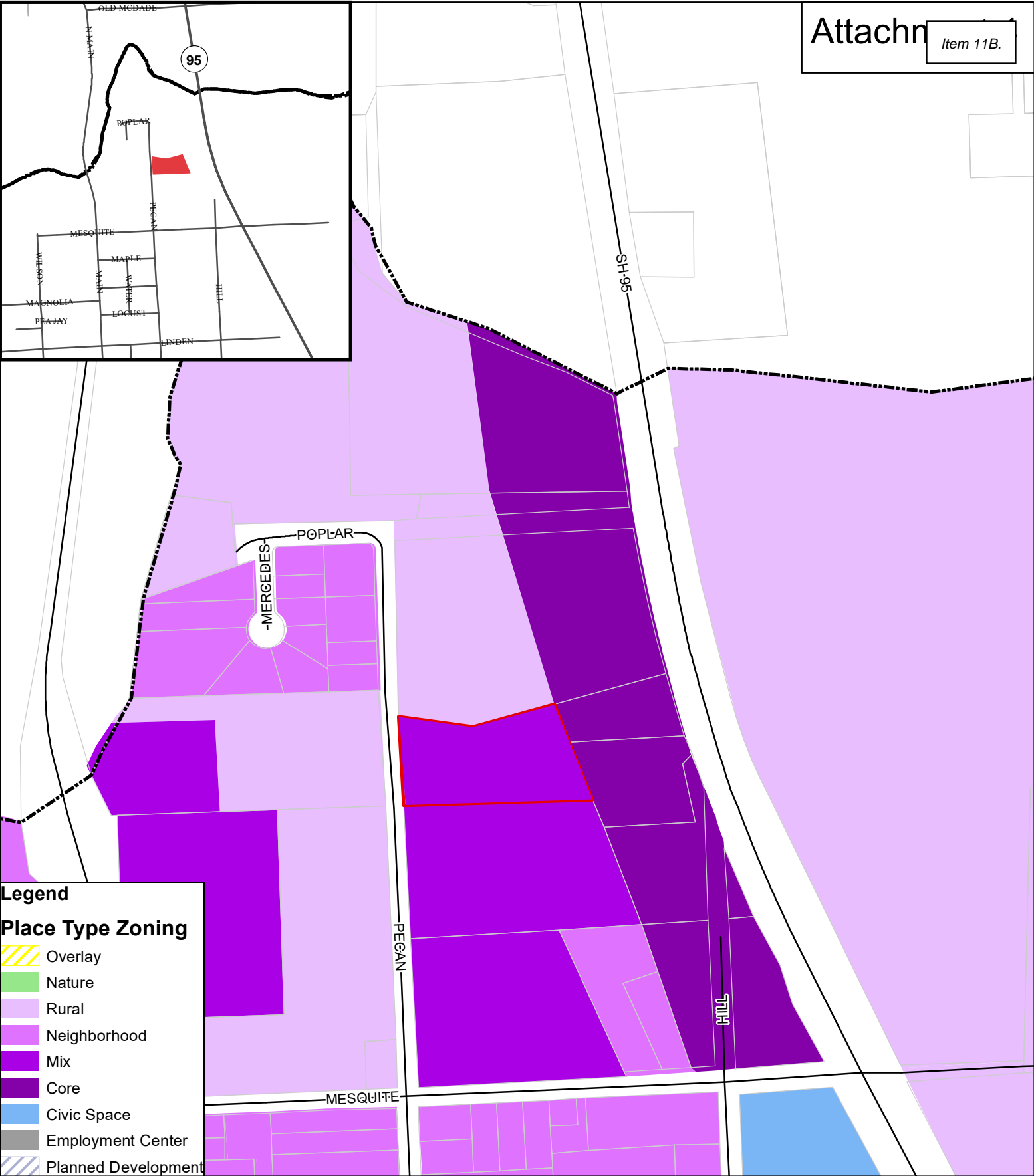
Mailing Address (if different than property address): _____

Phone (optional): _____ Email (optional): _____

Property Owner's Signature: _____

Additional Comments (Optional):

Re: 2.395 acres of land out of Farm Lot 10 Zoning Concept Scheme

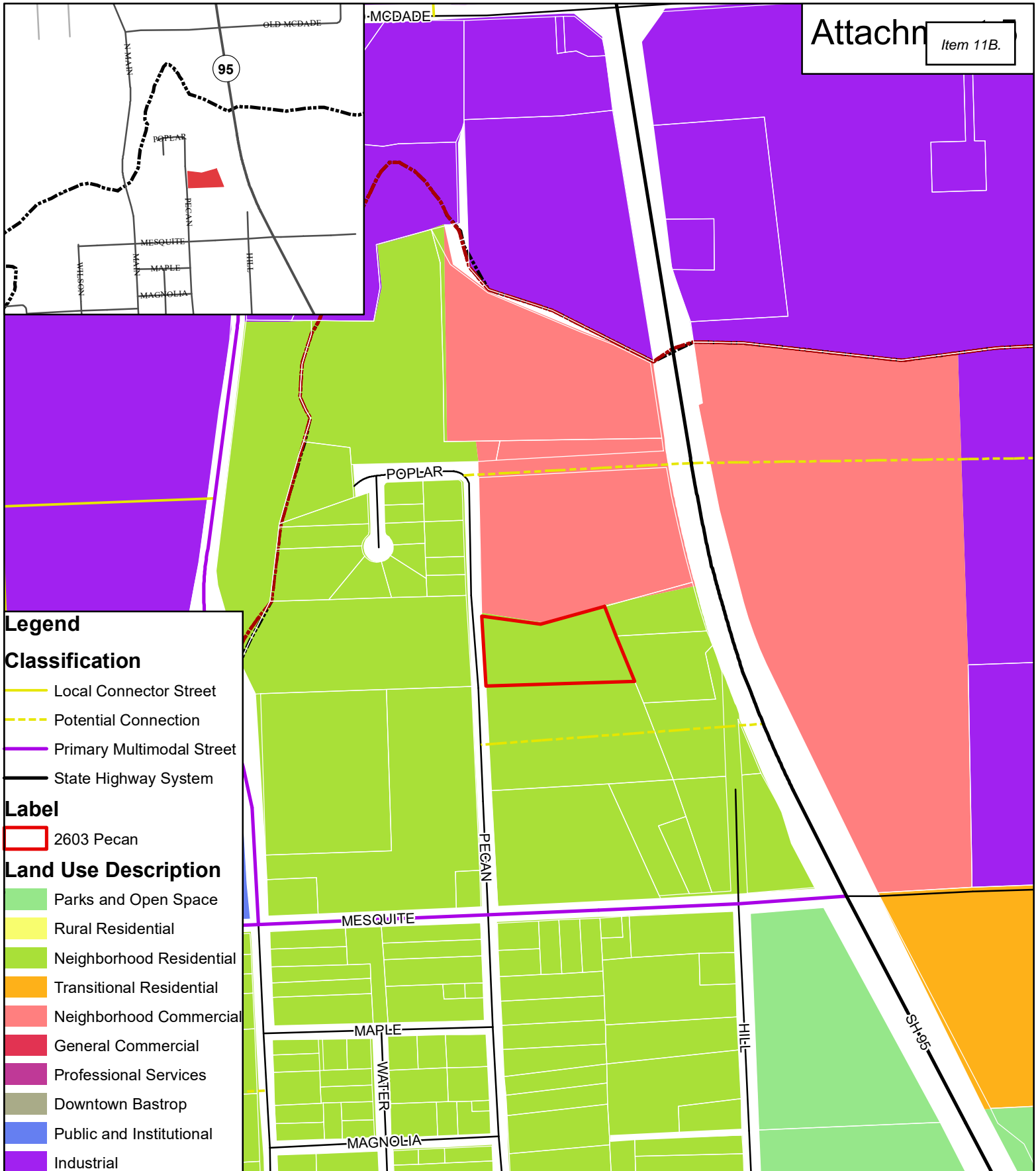


1 inch = 335.14 feet

Proposed Zoning Map
2.395 acres of Farm Lot 10
East of Main Street



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



Future Land Use Map 2.395 acres of Farm Lot 10 East of Main Street



1 inch = 423.91 feet

Date: 6/27/2022



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



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Consider action to approve Resolution No. R-2022-70 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with Hunt Communities for The Colony MUD 1F Section 2, as attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

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

BACKGROUND/HISTORY:

The Public Improvement Plan Agreement was developed as part of the City of Bastrop's Development Manual. This standardized agreement is a tool that can be used by staff. It allows a developer to establish the infrastructure costs, inspections fees and begin construction of public street and utility infrastructure. The agreement also establishes the process to record the final plat with a fiscal guaranty for the approved section of the subdivision prior to the completion of all public improvements. The cost estimates and scope of work included in the Agreement were approved with the Public Improvement Plans approved by the City Engineer.

POLICY EXPLANATION:

Texas Local Government Code 212.010 Standards for Approval of Plat requires that a new subdivision should extend roads and utilities in conformance to the city requirements and bonds be submitted in accordance with the municipal policy for the approval of subdivision plats.

Section 1.4.003 Public improvement Plan Agreement (PIPA) establishes the requirements for approval of the PIPA.

FUNDING SOURCE:

N/A

RECOMMENDATION:

The Director of Planning recommends City Council consider action to approve Resolution No. R-2022-70 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with Hunt Communities for The Colony MUD 1F Section 2, as attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution No. R-2022-70
- Exhibit A – The Colony MUD 1F Section 2 Public Improvement Plan Agreement

RESOLUTION NO. R-2022-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PUBLIC IMPROVEMENT PLAN AGREEMENT WITH HUNT COMMUNITIES BASTROP, LLC FOR THE COLONY MUD 1F, SECTION 2, AS ATTACHED IN EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has adopted the Bastrop Building Block (B³) Code and related codes that provide a process for the standards and construction of public improvements that support the development created during the subdivision process; and

WHEREAS, the Development Manual includes the requirement for a developer to provide a Public Improvement Plan Agreement to ensure the installation of the public improvements; and

WHEREAS, the “Developer” known as Hunt Communities Bastrop, LLC has an approved Preliminary Plat and Public Improvement Plan for the construction of a single-family subdivision; and

WHEREAS, The City Council also understands the importance of the required public improvements and the value they bring in regard to the public safety of neighborhoods.

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

Section 1: That the City Manager will execute the Public Improvement Plan Agreement attached as Exhibit A.

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: That this Resolution shall take effect immediately upon its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of August, 2022.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

CITY OF BASTROP, TEXAS
Public Improvement Plan Agreement

THE COLONY MUD 1F, SECTION 2

The State of Texas

County of Bastrop

WHEREAS, HUNT COMMUNITIES, LLC, hereinafter referred to as, "Developer", is the developer of the following described property and desires to make certain improvements to the following lots and blocks in THE COLONY MUD 1F, SECTION 2, a development in the City of Bastrop ETJ, Texas: being 5 BLOCKS AND 86 LOTS; and

WHEREAS, the said Developer has requested the City of Bastrop, a Home Rule Municipality of Bastrop County, Texas, hereinafter referred to as, "City", to provide approvals and cooperative arrangements in connection with said improvements:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That said Developer, acting herein by and through RICK NEFF, its duly authorized officer, and the City, acting herein by and through PAUL A. HOFMANN, its City Manager, for and in consideration of the covenants and agreements herein performed and to be performed, do hereby covenant and agree as follows regarding assurance of construction of sanitary sewer facilities (MUD Facility – Provided to MUD), streets (Bastrop County - Included), drainage (MUD Facility – Provided to MUD), street lights and street signs (Bastrop County - Included), and park/trail improvements (MUD Facility – Provided to MUD); summary of applicable infrastructure (development) amounts; assurance payments to the City; payment of inspection fees; and miscellaneous provisions relating to the acceptable completion of said construction according to the plans for THE COLONY MUD 1F, SECTION 2 approved by the City on July 14, 2022.

1.00 Assurance of Infrastructure Construction

1.10 Employment of Contractors

In accordance with this agreement, the Developer agrees to employ a general contractor or contractors in accordance with the conditions set forth in Section 4.00 for work for which the Developer is providing as stated herein and indicated in the Summary of Infrastructure (Development) Assurance Amounts, Section 2.30 on page 4 of this agreement.

1.11 Public Infrastructure Construction and Acceptance Process

- a) The Developer and the City agree that a pre-construction meeting will not be held and notice to proceed issued until the payment of the Public Improvement Inspection fees are paid to the City and a copy of the approved plan set provided to the City Construction Manager. The Public Improvement Inspection fees will be two percent (2%) of the total infrastructure costs (water, wastewater, streets, sidewalks, and drainage), per the First Amendment to the Consent Agreement of the Colony Municipal Utility District No. 1 and successor districts.
- b) Upon completion of the Infrastructure, the developer must furnish the City with the following prior to acceptance and release of fiscal guarantee (if provided):
 - 1. As-Built/Record Drawings of Public Improvement Plans in pdf format and in CAD/GIS format;
 - 2. The Developer agrees to require the contractor(s) to furnish the City and County with a two (2) year maintenance bond in the name of the City and County, subject to City approval, for ten percent (10%) of the

contract price of the public streets, sidewalk, and drainage improvements. The maintenance bond(s) shall be submitted and approved prior to the final acceptance of the improvements;

3. Letter of Concurrence from the Design Engineer.

c) Once these items are provided, the City will provide a Letter of Acceptance from the City Engineer.

d) In order to record the Final Plat, the developer must complete one of the following:

1. Have received a Letter of Acceptance from the City Engineer and MUD Engineer; or
2. Provide fiscal guarantee for 125% of the outstanding Infrastructure (Development) Improvement Costs, with Engineer's Estimate of Probable Costs. This guarantee will not be release until acceptance of the Infrastructure by the City Engineer.

1.12 Payment of Miscellaneous Construction Costs

It is further agreed and understood that additional costs may be required of the Developer to cover such additional work, materials and/or other costs as may be made necessary by conditions encountered during construction and within the scope of this project.

1.13 Compliance with Tree Preservation Ordinance

The Developer is responsible to fully comply with the requirements of the consent agreement relating to tree preservation.

2.00 Infrastructure (Development) Improvement Costs

All infrastructure (development) improvement costs are the full responsibility of the Developer unless otherwise noted, or unless otherwise funded with a public improvement district revenue, tax increment reinvestments zone revenue, or a Chapter 380 grant, pursuant to a separate agreement. The following improvement costs have been developed using the Developer's plans and specifications and recommendations by the City in accordance with the construction guidelines set forth by the City:

2.10 Sanitary Sewer Improvements (MUD Facility - Provided to MUD)

The distribution of costs between the City and MUD for all sanitary sewer are as follows:

	Full Project Cost	Assurance Amount	City Participation
Water Facilities	\$963,720.36	\$1,204,650.45	\$0.00
Sanitary Sewer Facilities	\$385,153.69	\$481,442.11	\$0.00
Total Construction Cost	\$1,348,874.05	\$1,686,092.56	\$0.00

2.20 Drainage Improvements (MUD Facility - Provided to MUD)

The distribution of costs between the City and MUD for drainage improvements are as follows:

	Full Project Cost	Assurance Amount	City Participation
Storm Drainage Facilities	\$561,483.72	\$701,854.65	\$0.00

2.30 Street Improvements (Bastrop County - Included)

The distribution of costs between the City and the Developer for all street improvements are as follows:

	Full Project Cost	Assurance Amount	City Participation
Streets & Sidewalks	\$1,904,939.50	\$2,381,174.37	\$0.00
Erosion Control Items	\$37,576.90	\$46,971.12	\$0.00
Total Construction Cost	\$1,942,516.40	\$2,428,145.49	\$0.00

2.40 Summary of Infrastructure (Development) Assurance Amounts

	Final Assurance Amount
Utility Facilities	\$1,686,092.56
Storm Drainage Facilities	\$701,854.65
Streets, Sidewalks & Erosion Control Improvements	\$2,428,145.49
Total Development Assurance Amounts	\$4,816,092.70

INSPECTION FEES TO HOLD IN ESCROW TO BE PAID PRIOR TO PRE-CONSTRUCTION MEETING:**Percentage Final of Construction Improvement**

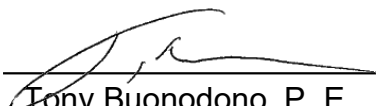
		Construction Cost Amount	Inspection Fee
Streets, Sidewalks & Erosion Control Improvements	2.0%	\$1,942,516.40	\$38,850.33
Water	2.0%	\$963,720.36	\$19,274.41
Wastewater	2.0%	\$385,153.69	\$7,703.07
Drainage	2.0%	\$561,483.72	\$11,229.67
Payment to the City			\$77,057.48

Public Improvement Plan Agreement – Colony MUD 1F Section 2

Item 11C.

The final construction amount is **\$3,852,874.17**, and the Public Improvement Inspection fee amount is **\$77,057.48** (the “Final Fiscal Guaranty Amount”).

RECOMMENDED:

	7/27/2022
Tony Buonodono, P. E. City Engineer	Date

3.00 Miscellaneous Improvements

3.10 Drainage Operation and Maintenance Plan (MUD Facility)

N/A

3.20 Sidewalks (Bastrop County - Included)

The Developer shall be responsible for installing sidewalks along rights-of-way on open space lots and other lots that will not contain single family residential units within The Colony MUD 1F, Section 2 as shown on the approved Public Improvement Plans. All sidewalks shall be in compliance with the County's Master Transportation Plan, and conform to the City of Bastrop Standard Construction Details.

3.30 Screening Wall, Landscaping, and Irrigation (MUD Facility)

N/A

3.40 Street Lights (MUD/HOA Facility)

The Developer is responsible for the initial installation and maintenance of all street lights. The MUD or HOA will be responsible or obligated to maintain and/or replace any standard or non-standard street light poles.

3.50 Street Name and Regulatory Signs (Bastrop County)

Street name and regulatory signs shall be installed by the Developer at the Developer's expense at locations specified by the City's Director of Public Works per the signage regulations ***in compliance with the Consent Agreement*** and the Bastrop County Sign Standards and Details. The signs shall conform to The State of Texas Manual on Uniform Traffic Control Devices and County requirements, including but not limited to, exact placement, sign height and block numbers. The City and County shall not be responsible or obligated to maintain and/or replace any non-

standard sign poles, street name signs, or regulatory signs. Installation shall be completed prior to the acceptance of the subdivision.

RECOMMENDED:

 7/27/22
Curtis Hancock Date
Public Works Director

3.60 Land Dedication

N/A

3.70 Impact Fees (MUD Facility)

N/A

4.00 Miscellaneous Provisions

4.10 Bonds

The developer will provide the City with proof of payment to the surety and that all other obligations of the developer or contractor have been met in order for the bonds to be binding upon the surety.

4.20 Public Liability

The Developer shall further require the contractor(s) to secure Public Liability Insurance. The amount of Insurance required shall include Public Liability, Bodily Injury and Property Damage of not less than \$100,000 one person, \$300,000 one accident and \$100,000 property damage. The minimum requirements for automobile and truck public liability, bodily injury and property damage shall also include not less than \$100,000 one person, \$300,000 one accident, and \$100,000 property damage.

The Contractor shall provide Worker's Compensation Insurance in accordance with the most recent Texas Workers' Compensation Commission's rules.

4.30 General Indemnity Provisions

The Developer shall waive all claims, fully release, indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including all expenses of litigation and/or settlement which may arise by injury to property or person occasioned by error, omission, intentional or negligent act of Developer, its officers, agents, consultants, employees, invitees, or other person, arising out of or in connection with the Agreement, or on or about the property, and Developer will, at its own cost and expense, defend and protect the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from any and all such claims and demands. Also, Developer agrees to and shall indemnify, defend and hold harmless the City and all of its officials, officers, agents, consultants, employees and invitees in both their public and private capacities, from and against any and all claims, losses, damages, causes of action, suit and liability of every kind, including all expenses of litigation, court costs and attorney fees for injury to or death of any person or for any damage to any property arising out of or in connection with this Agreement or any and all activity or use pursuant to the Agreement, or on or about the property. This indemnity shall apply whether the claims, suits, losses, damages, causes of action or liability arise in whole or in part from the intentional acts or negligence of developer or any of its officers, officials, agents, consultants,

employees or invitees, whether said negligence is contractual, comparative negligence, concurrent negligence, gross negligence or any other form of negligence. The City shall be responsible only for the City's sole negligence. Provided, however, that nothing contained in this Agreement shall waive the City's defenses or immunities under Section 101.001 et seq. of the Texas Civil Practice and Remedies Code or other applicable statutory or common law. Notwithstanding anything to the contrary in this section, the Developer shall not be required to indemnify the City in the event the claims, suits, losses, damages, causes of action or liability arise in whole or in part as a result of the City's breach of this agreement or a separate agreement pertaining to the property governed by this agreement.

4.31 Indemnity Against Design Defects

Approval of the City Engineer or other City employee, official, consultant, employee, or officer of any plans, designs or specifications submitted by the Developer under this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, its engineer, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by the City for any defect in the design and specifications prepared by the consulting engineer, his officers, agents, servants, or employees, it being the intent of the parties that approval by the City Engineer or other City employee, official, consultant, or officer signifies the City's approval of only the general design concept of the improvements to be constructed. In this connection, the Developer shall indemnify and hold harmless the City, its officials, officers, agents, servants and employees, from any

loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise out of any defect, deficiency or negligence of the engineer's designs and specifications incorporated into any improvements constructed in accordance therewith, and the Developer shall defend at his own expense any suits or other proceedings brought against the City, its officials, officers, agents, servants or employees, or any of them, on account thereof, to pay all expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith. Notwithstanding anything to the contrary in this section, the Developer shall not be required to indemnify the City in the event the claims, suits, losses, damages, causes of action or liability arise in whole or in part as a result of the City's breach of this agreement or a separate agreement pertaining to the property governed by this agreement.

4.32 Approval of Plans

The Developer and City agree that the approval of plans and specifications by the City shall not be construed as representing or implying that improvements built in accordance therewith shall be free of defects. Any such approvals shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be designed or built in a good and workmanlike manner.

Neither the City or County, nor its elected officials, officers, employees, contractors and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by the City for any defects in any plans or specifications submitted, revised, or approved, in the loss or damages to any person arising out of approval or disapproval or failure to approve or disapprove any

plans or specifications, for any loss or damage arising from the non-compliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

4.33 Venue

Venue of any action brought hereunder shall be in the City of Bastrop, Bastrop County, Texas.

4.40 Dedication of Infrastructure Improvements

Upon final acceptance of THE COLONY MUD 1F, SECTION 2, the public streets and sidewalks shall become the property of the County.

4.60 Assignment

This agreement, any part hereof, or any interest herein shall not be assigned by the Developer without written consent of the City Manager, said consent shall not be unreasonably withheld, and it is further agreed that such written consent will not be granted for the assignment, transfer, pledge and/or conveyance of any refunds due or to become due to the Developer except that such assignment, transfer, pledge and/or conveyance shall be for the full amount of the total of all such refunds due or to become due hereunder nor shall assignment release assignor or assignee from any and all Development assurances and responsibilities set forth herein.

4.70 Conflicts

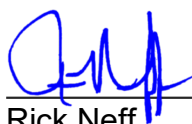
In the event of a conflict between this agreement and that certain Consent/Development Agreement between the **City of Bastrop** and **Hunt Communities Bastrop, LLC**, effective **March 4th, 2020** (the "Consent/Development Agreement"), the Consent/Development Agreement shall control. Nothing in this

agreement shall be construed as amending the Consent/Development Agreement.

IN TESTIMONY WHEREOF, the City of Bastrop has caused this instrument to be executed in duplicate in its name and on its behalf by its City Manager, attested by its City Secretary, with the corporate seal of the City affixed, and said Developer has executed this instrument in duplicate, at the City of Bastrop, Texas this the ____ day of _____, 2022.

THE COLONY MUD 1F-2

City of Bastrop, Texas



Rick Neff
Hunt Communities Bastrop, LLC.

Paul A. Hofmann
City Manager

ATTEST:

Ann Franklin
City Secretary

Date

APPROVED AS TO FORM:

Alan Bojorquez
City Attorney

Date

Distribution of Originals:

Developer
City Secretary
Planning and Development Department

Colony MUD 1F Section 2

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	COST	AMOUNT
I. STREET ITEMS					
1	Street Excavation/Embankment R.O.W. to R.O.W., complete and in place per square yard	44,341	SY	\$3.00	\$133,023.00
2	8" Lime Stabilized Subgrade, 3' to 3' Back of Curb, complete and in place per square yard	21,629	SY	\$9.95	\$215,208.55
3	10" Lime Stabilized Subgrade, 3' to 3' Back of Curb, complete and in place per square yard	8,783	SY	\$13.65	\$119,887.95
4	8" Base, 3' to 3' Back of Curb, complete and in place per square yard	21,629	SY	\$11.10	\$240,081.90
5	16" Base, 3' to 3' Back of Curb, complete and in place per square yard	8,783	SY	\$20.65	\$181,368.95
6	2" HMA, Lip to Lip, complete and in place per square yard	23,951	SY	\$14.67	\$351,359.56
7	Geogrid, 3' to 3' Back of Curb complete and in place per square yard	30,016	SY	\$2.95	\$88,547.20
8	6" Stand Up Curb and Gutter, complete and in place per linear foot	4,910	LF	\$18.23	\$89,516.23
9	4" Roll Curb and Gutter complete and in place per linear foot	7,561	LF	\$15.96	\$120,673.88
10	Common Area 4' Sidewalks, complete and in place per linear foot	2,439	LF	\$31.10	\$75,852.90
11	Common Area 6' Sidewalks, complete and in place per linear foot	3,075	LF	\$46.65	\$143,448.75
12	ADA Ramps, complete and in place per each	12	EA	\$1,500.00	\$18,000.00
13	Concrete Valley Gutter, complete and in place per each	8	EA	\$6,000.00	\$48,000.00
14	Street Sign complete and in place per each	8	EA	\$1,793.00	\$14,344.00
15	Stop Sign complete and in place per each	8	EA	\$2,121.78	\$16,974.24
16	Stop Bar complete and in place per each	8	EA	\$284.00	\$2,272.00
17	Street Light, complete and in place per each	8	EA	\$5,797.55	\$46,380.40
SUBTOTAL STREETS ITEMS					\$1,904,939.50

II. DRAINAGE ITEMS					
1	18" R.C.P., complete and in place per linear foot	1,712	LF	\$51.95	\$88,963.34
2	24" R.C.P., complete and in place per linear foot	601	LF	\$66.84	\$40,198.24
3	30" R.C.P., complete and in place per linear foot	1,147	LF	\$97.64	\$112,033.11
4	36" R.C.P., complete and in place per linear foot	74	LF	\$140.30	\$10,363.96
5	42" R.C.P., complete and in place per linear foot	769	LF	\$150.00	\$115,390.50
6	5' X 5' Junction Box complete and in place per each	2	EA	\$4,844.58	\$9,689.16
7	6' X 6' Junction Box complete and in place per each	5	EA	\$6,082.42	\$30,412.10
8	24" Headwall w/ Dissapators and Dump Rock complete and in place per each	1	EA	\$5,130.59	\$5,130.59
9	42" Headwall w/ Dissapators and Dump Rock complete and in place per each	3	EA	\$7,503.14	\$22,509.42
10	10' inlets w/ curb transition, complete and in place per each	26	EA	\$4,711.11	\$122,488.86
11	Trench Safety, complete and in place per linear foot	4,304	LF	\$1.00	\$4,304.44
SUBTOTAL DRAINAGE ITEMS:					\$561,483.72

III. WATER ITEMS					
1	8" C-900 DR-14, complete and in place per linear foot	4,194	LF	\$51.68	\$216,757.29
2	12" C-900 DR-14, complete and in place per linear foot	489	LF	\$125.00	\$61,125.00
3	18" C-900 DR-14, complete and in place per linear foot	1,237	LF	\$195.00	\$241,189.65

CARLSON, BRIGANCE DOERING, INC.

ENGINEER'S COST ESTIMATE

Colony M.U.D. 1F Section 2

CBD #5288

EXCAVATION, STREETS, DRAINAGE, WATER, WASTEWATER and EROSION CONTROL

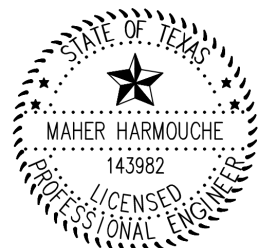
July, 2022

Item 11C.

4	24" C-900 DR-14, complete and in place per linear foot	587	LF	\$285	\$167,546.78
5	5 1/4" Fire Hydrant Assembly, complete and in place per each	15	EA	\$3,855.67	\$57,835.05
6	6" Gate Valve, complete and in place per each	15	EA	\$1,988.01	\$29,820.15
7	8" Gate Valve, complete and in place per each	13	EA	\$2,306.35	\$29,982.55
8	12" Gate Valve, complete and in place per each	2	EA	\$8,400.00	\$16,800.00
9	18" Gate Valve, complete and in place per each	4	EA	\$10,600.00	\$42,400.00
10	24" Gate Valve, complete and in place per each	2	EA	\$12,500.00	\$25,000.00
10	Single Water Service Assembly, complete and in place per each	7	EA	\$1,150.35	\$8,052.45
11	Double Water Service Assembly, complete and in place per each	36	EA	\$1,686.22	\$60,703.92
12	Trench Safety, complete and in place per linear foot	6,508	LF	\$1.00	\$6,507.52
SUBTOTAL WATER ITEMS:					\$963,720.36

IV. WASTEWATER ITEMS		QUANTITY	UNIT	COST	AMOUNT
1	8" Tie In to Existing, complete and in place per each	2	EA	\$1,201.75	\$2,403.50
2	8" PVC SDR-26 - All Depths, complete and in place per linear foot	3,970	LF	\$46.09	\$182,973.15
3	4' Wastewater Manhole, complete and in place per each	21	EA	\$4,250.00	\$89,250.00
4	5' Wastewater Drop Manhole, complete and in place per each	2	EA	\$7,000.00	\$14,000.00
4	Single Wastewater Service (6") Assembly, complete and in place per each	7	EA	\$1,628.03	\$11,396.21
5	Double Wastewater Service (6") Assembly, complete and in place per each	36	EA	\$2,254.47	\$81,160.92
6	Trench Safety, complete and in place per linear foot	3,970	LF	\$1.00	\$3,969.91
SUBTOTAL WASTEWATER ITEMS:					\$385,153.69

V. EROSION CONTROL ITEMS		QUANTITY	UNIT	COST	AMOUNT
1	Revegetation of R.O.W., Easements and All Disturbed Areas - Seed & Topsoil, complete and in place per square yard	12,113	SY	\$1.82	\$22,045.66
2	Inlet Protection, complete and in place per each	26	EA	\$95.17	\$2,474.42
3	Stabilized Construction Entrance complete and in place per each	1	EA	\$1,097.29	\$1,097.29
4	Concrete Wash-Out Area complete and in place per each	1	EA	\$615.78	\$615.78
5	Install and Maintain Silt Fence, complete and in place per linear foot	4,125	LF	\$2.75	\$11,343.75
SUBTOTAL EROSION CONTROL ITEMS:					\$37,576.90

TOTAL COST ESTIMATE**\$3,852,874.18**CARLSON, BRIGANCE, & DOERING, INC.
ID # F3791

07-01-2022

77



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Consider action to approve Resolution No. R-2022-69 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 Eight Million, Nine Hundred Thirty-One Thousand, Nine Hundred and Two Dollars (\$8,931,902); 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 to work 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 package. 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 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.

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) selected the following:

- For the Well Field: Weisinger with a proposal in the amount of \$6,025,000.00
- For the Clearwell: Preload with a proposal in the amount for \$1,480,800.00

Below is a summary of the proposer's price and evaluation results:

Well Driller	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
Weisinger	35	8	8	\$6,025,000	91
Hydro	34	8	8	\$6,240,729	89
Alsay	36	8	8	\$7,026,950	86

Clearwell	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
Preload	37	8	8	\$1,480,800	93
DN Tanks	37	8	8	\$1,591,430	90

After selecting the two construction firms: Weisinger and Preload, Archer Western presented the City with their Guaranteed Maximum Price (GMP1), in the amount of \$8,831,902, which includes the Cost of Work, Construction Fee, General Conditions, and CM@Risk's contingency; and a Total Contract Price of \$8,931,902, which includes the GMP 1 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 with a GMP1 for the construction of the Well Field and Clearwell, 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 GMP1. 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 GMP1 and Total Contract Price, Archer Western will move forward in awarding a construction contract with Weisinger and Preload to perform the construction of the Well Field and Clearwell.

Archer Western has 575 calendar days to complete the Well Field package, and 575 calendar days to complete the Clearwell.

FISCAL IMPACT:

FY22 Annual Budget

- CO Bond Series 2021

RECOMMENDATION:

Consider action to approve Resolution No. R-2022-69 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 Eight Million, Nine Hundred Thirty-One Thousand, Nine Hundred and Two Dollars (\$8,931,902); 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 – GMP1 with Archer Western
- Exhibit B: Resolution No. R-2022-69
- Exhibit C: Well Field and Clearwell – location map

RESOLUTION NO. R-2022-69

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 EIGHT MILLION, NINE HUNDRED THIRTY-ONE THOUSAND, NINE HUNDRED AND TWO DOLLARS (\$8,931,902); 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 Eight Million, Eight Hundred Thirty-One Thousand, Nine Hundred and Two Dollars (\$8,831,902).

Section 2. The City Manager is hereby authorized to execute a contract with Archer Western Construction, LLC in an amount not to exceed of Eight Million, Nine Hundred Thirty-One Thousand, Nine Hundred and Two Dollars (\$8,931,902), 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 9th day of August 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 _____, 2021.

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:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay
 - 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:
 - If ahead of schedule, the number of calendar Days ahead.
 - 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**

Cost of Work	\$ __\$7,505,800__
Construction Fee	\$ __\$600,464__
General Conditions	\$ __\$585,452__
CM@Risk's Contingency	\$ __\$140,186__
Total GMP Price	\$ __\$8,831,902__

Owner's Contingency	\$ __\$100,000__
Total Contract Price	\$ __\$8,931,902__

(Contract Price - Written Amount)

Eight Million, nine hundred thirty-one thousand, nine hundred and two dollars for GMP 1, consisting of Package 1 Well Drilling, Package 2 Clearwell, CMAR GCs & Construction Fee, CMAR Contingency and Owner Contingency.

- 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

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
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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: _____

Title: President

CITY OF BASTROP _____

By: _____

Date: _____

Recommended:

By: _____

(Department)

ATTEST:

City Clerk _____

APPROVED AS TO FORM:

City Attorney _____

(Corporate Seal)

ATTEST: (Signature and Title)
Corporate Secretary

Approved by City Council:

Date:

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 FINAL PAYMENT 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			
		Detail	
Drawing No.	Description		
Make the following additions, modifications, or deletions to the Work described in the Contract Documents:			
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.			
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	_____
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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

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.

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>	<i>Date</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	<i>(signature)</i>
Date	<i>(date signed)</i>
Name	<i>(typed or printed)</i>
Title	<i>(typed or printed)</i>
Representing	<i>(typed or printed)</i>

Notary Attest

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

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

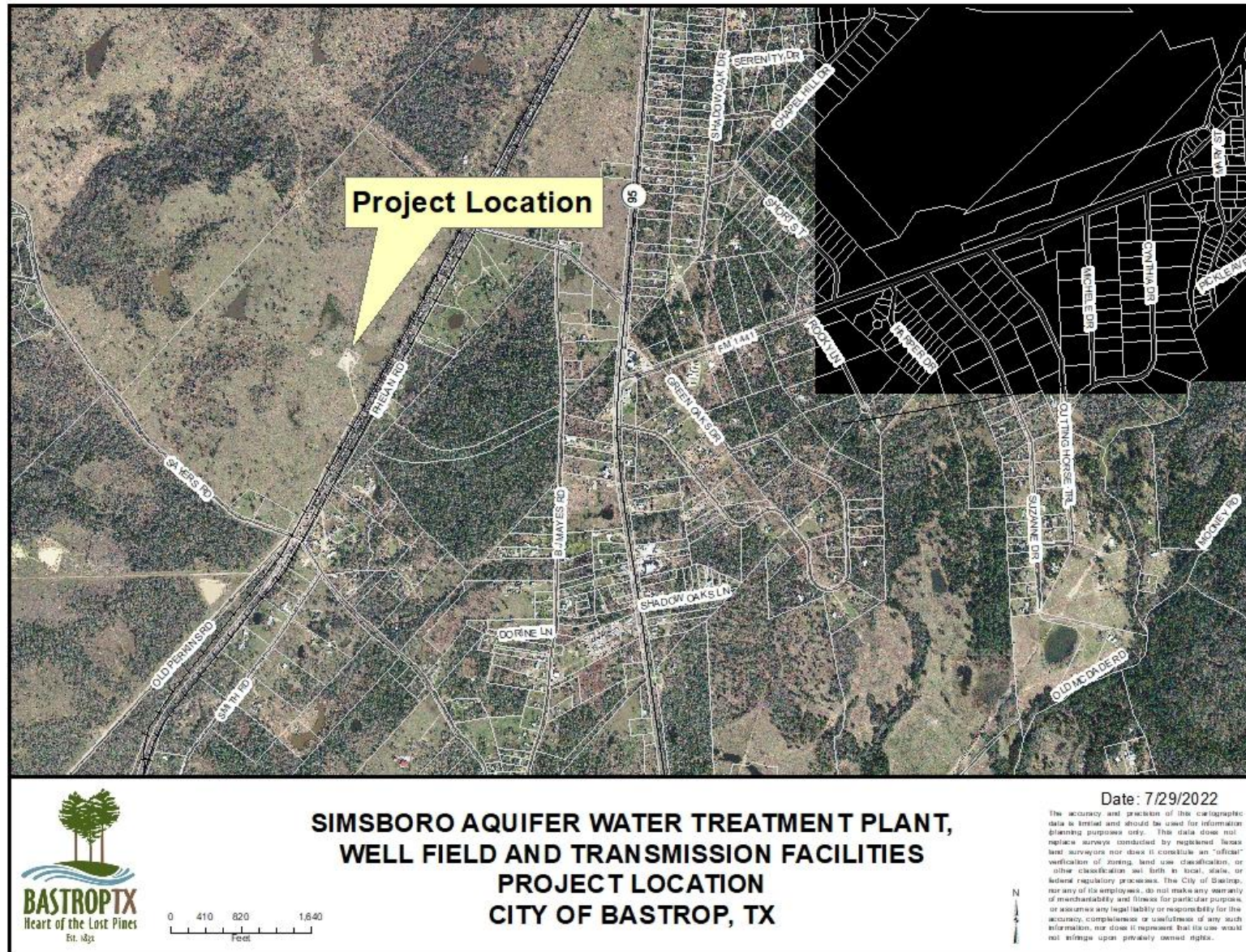
By _____
(notary's signature)

Name _____
(typed or printed)

Notary Public - State of _____
(typed or printed)

My commission expires _____
(expiration date)

(Notary Seal)



CITY OF BASTROP

Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities-GMP1

**City Council Meeting
August 9, 2022**

**Engineering and
Capital Project Management Department**



Background

- In 2018:
 - City approved an engineering services agreement with Freese and Nichols, INC. (FNI) for the preliminary design
- In 2020:
 - City approved an engineering services agreement with FNI for the design and construction administration services
 - FNI's recommendation of construction manager at risk (CM@Risk) delivery method and
 - City approved the use of CM@Risk delivery method



Background

- In 2021:
 - City advertised a Request for Qualifications (RFQ) for the use of CM@Risk for the design phase services
 - City received 7 Statement of Qualifications (SOQs)
 - Selection Committee comprised of City staff selected Archer Western as the most qualified
 - City approved a professional services contract with Archer Western



Project Overview

- The City is intending to convert its water supply source from shallow alluvial wells fed by the Colorado River, to deep wells that draw from the Simsboro Aquifer, with a water supply:
 - More reliable
 - More resilient
 - Better quality



Project Overview

- The whole project consists of:
 - A new well field and production facilities:
 - 3 wells to meet Phase 1 demands (avg capacity 3 MGD, peak capacity 6 MGD)
 - water collection piping and access roads
 - Groundwater Treatment Facilities:
 - gravity filtration with green sand media for iron and manganese removal
 - chemical building and filter building



Project Overview (cont.)

- Low Lift pump station:
 - water will be pumped from filter effluent to a 0.5 MG clearwell
- Clearwell (above grade Ground Storage Tank):
 - 0.5 MG prestressed concrete tank
- Backwash pump station
 - Backwash pumps will pull water from clearwell



Project Overview (cont.)

- Transmission facilities to transfer finished water from treatment plant to Willow Plant for pumping to distribution system
 - 24" pipeline, normally operating by gravity in Phase I
 - standby backwash pump can serve as transfer pump (to extend useable volume of clearwell)
 - future transmission pump station for build-out

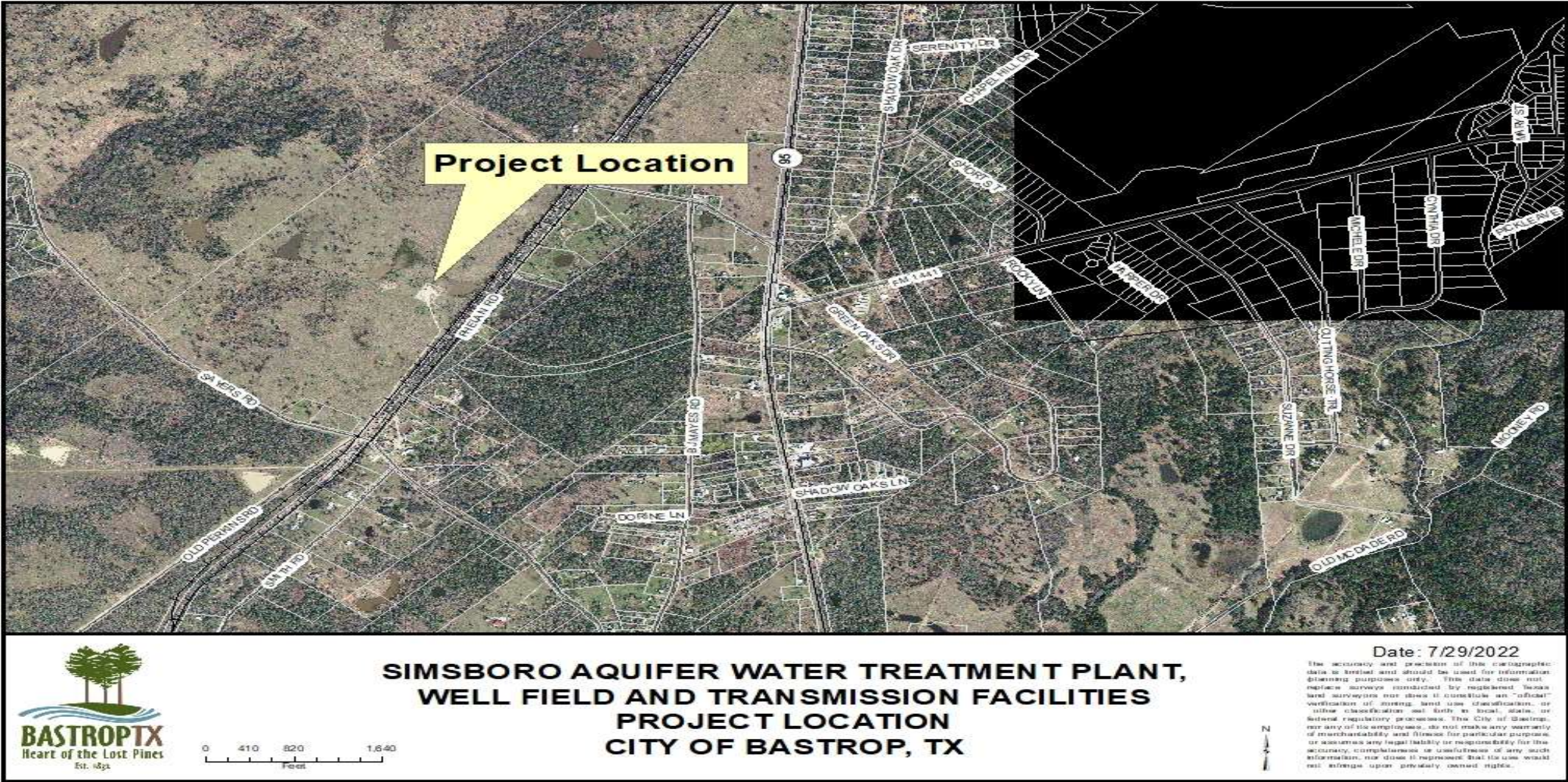


Project Overview (cont.)

- Lift Station and Force Main:
 - Convey backwash water and wastewater generated at the WTP to City's collection system
- Other work:
 - Electrical, instrumentation, site access and improvements, etc.



Project Location



Project Team

- City:
 - Project Manager: Fabiola M. de Carvalho, AMP MIAM
 - Construction Manager: Rene Aguilar, P.E.
 - Project Owner: Curtis Hancock
- FNI:
 - Project Manager: Kira Iles, P.E.
 - Principal: Kendall King, P.E.
 - Construction Inspector/Manager: Kenneth Barnes



Project Team (cont.)

- Archer Western:
 - Program Principal: Mark Tepera
 - Project Manager : Thor Benson



CMAR Selection and GMP Process

- Archer Western selected as CM@Risk for design phase services: March 23, 2021
- Work is advertised as packages, bids analyzed to select contractor offering the best value to the City
- CMAR may bid on work packages, and are reviewed as any other bidder
- Total of all work packages, plus CMAR fee, contingency = Guaranteed Maximum Price (GMP)



CMAR Selection and GMP Process

- CM@Risk advertised on July 6, 2022 for construction services for the Clearwell and Well Field (Drilling) work packages
- CM@Risk held a Bid Opening on July 27, 2022 and recommended as follows:
 - Weisinger: for the Well Field (Drilling) work package, and
 - Preload: for the Clearwell work package



Summary of Evaluation Results

Rank	Contractor/Well Driller	Project Cost	Total Score
1	Weisinger	\$6,025,000	91 ★
2	Hydro Resources	\$6,240,729	89
3	Alsay	\$7,026,950	86

Summary of Evaluation Results

Rank	Contractor/Clearwell	Project Cost	Total Score
1	Preload	\$1,480,800	93 ★
2	DN Tanks	\$1,591,430	90

Project Budget & Schedule

- Funding Source:
 - CO Bond Series 2021
- Notice to Proceed: August 2022
- Anticipated Completion: January 2024



Project Impact and Notification

- No service interruption to water, wastewater or traffic
- Notification Plan:
 - Provide project updates through Building Bastrop page



Staff Recommendation

Authorize the approval of the Construction Phase Services Contract for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities, GMP1 in the amount of \$8,931,902; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.



Questions





STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Consider action to approve Resolution No. R-2022-71 of the City of Bastrop, Texas, conveying the Bastrop City Council's expectations and directives to the City's Diversity, Equity & Inclusion Board, as requested by Council Members Kevin Plunkett and John Kirkland.

AGENDA ITEM SUBMITTED BY:

Submitted by: Rebecca Gleason, Assistant City Manager

BACKGROUND/HISTORY:

On July 26, 2022, the City of Bastrop City Council created the Diversity, Equity & Inclusion Board. The attached Resolution seeks to clarify the scope of the Board.

FISCAL IMPACT:

N/A

RECOMMENDATION:

The Assistant City Manager recommends Council consideration of the attached Resolution as submitted by Council Members Plunkett and Kirkland.

ATTACHMENTS:

1. Resolution No. R-2022-71

*Cty Atty Alan B.**Draft "B"**August 1, 2022*

CITY OF BASTROP

RESOLUTION NO. R-2022- 71

DIVERSITY, EQUITY & INCLUSION BOARD**A RESOLUTION OF THE CITY OF BASTROP, TEXAS,
CONVEYING THE BASTROP CITY COUNCIL'S
EXPECTATIONS AND DIRECTIVES TO THE CITY'S
DIVERSITY, EQUITY & INCLUSION BOARD**

WHEREAS, on July 26, 2022, the City Council approved Resolution No. R-2022-67, creating the Diversity, Equity and Inclusion Board (DEI Board); and

WHEREAS, the City Council of the City of Bastrop ("City Council") supports the goals and objectives of the City Manager's Diversity Task Force that led to the creation of the DEI Board; and

WHEREAS, the City Council opposes discrimination in all its forms, specifically including discrimination in the City of Bastrop's services, programs, and employment practices; and

WHEREAS, the City Council finds it necessary and appropriate to provide specific guidance to the members of the DEI Board.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop:

Section 1: Expectations & Directives. The City Council hereby provides the following expectations and directives to the DEI Board.

- a. Advisory:** The DEI Board shall serve in an advisory capacity through which it renders recommendations to the City Council and City Management. Recommendations shall be in the form of an annual written report to the City Council, and upon request by the City Council or City Manager. Suggestions from the DEI Board for possible solutions and improvements may apply to City policies, practices, services and programs.
- b. Educational:** The DEI Board shall promote community awareness on the value of Diversity, Equity and Inclusion. The DEI Board shall coordinate with City staff to identify opportunities to provide educational information and activities at civic events and public forums.
- c. Human Resources:** The DEI Board shall provide input to the City's

City Manager on employment practices and opportunities in an effort to enhance recruitment and retention of a diverse workforce that better reflects the community. The DEI Board shall suggest means for improving the volunteer service of minority residents on City boards and commissions.

- d. Public Safety:** The DEI Board shall provide input to the City Manager in an effort to encourage equitable provision of fire and police services throughout the community, including neighborhoods with predominately minority residents.

Section 2: Work Plan & Budget. The City Council hereby asks the City Manager to work with the DEI Board to devise a long-term Work Plan to be submitted to the City Council for approval and annual review. The Work Plan shall include any requested budgetary allocations necessary to support the DEI Board's goals and activities.

Section 3: Open Meeting. The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, TX, on this, the ____ day of August 9, 2022.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: August 9, 2022

TITLE:

Consider action to approve Resolution No. R-2022-68 acknowledging proposed tax rate, no-new-revenue tax rate and voter-approval tax rate for Fiscal Year 2022-2023 (FY 2023), calling for a public hearing on September 13, 2022, and authorizing a public notice.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

Truth-in-taxation is a concept embodied in the Texas Constitution and the Tax Code that requires local taxing units to make taxpayers aware of tax rate proposals. When a proposed tax rate exceeds the voter-approval rate or the no-new-revenue rate, whichever is lower, the taxing unit's governing body must vote to place a proposal to adopt the rate on the agenda of a future meeting as an action item. This vote must be recorded. The proposal must specify the desired rate. A taxing unit cannot vote to adopt a proposal to increase taxes by an unspecified amount. If the motion passes, the governing body must schedule a public hearing on the proposal.

There are four principles to truth-in-taxation:

- Property owners have a right to know about increases in their appraised property value and to be notified of the estimated taxes that could result from the new value.
- A taxing unit must publish its no-new-revenue and voter-approval tax rates before adopting an actual tax rate.
- A taxing unit must publish special notices and hold a public hearing before adopting a tax rate that exceeds the lower of the voter-approval rate or the no-new-revenue tax rate.
- If a taxing unit adopts a rate that exceeds the voter-approval rate, voters may petition for an election to limit the rate to the no-new-revenue rate.

The no-new-revenue rate is a calculated rate that will raise the same amount of property tax revenue from the same properties taxed in both years. If property values rise, the no-new-revenue rate will go down and vice versa. The rate can be affected by lost value from changes in exemptions and court appeals. The voter-approval rate provides the taxing unit the same amount of tax revenue from the previous year for maintenance and operations, plus an extra three and a half (3.5) percent increase for those operations, in addition to sufficient funds to pay debt service in the coming year.

In the FY 2023 Proposed Budget, the City Managers' recommendation was to use the no-new-revenue M&O rate, calculated from preliminary values, of \$0.3287 plus a debt rate of \$0.1962. On July 25, 2022, the Chief Financial Officer received the certified appraisal rolls along with other values that must be used in the tax rate calculation, which moved this NNR M&O rate to

\$0.3166. This change in the rate will reduce the General Fund property tax revenue for FY 2023 by \$33,000.

For the purposes of the public hearing the City Manager is suggesting a tax rate of \$0.5238 including a maintenance and operations (M&O) tax rate of \$0.3276 (3.5% over the NNR M&O rate) and a debt service (I&S) tax rate of \$0.1962 per \$100 in taxable value. This will provide City Council some flexibility as they work through the FY 2023 proposed budget at workshops scheduled for August 16th and 17th. The City Council can decide to adopt a rate lower than what is proposed but cannot adopt a rate that exceeds this proposed rate.

The no-new-revenue tax rate has been calculated by the Bastrop County Tax Assessor Collector to be \$0.4887. The voter-approval rate, which is the maximum rate that can be applied and not be subject to an election to seek voter approval, has been calculated by the Bastrop County Tax Assessor Collector to be \$0.5238. These rates will be published in the local newspaper, the City's website, and the government access cable channel as required by State law.

TAX RATE					
Fiscal Year	Proposed Property Tax Rate	No-New-Revenue Tax Rate	No-New-Revenue M&O Tax Rate	Voter-Approval Tax Rate	Debt Rate
2022-2023	0.5238	0.4887	0.3166	0.5238	0.1962
2021-2022	0.5794	0.5457	0.3632	0.6100	0.2054

When a proposed tax rate exceeds the voter-approval rate or the no-new-revenue tax rate, whichever is lower, the taxing unit's governing body must vote to place a proposal to adopt the tax rate on the agenda of a future meeting as an action item. If the motion passes, the governing body must schedule a public hearing on the proposal. The Chief Financial Officer proposes that a public hearing be held on Tuesday, September 13, 2022. These public hearing will be held in the City Council Chambers, located in City Hall at 1311 Chestnut St. Bastrop, TX 78602.

The Notice of Public Hearing on Increase reflects the most up to date average homestead values and are slightly different than the preliminary values used in the FY 2023 Proposed Budget.

RECOMMENDATION:

The City Manager recommends approval of Resolution No. R-2022-68 acknowledging proposed tax rate, no-new-revenue tax rate and voter-approval tax rate for Fiscal Year 2022-2023 (FY 2023), calling for a public hearing, and authorizing a public notice.

ATTACHMENTS:

- Resolution R-2022-68
- Notice of Public Hearing on Increase

RESOLUTION NO. R-2022-68**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, ACKNOWLEDGING PROPOSED TAX RATE, NO-NEW REVENUE TAX RATE, AND VOTER-APPROVAL TAX RATE FOR FISCAL YEAR 2022-2023 (FY 2023), CALLING FOR A PUBLIC HEARING, AND AUTHORIZING A PUBLIC NOTICE.**

WHEREAS, the City Council deems it advisable to give notice of its intent to propose a tax rate for the City of Bastrop, Texas as hereinafter provided; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public and public notice of the meeting was given, all as required by Chapter 551, Texas Government Code.

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

SECTION 1: That the City Council of the City of Bastrop, Texas, does hereby order that a public hearing be scheduled as specified on Exhibit "A" [Notice of Public Hearing on Tax Increase] to consider a proposal to adopt a tax rate for Fiscal Year 2022-2023.

SECTION 2: That notice of the proposed tax rate, no-new-revenue tax rate, and a voter-approval tax rate for the City of Bastrop, Texas, for Fiscal Year 2022-2023 is hereby acknowledged consistent with Exhibit "A".

SECTION 3: That the City Secretary shall cause said notice of a public hearing on the proposed tax rate increase for the City of Bastrop, Texas, for Fiscal Year 2022-2023 to be distributed as required by law consistent with Exhibit "A".

SECTION 4: That this Resolution shall become effective immediately upon its passage.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, this 9th day of August 2022.

CITY OF BASTROP, TEXAS

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

NOTICE OF PUBLIC HEARING ON INCREASE

Item 12C.

A tax rate of \$0.5238 per \$100 valuation has been proposed by the governing body of City of Bastrop.

PROPOSED TAX RATE	\$0.5238 per \$100
NO-NEW-REVENUE TAX RATE	\$0.4887 per \$100
VOTER-APPROVAL TAX RATE	\$0.5238 per \$100

The no-new-revenue tax rate is the tax rate for the 2022 tax year that will raise the same amount of property tax revenue for the City of Bastrop from the same properties in both the 2021 tax year and the 2022 tax year.

The voter-approval rate is the highest tax rate that the City of Bastrop may adopt without holding an election to seek voter approval of the rate.

The proposed tax rate is greater than the no-new-revenue tax rate. This means that the City of Bastrop is proposing to increase property taxes for the 2022 tax year.

A PUBLIC HEARING ON THE PROPOSED TAX RATE WILL BE HELD ON September 13, 2022 AT 6:30 PM AT 1311 Chestnut St. Bastrop, TX 78602.

The proposed tax rate is not greater than the voter-approval tax rate. As a result, the City of Bastrop is not required to hold an election at which voters may accept or reject the proposed tax rate. However, you may express your support for or opposition to the proposed tax rate by contacting the members of the City Council of the City of Bastrop at their offices or by attending the public hearing mentioned above.

YOUR TAXES OWED UNDER ANY OF THE RATES MENTIONED ABOVE CAN BE CALCULATED
AS FOLLOWS:

$$\text{property tax amount} = (\text{rate}) \times (\text{taxable value of your property}) / 100$$

FOR the proposal:

AGAINST the proposal:

PRESENT and not voting:

ABSENT:

The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.

The following table compares the taxes imposed on the average residence homestead by the City of Bastrop last year to the taxes proposed to be imposed on the average residence homestead by (

Item 12C.

 Bastrop this year.

	2021	2022	Change
Total tax rate (per \$100 of value)	\$0.5794	\$0.5238	decrease of -0.0556, or -9.6%
Average homestead taxable value	\$226,596	\$255,713	increase of \$29,117, or 12.85%
Tax on average homestead	\$1,312.90	\$1,339.42	increase of \$26.52, or 2.02%
Total tax levy on all properties	\$6,373,089	\$7,365,550	increase of \$992,461, or 15.57%

For assistance with tax calculations, please contact the Tax Assessor for Bastrop County at (512) 581-7161, or visit <https://bastrop.countytaxrates.com> for more information.