

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



September 26, 2023

AMENDMENT TO CHANGE TITLE OF SECTION 10 TO EXECUTIVE SESSION

Special Council Meeting at 5:30 PM

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

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

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

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE** - Kaison Ancrum, Compass Rose Harvest and Aria Perkins
TEXAS PLEDGE OF ALLEGIANCE - *Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*
3. **INVOCATION** - Phil Woods, Police Chaplain
4. **PRESENTATIONS - NONE**
5. **WORK SESSIONS/BRIEFINGS - NONE**
6. **STAFF AND BOARD REPORTS - NONE**

7. CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. Anyone in attendance wishing to address the Council must complete a citizen comment form and give the completed form to the City Secretary prior to the start of the City Council meeting. Alternately, if you are unable to attend the council meeting, you may complete a citizen comment form with your comments at www.cityofbastrop.org/citizencommentform at least two hours before the meeting starts on the requested date. Comments submitted by this time will be given to the City Council during the meeting and included in the public record, but not read aloud. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Manager for research and possible future action.

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

8. 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.

8A. Consider action to approve City Council minutes from the September 19, 2023, Regular meeting.

Submitted by: Ann Franklin, City Secretary

8B. Consider action to approve the second reading of Ordinance No. 2023-37 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting.

Submitted by: Laura Allen, Senior Accountant

8C. Consider action to approve the second reading of Ordinance No. 2023-36 approving the Burleson Crossing East Zoning Concept Scheme, changing the zoning for 19.81 acres out of the Nancy Blakey Survey from P5 Core to a Planned Development District (PDD) with a P5 Core base zoning, as shown in attached as Attachment 2, located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas.

Submitted by: Sylvia Carrillo, City Manager, ICMA-CM, CPM

9. ITEMS FOR INDIVIDUAL CONSIDERATION

9A. Consider action to approve Resolution No. R-2023-128 of the City Council of the City of Bastrop, Texas, approving Amendment Number 1 to Capital Area Council of Governments (CAPCOG) "Lease of Site for Air Quality Monitoring" for a portion of property in the City's Mayfest Park, located at 25 American Legion Drive, for a term of three (3) years at a total rent of One and 00/100 Dollar (\$1.00); attached as Exhibit A; authorizing City Manager to execute all appropriate documentation; providing for a repealing clause; and establishing an effective date.

Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager

9B. Consider action to approve Resolution No. R-2023-144 of the City Council of the City of Bastrop, Texas appointing Mayor Lyle Nelson as the General Assembly Representative to the Capital Area Council of Government (CAPCOG) and replacing current member Connie Schroeder; authorizing the Mayor to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager

9C. Consider action to approve the first reading of Ordinance No. 2023-38, of the City Council of the City of Bastrop, Texas, establishing and adopting transportation impact fees; amending the Bastrop Code of Ordinances, Chapter 13, Article 13.12, by enacting sections 13.12.094 - 13.12.099 providing for definitions; providing for assessment of said impact fees; providing for the general administration of said impact fees; providing a severability clause; providing an effective date and an open meetings clause, providing adoption, repealer, severability, filing and enforcement; establishing an effective date; providing for proper notice and meeting; and move to include on the October 10, 2023, agenda for second reading.

Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager

9D. Consider action to approve Resolution No. R-2023-145 approving an amendment to the Animal Control Services Interlocal Agreement with Bastrop County to extend the agreement through October 31, 2023.

Submitted by: Vicky Steffanic, Chief of Police

10. EXECUTIVE SESSION

10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel and discuss the potential acquisition of real estate relating to the Transfer Lift Station and Force Main project.

10B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding Wastewater Treatment Plant & Collection System and Improvements at the Administration Building, including the HVAC system, amended sealed plans, supplemental instructions, change orders, contract compliance, and invoice irregularities involving KSA Engineering, Inc.

- 10C. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding potential agreements with Aqua Water Supply Corporation regarding treated wastewater effluent.
- 10D. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 and 551.072 to seek the advice of legal counsel regarding and discuss the potential acquisition of real estate relating to the Blakey Lane Extension project.
- 10E. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding the Destination and Marketing Services Agreement with Visit Bastrop and related information.

11. ADJOURNMENT

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

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

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City’s website, www.cityofbastrop.org and said Notice was posted on the following date and time: Thursday, September 21, 2023, at 5:00 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: September 26, 2023

TITLE:

Consider action to approve City Council minutes from the September 19, 2023, Regular meeting.

AGENDA ITEM SUBMITTED BY:

Ann Franklin, City Secretary

BACKGROUND/HISTORY:

N/A

FISCAL IMPACT:

N/A

RECOMMENDATION:

Consider action to approve City Council minutes from the September 19, 2023, Regular meeting.

ATTACHMENTS:

- September 19, 2023, DRAFT Regular Meeting Minutes.



SEPTEMBER 19, 2023

The Bastrop City Council met in a regular meeting on Tuesday, September 19, 2023, at 5:00 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Nelson and Mayor Pro Tem Kirkland and Council Members Lee, Meyer, Plunkett, and Crouch. Officers present were: City Manager, Sylvia Carrillo; City Secretary, Ann Franklin; and City Attorney, Alan Bojorquez.

CALL TO ORDER

Mayor Nelson called the meeting to order at 5:00 p.m. with a quorum present.

PLEDGE OF ALLEGIANCE

Bastrop High School NJROTC Seniors, led the pledges.

Maddy Pickering, Commanding Officer c/LCDR

Shayla Tangen, Executive Officer c/Lieutenant

Connor Shaw, Senior Chief Petty Officer c/SCPO

INVOCATION

Bob Long, Police Chaplain, gave the invocation.

PRESENTATIONS

4A. Mayor's Report-**NONE**

4B. Council Members' Report-**NONE**

4C. City Manager's Report-**NONE**

4D. Proclamation of the City Council of the City of Bastrop, Texas recognizing October 3, 2023, as National Night Out.

Submitted by: Ann Franklin, City Secretary

The presentation was made by Mayor Nelson and received by Chief Steffanic.

4E. Proclamation of the City Council of the City of Bastrop, Texas recognizing the month of October as Domestic Violence Awareness Month.

Submitted by: Ann Franklin, City Secretary

The presentation was made by Mayor Nelson and received by Pastor Bernie Jackson.

WORK SESSIONS/BRIEFINGS-NONE

STAFF AND BOARD REPORTS- NONE

CITIZEN COMMENTS - NONE

CONSENT AGENDA

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

- 8A. Consider action to approve City Council minutes from the September 12, 2023, Regular meeting.
Submitted by: Ann Franklin, City Secretary
- 8C. Consider action to approve the second reading of Ordinance No. 2023-32 of the City Council of the City of Bastrop, Texas ("City") to amend Article 4.04 - Peddlers, Solicitors and Vendors and adopt Division 4 – Requirements Applicable for Mobile Food Vendors in the Bastrop, Texas Code of Ordinances; providing for findings of fact, purpose, adoption and amendment, repealer, severability, enforcement, effective date, and property notice and meeting.
Submitted by: Andres Rosales, Fire Chief

PULLED FROM AGENDA

- 8B. Consider action to approve the second reading of Ordinance No. 2023-36 approving the Burleson Crossing East Zoning Concept Scheme, changing the zoning for 19.81 acres out of the Nancy Blakey Survey from P5 Core to a Planned Development District (PDD) with a P5 Core base zoning, as shown in attached as Attachment 2, located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas.
Submitted by: Sylvia Carrillo, City Manager, ICMA-CM, CPM
This item was pulled from the agenda and placed on the September 26, 2023, agenda.

ITEMS FOR INDIVIDUAL CONSIDERATION

- 9A. Consider action to approve the first reading of Ordinance No. 2023-38, of the City Council of the City of Bastrop, Texas, establishing and adopting transportation impact fees; amending the Bastrop Code of Ordinances, Chapter 13, Article 13.12, by enacting sections 13.12.094 - 13.12.099 providing for definitions; providing for assessment of said impact fees; providing for the general administration of said impact fees; providing a severability clause; providing an effective date and an open meetings clause, providing adoption, repealer, severability, filing and enforcement; establishing an effective date; providing for proper notice and meeting; and move to include on the September 26, 2023, meeting for second reading.
Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager
Presentation was made by Sylvia Carrillo, ICMA-CM, CPM, City Manager and Jake Gutekunst, Kimley-Horn.

Public Hearing Opened.

A motion was made by Mayor Pro Tem Kirkland to table this item for further discussion and keep the public hearing open, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

9B. Consider action to approve the first reading of Ordinance No. 2023-37 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting, and move to include on the October 12, 2023 agenda for a second reading.

Submitted by: Laura Allen, Senior Accountant
Presentation was made by Laura Allen, Senior Accountant.

A motion was made by Council Member Lee to approve the first reading of Ordinance No. 2023-37 and move to include on the October 10, 2023, agenda for second reading, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

9C. Consider action to approve the second reading of Ordinance No. 2023-33 of the City Council of the City of Bastrop, Texas adopting a budget for the Fiscal Year 2023-2024 (October 1, 2023 through September 30, 2024) attached as Exhibit A; making certain appropriations; and providing that expenditures for said Fiscal Year be made in accordance with said budget; updating the Master Fee Schedule; providing a distribution; severability; repealer; an effective date; and proper notice of meeting.

Submitted by: Sylvia Carrillo, City Manager, and Laura Allen, Senior Accountant
Presentation was made by Laura Allen, Senior Accountant.

**Public hearing opened
Public hearing closed**

A motion was made by Council Member Meyer to approve the second reading of Ordinance No. 2023-33, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

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

9D. Consider action to approve Resolution No. R-2023-127 ratifying that the adoption of the Fiscal Year 2023-2024 budget will require raising more revenues from property taxes than in the previous year.

Submitted by: Sylvia Carrillo, City Manager, and Laura Allen, Senior Accountant
Presentation was made by Laura Allen, Senior Accountant.

A motion was made by Council Member Plunkett to approve Resolution No. R-2023-127 to ratify the vote just taken to approve the Fiscal Year 2023-2024 budget which will raise more revenues from ad valorem taxes than the previous fiscal year, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

9E. Consider action to approve the second reading of Ordinance No. 2023-34 of the City Council of the City of Bastrop, Texas, adopting the tax roll, adopting the tax rate, and levying ad valorem taxes for the Fiscal Year 2023-2024 to provide revenue for the

payment of budgeted municipal expenditures; and providing for tax assessment; records; severability; an effective date; and proper notice and meeting.

Submitted by: Sylvia Carrillo, City Manager, and Laura Allen, Senior Accountant
Presentation was made by Laura Allen, Senior Accountant.

A motion was made by Council Member Lee Meyer to approve the second reading of Ordinance No. 2023-34 to increase the property tax rate by the adoption of a tax rate of \$0.4994 per \$100 valuation, which is effectively a 1.6 percent increase in the tax rate, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

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

- 9F. Consider action to approve the second reading of Ordinance No. 2023-31, of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Chapter 14, the Bastrop Building Block (B3) Technical Manual, Article 4.1 Plat Submission; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager

Presentation was made by Sylvia Carrillo, ICMA-CM, CPM, City Manager.

A motion was made by Council Member Mayor Pro Tem Kirkland to approve the second reading of Ordinance No. 2023-31, seconded by Council Member Meyer, motion was approved on a 5-0 vote.

- 9G. Consider action to approve the second reading of Ordinance No. 2023-24 of the City Council of the City of Bastrop, Texas, annexing a tract of land described as 104.6+/- acres of land out of the Nancy Blakey survey, Abstract No. A98, located west of farm-to-market road 969, as shown in Exhibit A; providing for findings of fact, adoption, repealer, severability, filing and enforcement; establishing an effective date; providing for proper notice and meeting.

Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager

Presentation was made by Sylvia Carrillo, ICMA-CM, CPM, City Manager.

A motion was made by Council Member Plunkett to approve the second reading of Ordinance No. 2023-24, seconded by Mayor Pro Tem Kirkland, motion was approved on a 5-0 vote.

EXECUTIVE SESSION

The City Council did not meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:

- 10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel and discuss the potential acquisition of real estate relating to the Transfer Lift Station and Force Main project.

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

No Action

Adjourned at 6:50 p.m. without objection.

APPROVED:

ATTEST:

Mayor Lyle Nelson

City Secretary Ann Franklin

The Minutes were approved on September 26, 2023, by Council Member Name’s motion, Council Member Name’s second. The motion was approved on a 5-0 vote.



STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-37 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting.

AGENDA ITEM SUBMITTED BY:

Submitted by: Laura Allen, Senior Accountant

BACKGROUND/HISTORY:

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

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

Demand Charge by Meter Size - Water

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

The proposed budget for FY2024 included an assumption that the water base rate increase of \$5.00 for ¾" meter and equivalent change to all other meter sizes will be required. These rate

increases were informed by the update of the rate model based on new debt and capital improvement projections.

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

FISCAL IMPACT:

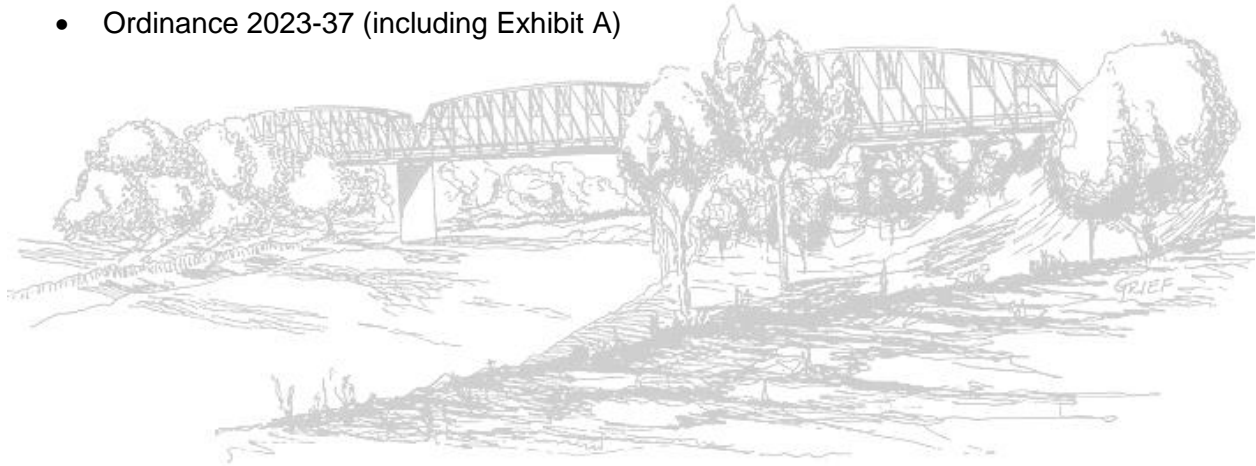
Water and wastewater revenue

RECOMMENDATION:

Larua Allen, Senior Accountant, recommends approval of the second reading of Ordinance No. 2023-37 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, proper notice and meeting.

ATTACHMENTS:

- Ordinance 2023-37 (including Exhibit A)



ORDINANCE NO. 2023-37

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

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

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

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

WHEREAS, the City utilizes a rate model that once updated reflects the need for an increase in the water base rates to help fund ongoing water infrastructure projects; and

WHEREAS, this ordinance increases the water demand charge for meter sizes greater than 1.5" and increases the water base rates for all meter sizes; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that in order to properly bill water charges to their customers, it is necessary to amend the City Code of Ordinances Appendix A: Fee Schedule 13.02.004, as attached in Exhibit A.

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

SECTION 1: FINDINGS OF FACT The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ENACTMENT Appendix A, Article A13.02.004 Water service charge are hereby amended to read in accordance with Exhibit A which is attached hereto and incorporated into this Ordinance for all intents and purposes. Underlined language shall be added. Stricken language shall be deleted.

SECTION 3. REPEALER All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 4. SEVERABILITY Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 5. EFFECTIVE DATE This Ordinance shall be effective November 1, 2023.

SECTION 6. PROPER NOTICE & MEETING It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & APPROVED on First Reading on the 19th day of September 2023.

READ & ADOPTED on the Second Reading on the 26th day of September 2023.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "A"

Appendix A – Fee Schedule

Sec. A13.02.004 - Water service charges.

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

Meter Size	Minimum Charge
¾" (or smaller)	\$32.72
1"	\$54.53
1½"	\$106.50
2"	\$168.59
3"	\$316.10
4"	\$503.96
6"	\$1,038.19

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

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

Commercial - In city limits.

Meter Size	Minimum Charge
¾" (or smaller)	\$32.72

1"	\$54.53
1½"	\$106.50
2"	\$168.59
3"	\$316.10
4"	\$503.96
6"	\$1,038.19

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

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

(2) Residential and Commercial - Outside city limits.

Meter Size	Minimum Charge
¾" (or smaller)	\$49.09
1"	\$81.79
1½"	\$159.75
2"	\$252.89
3"	\$474.15
4"	\$862.44
6"	\$1,557.29

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

0—3,000 gallons	\$ 4.12
3,001—5,000 gallons	\$ 4.42
5,001—10,000 gallons	\$ 4.70
10,001—20,000 gallons	\$ 4.98
20,001—50,000 gallons	\$ 5.39
Over 50,000 gallons	\$ 5.66

(b) no change



STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-36 approving the Burleson Crossing East Zoning Concept Scheme, changing the zoning for 19.81 acres out of the Nancy Blakey Survey from P5 Core to a Planned Development District (PDD) with a P5 Core base zoning, as shown in attached as Attachment 2, located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas.

STAFF REPRESENTATIVE:

Kennedy Higgins – Planner, Development Services

BACKGROUND:

The applicant has applied for a Zoning Concept Scheme for Burleson Crossing East (Attachment 2). The proposal is to place a Planned Development District (PDD) with a P5 Core base zoning to suffice commercial uses such as retail and restaurant onsite.

Place Type 5 – Core is defined in the code as:

“Higher density mixture of Building Types that accommodate commercial, retail, offices, row houses, and apartments. It has a tight network of Streets, with wide sidewalks, steady Street Tree plantings, and buildings set close to the sidewalks. P5 is a highly walkable area. A continuous line of buildings is critical to define the Public Frontage and allow for visible activity along the Street edge.”

The Future Land Use Plan shows this area as General Commercial:

“The General Commercial character area supports local and regional businesses that rely on heavy traffic volumes and the visibility that is associated with being located near major roadways. General Commercial developments typically involve varying development intensities, from smaller locally owned shops to big box retailers. These areas are predominantly auto-oriented, with large accessory parking areas.

PLANNING & ZONING COMMISSION RECOMMENDATION:

The P&Z Commission reviewed the Zoning Concept Scheme at their August 31, 2023, regular meeting and recommended approval of the Planned Development District, by a vote of 6-0.

STAFF RECOMMENDATION:

Consider action to approve the second reading as written.

ATTACHMENTS:

- Attachment 1: Location Map
- Attachment 2: Zoning Concept Scheme
- Attachment 3: Future Land Use Map
- Attachment 4: Warrant List
- Attachment 5: Draft PDD Zoning Exhibits
- Attachment 6: Draft PDD Agreement





STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-36 approving the Burleson Crossing East Zoning Concept Scheme, changing the zoning for 19.81 acres out of the Nancy Blakey Survey from P5 Core to a Planned Development District (PDD) with a P5 Core base zoning, as shown in attached as Attachment 2, located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas.

STAFF REPRESENTATIVE:

Kennedy Higgins – Planner, Development Services

ITEM DETAILS:

Site Address:	Northeast corner of State Highway 71 and Edward Burleson Drive
Total Acreage:	19.81 acres
Acreage Rezoned:	19.81 acres
Legal Description:	19.81 acres out of the Nancy Blakey Survey
Property Owner:	BRP East, L.P.
Agent Contact:	Steve Durham
Existing Use:	Vacant/Undeveloped
Existing Zoning:	P5 Core
Proposed Zoning:	Planned Development District, P5 Core Base Zoning
Character District:	Cattleman's
Future Land Use:	General Commercial

BACKGROUND:

The applicant has applied for a Zoning Concept Scheme for Burleson Crossing East (Attachment 2). The proposal is to place a Planned Development District (PDD) with a P5 Core base zoning to suffice commercial uses such as retail and restaurant onsite.

Place Type 5 – Core is defined in the code as:

“Higher density mixture of Building Types that accommodate commercial, retail, offices, row houses, and apartments. It has a tight network of Streets, with wide sidewalks, steady Street Tree plantings, and buildings set close to the sidewalks. P5 is a highly walkable area. A continuous line of buildings is critical to define the Public Frontage and allow for visible activity along the Street edge.”

The Future Land Use Plan shows this area as General Commercial:

“The General Commercial character area supports local and regional businesses that rely on heavy traffic volumes and the visibility that is associated with being located near major roadways. General Commercial developments typically involve varying development intensities, from smaller locally owned shops to big box retailers. These areas are predominantly auto-oriented, with large accessory parking areas.

Infrastructure	Available (Y/N)	Proposed
Water	Y	Line Extensions
Wastewater	Y	Line Extensions
Drainage	Y	Storm sewer, detention pond
Transportation	Y	Extension, private drive, widening
Parks and Open Space	N	

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 site includes one central location for detention and a storm sewer connection to the detention pond to the west in the Burleson Crossing development. The maximum impervious cover stated in the PDD is no more than 85%.

Utilities

Wastewater and water service (domestic and fire) will be provided by the City of Bastrop via line extensions from existing infrastructure located on Edward Burleson Street. These lines will be designed according to the City’s construction standards, as well as the Texas Commission on Environmental Quality’s (TCEQ) requirements.

Electric service provided by Bluebonnet Electric.

Gas will be provided by CenterPoint Energy.

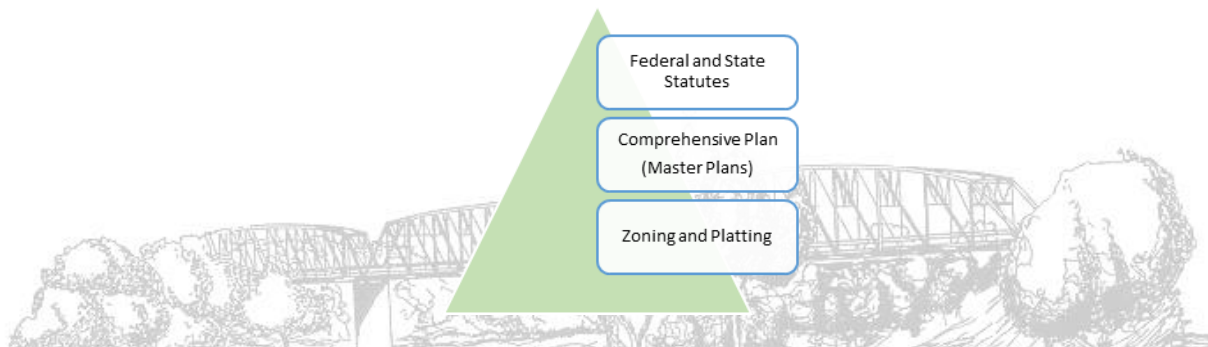
Traffic Impact and Streets

This zoning concept plan creates a private drive, includes Right of Way dedication for widening Edward Burleson and an extension of Blakey Lane eastward. A private drive resembling a typical city street will run through the heart of the development, leading to Wagon Wheel Circle. Access to the development will primarily be provided via entry points located off Edward Burleson. Additionally, on the eastern flank, there will be a coordinated connection to the SH 71 service road, extending northward towards Blakey Lane, with collaboration undertaken in conjunction with TxDOT. The street ROW’s meet the 55.5’ width requirement. The street design will follow the B3 Code, Section 7.3 for design and layout. A Traffic Impact Analysis has been conducted and completed by LJA Engineering for the development. We anticipate two easements along the private drive that will encompass a water line and storm sewer.

TABLE 1- RAW SITE TRIP GENERATION ESTIMATE

Land Use (ITE Code)	Units/ 1000 Sq Ft	24 Hr Trips	AM Peak			PM Peak		
			IN	OUT	TOTAL	IN	OUT	TOTAL
Commercial (>150k) (820)	175	10433	147	90	237	405	439	844
High-Turnover Restaurant (932)	25	2680	132	107	239	138	88	226
TOTAL		13113	279	197	476	543	527	1070

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.

Zoning Change signs were visibly placed in the front of the property 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.

(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.

If the Planning & Zoning Commission recommends denial of the zoning request, the City Council must have a minimum vote of 4 out of 5 members to approve the zoning request.

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 General Commercial character area supports local and regional businesses that rely on heavy traffic volumes and the visibility that is associated with being located near major roadways. General Commercial developments typically involve varying development intensities, from smaller locally owned shops to big box retailers. These areas are predominantly auto-oriented, with large accessory parking areas. While General Commercial development will continue to be auto-oriented, improved street-side and parking lot landscaping, buffers, appropriately designed and scaled signage, bicycle and pedestrian accommodations, higher quality building materials, and access management techniques (e.g., limited access points and inter-parcel connectivity) will help to improve overall development quality and appearance.

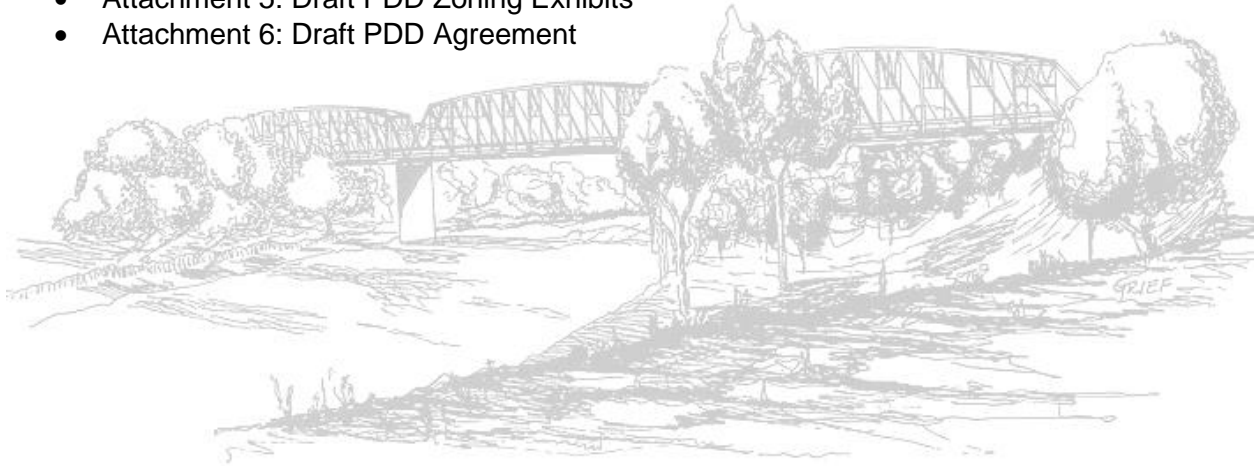
Representative land uses that are appropriate in General Commercial include General Retail Sales, Food Service, Medical or Health Care Facilities, and Professional Offices which are what is anticipated for Burlison Crossing East.

RECOMMENDATION:

Staff recommends approving the Burleson Crossing East Zoning Concept Scheme, changing the zoning for 19.81 acres out of the Nancy Blakey Survey from P5 Core to a Planned Development District (PDD) with a P5 Core base zoning, as shown in attached Exhibit A, located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas. The PDD eliminates the original 25 warrants and instead incorporates them into the PDD development agreement. Wagon Wheel will be crafted as a private street within the development, seamlessly connecting Edward Burleson Lane and Settlement Drive. This street, designed to serve as a public thoroughfare, shall be upheld and maintained by the development itself.

ATTACHMENTS:

- Attachment 1: Location Map
- Attachment 2: Zoning Concept Scheme
- Attachment 3: Future Land Use Map
- Attachment 4: Warrant List
- Attachment 5: Draft PDD Zoning Exhibits
- Attachment 6: Draft PDD Agreement



ORDINANCE 2023-36**ZONING CONCEPT SCHEME CHANGE
BURLESON CROSSING EAST**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE ZONING CHANGE FOR 19.81 +/- ACRES OUT OF THE NANCY BLAKEY SURVEY, ABSTRACT 98, BASTROP COUNTY, TEXAS, MORE COMMONLY KNOWN AS BURLESON CROSSING EAST FROM P5 CORE TO PLANNED DEVELOPMENT DISTRICT; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR 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 July 26, 2023, Steve Durhman submitted a request for zoning modifications for certain properties located at the northeast corner of State Highway 71 and Edward Burleson Drive, within the city limits of Bastrop, Texas described as being 19.81 +/- acres of land out of the Nancy Blakey Survey Abstract 98 more commonly known as Burleson Crossing East (“Property”); 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; 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, 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 August 31, 2023; 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 are 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, the information provided by the Applicants, and all other information presented, City Council finds that it is 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 foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.
- Section 2:** The Property, a 19.81 +/- acres tract of land out of the Nancy Blakey Survey, Abstract 98, Bastrop County, Texas, more commonly known as Burluson Crossing East, more particularly shown and described in Attachment A which is attached and incorporated herein, is hereby rezoned from P5 Core to Planned Development District with a P5 Core base zoning. The City Manager is hereby authorized to promptly note the zoning change on the official Zoning Map of the City of Bastrop, Texas.
- 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:** 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 6:** This Ordinance shall be effective immediately upon passage and publication.

[Signatures on following page]

READ & ACKNOWLEDGED on First Reading on this the 12th day of September 2023.

READ & ADOPTED on Second Reading on this the 19th day of September 2023.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

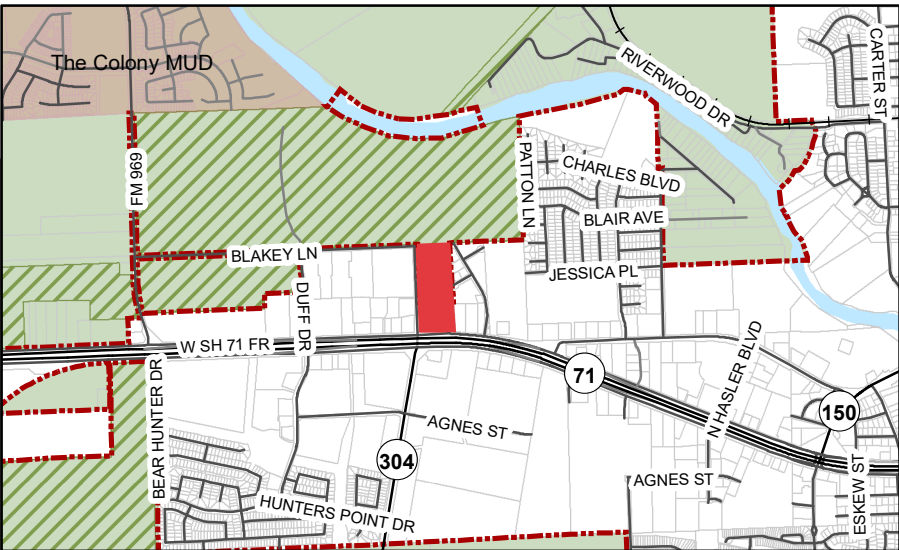
Ann Franklin, City Secretary

APPROVED AS TO FORM:

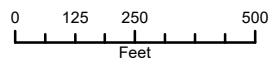
Alan Bojorquez, City Attorney

ATTACHMENT A

Property Description



**Zoning Concept Scheme
 Burleson Crossing East**



1 inch = 400 feet

Date: 08/17/2023

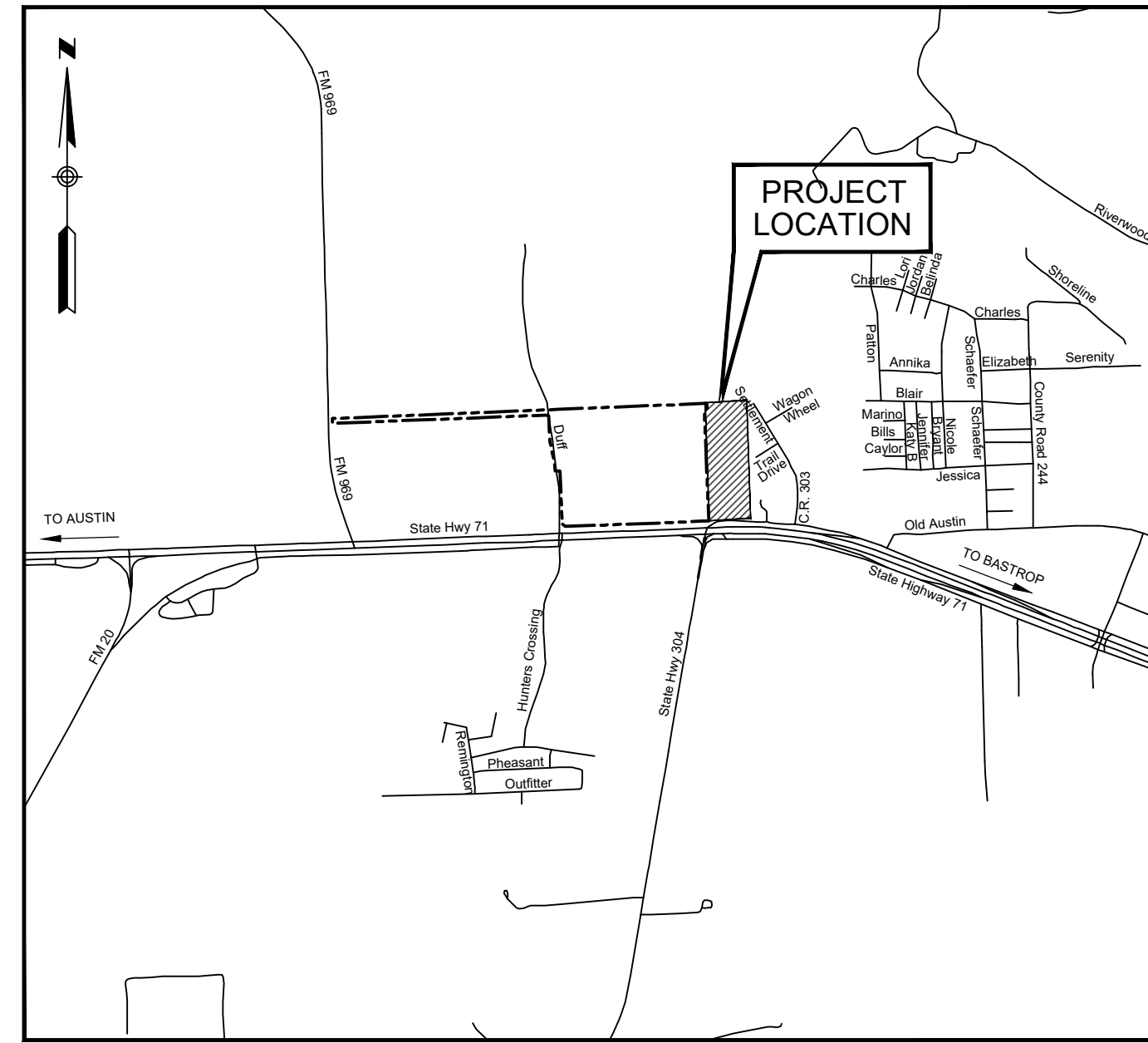
The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification 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 accuracy, completeness or usefulness of information, nor does it represent that its use will not infringe upon privately owned rights.



BURLESON CROSSING EAST ZONING CONCEPT PLAN

BURLESON CROSSING EAST
 ZONING CONCEPT PLAN
 Appendix 1

SHEET NO.	DESCRIPTION
01	COVER SHEET
02	ZONING CONCEPT PLAN
03	OVERALL DRAINAGE AREA MAP
04	CONCEPTUAL UTILITY PLAN
05	LANDSCAPE CONCEPTUAL PLAN
06	LANDSCAPE CONCEPTUAL PLAN



LOCATION MAP
(N.T.S.)

SUBMITTAL DATE: OCTOBER 4TH, 2021

LEGAL DESCRIPTION

19.81 ACRES IN THE NANCY BLAKEY SURVEY, ABSTRACT NO. 98
BASTROP COUNTY, TEXAS

OWNER: ERHARD LEGACY PARTNERS, LTD.
11111 WILCREST GREEN DRIVE, SUITE 100
HOUSTON, TEXAS 77042

DEVELOPER: BASTROP RETAIL PARTNERS, LP
c/o DURHAM AND BASSETT REALTY GROUP, INC.
100 EAST ANDERSON LANE, SUITE 200
AUSTIN, TX. 78752
PHONE # (512) 833-6444
FAX # (512) 833-6448

ENGINEER: LJA ENGINEERING INC.
5316 HIGHWAY 290 W. SUITE 150
AUSTIN TEXAS 78735
CONTACT PERSON : S. DANNY MILLER, P. E
PHONE # (512) 439-4700
FAX # (512) 439-4716

SURVEYOR: LJA SURVEYING INC.
5316 HIGHWAY 290 W. SUITE 150
AUSTIN TEXAS 78735
CONTACT PERSON : MATT OVERALL
PHONE # (512) 439-4700
FAX # (512) 439-4716

NOTES:

1. THIS PROJECT IS LOCATED IN AN UNNAMED TRIBUTARY OF THE COLORADO RIVER.
2. THE TRACT SHOWN HEREON LIES WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD-PLAIN), AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, AS SHOWN ON MAP NO. 48021C0335E, DATED JANUARY 19, 2006, FOR BASTROP COUNTY, TEXAS AND INCORPORATED AREAS.

PROPOSED UTILITY PROVIDERS
 WATER AND WASTEWATER : CITY OF BASTROP - TREY JOB (512) 332-8932
 ELECTRIC : BLUEBONNET ELECTRIC COOPERATIVE - RODNEY GERIK (979) 542-8527
 GAS : CENTERPOINT/ENTEX - WENDY LAMB (830) 643-6938
 TELEPHONE : AT&T
 CABLE : TIME-WARNER

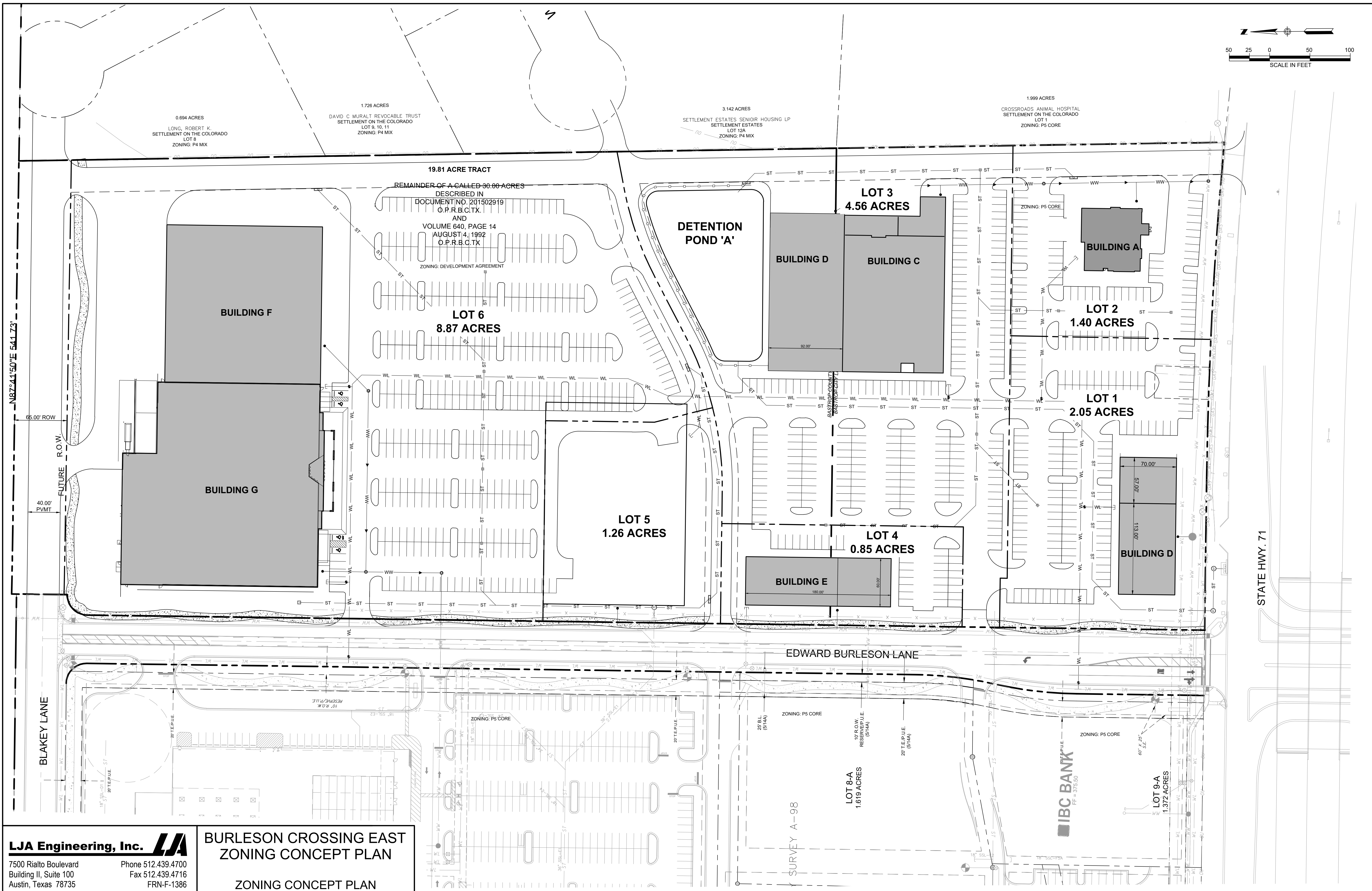
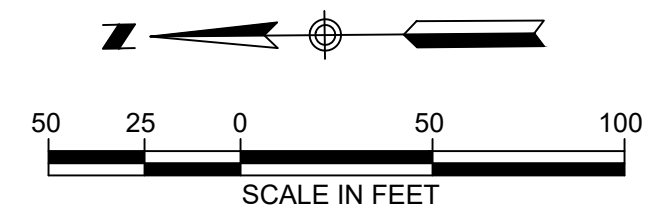
REVISIONS / CORRECTIONS			
Number	Description	Revise (R) Add (A) Void (V) Sheet No.'s	City of Bastrop Approval- Date

LJA Engineering & Surveying, Inc.

5316 Highway 290 West
Suite 150
Austin, Texas 78735

Phone 512.439.4700
Fax 512.439.4716
FRN-F-1386
CV1

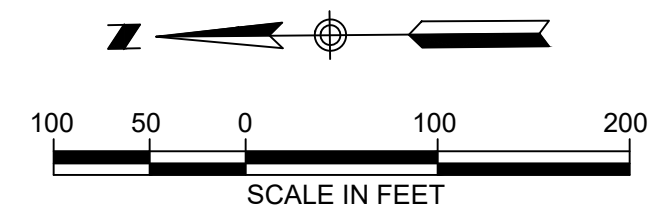
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 User: cadwin
 Last Modified: 2021-09-27 11:05 AM
 Plot Date: 2021-10-01 11:05 AM



LJA Engineering, Inc.
 7500 Rialto Boulevard
 Building II, Suite 100
 Austin, Texas 78735
 Phone 512.439.4700
 Fax 512.439.4716
 FRN-F-1386

**BURLESON CROSSING EAST
 ZONING CONCEPT PLAN**
 ZONING CONCEPT PLAN

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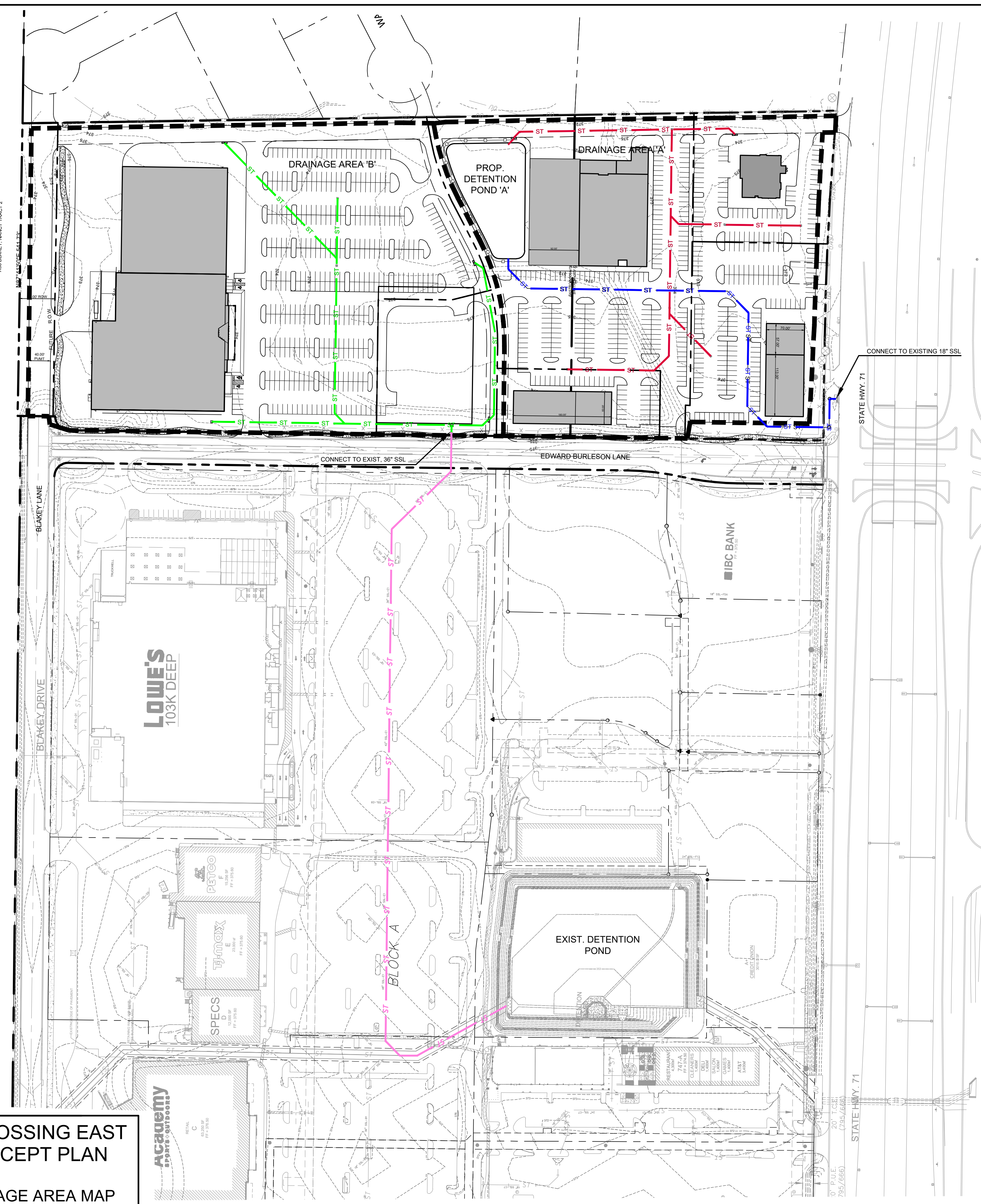


LEGEND

- DRAINAGE AREA
- EXIST. STORM SYSTEM
- DRAINAGE AREA 'A'
- DRAINAGE AREA 'B'
- DETENTION POND 'A'

CONCEPTUAL DRAINAGE PLAN NOTES

1. DRAINAGE AREA 'A' RUNOFF SHALL BE CAPTURED AND CONVEYED TO PROPOSED DETENTION POND 'A'
2. DRAINAGE AREA 'B' RUNOFF SHALL BE CAPTURED AND CONVEYED TO EXIST. DETENTION POND LOCATED IN LOT 6A, BURLESON CROSSING FINAL PLAT, TO THE EXTENT ALLOWED.
3. EXISTING AND PROPOSED DETENTION PONDS SHALL BE ANALYZED BASED ON CURRENT ATLAS-14 CRITERIA AS PART OF THE PRELIMINARY PLAT APPLICATION.



I:\A\141_Bastrop\407 - Burleson East\401\Exhibits\drainage map.dwg, Oct 04, 2021 - 11:41 am

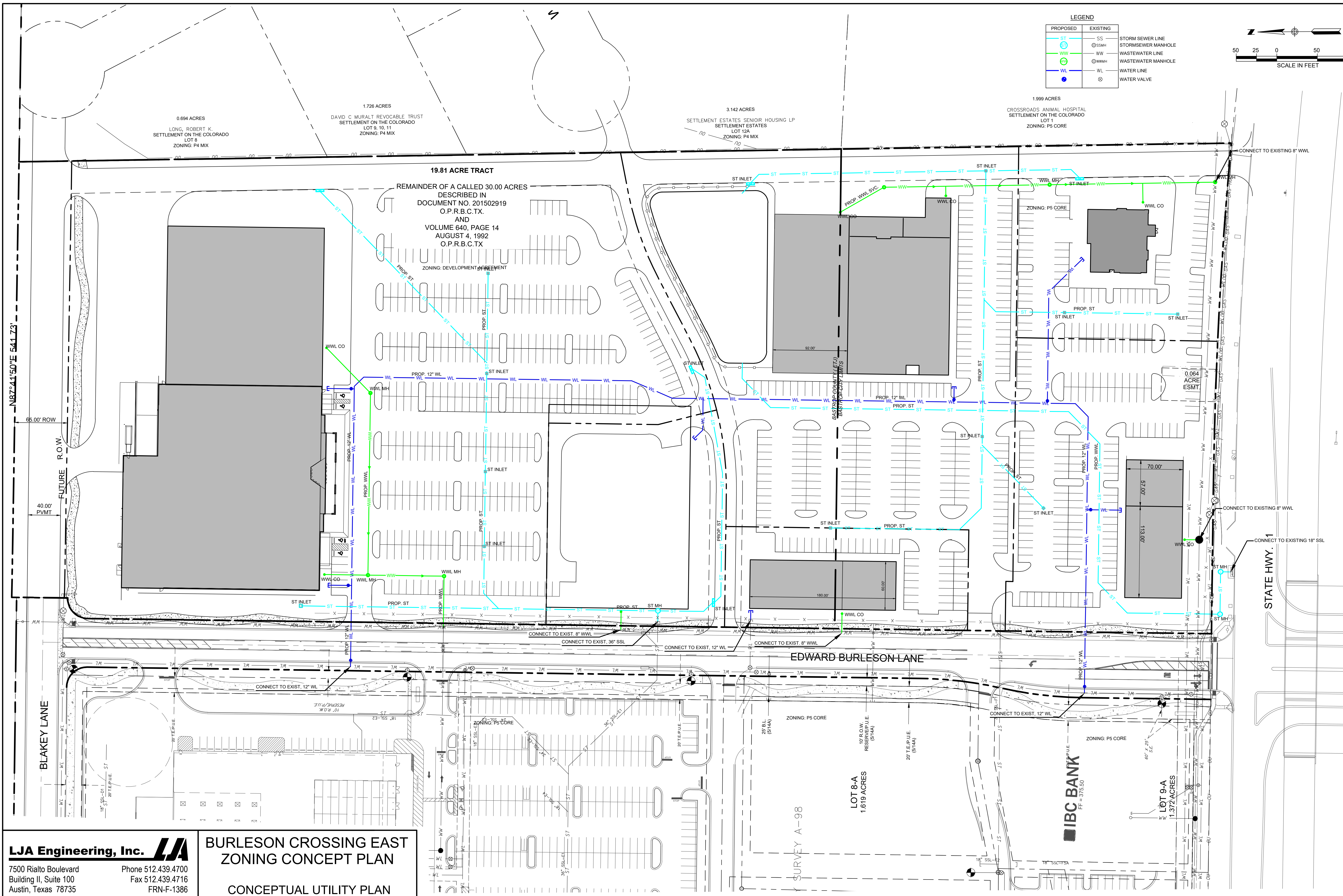
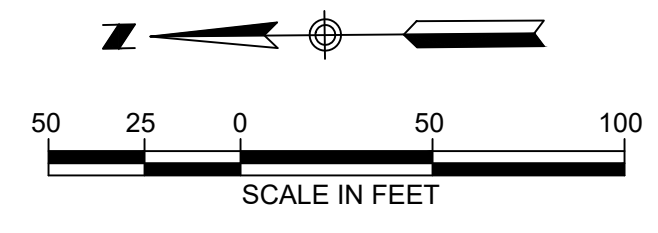
LJA Engineering, Inc.

7500 Rialto Boulevard Phone 512.439.4700
 Building II, Suite 100 Fax 512.439.4716
 Austin, Texas 78735 FRN-F-1386

**BURLESON CROSSING EAST
 ZONING CONCEPT PLAN**

OVERALL DRAINAGE AREA MAP

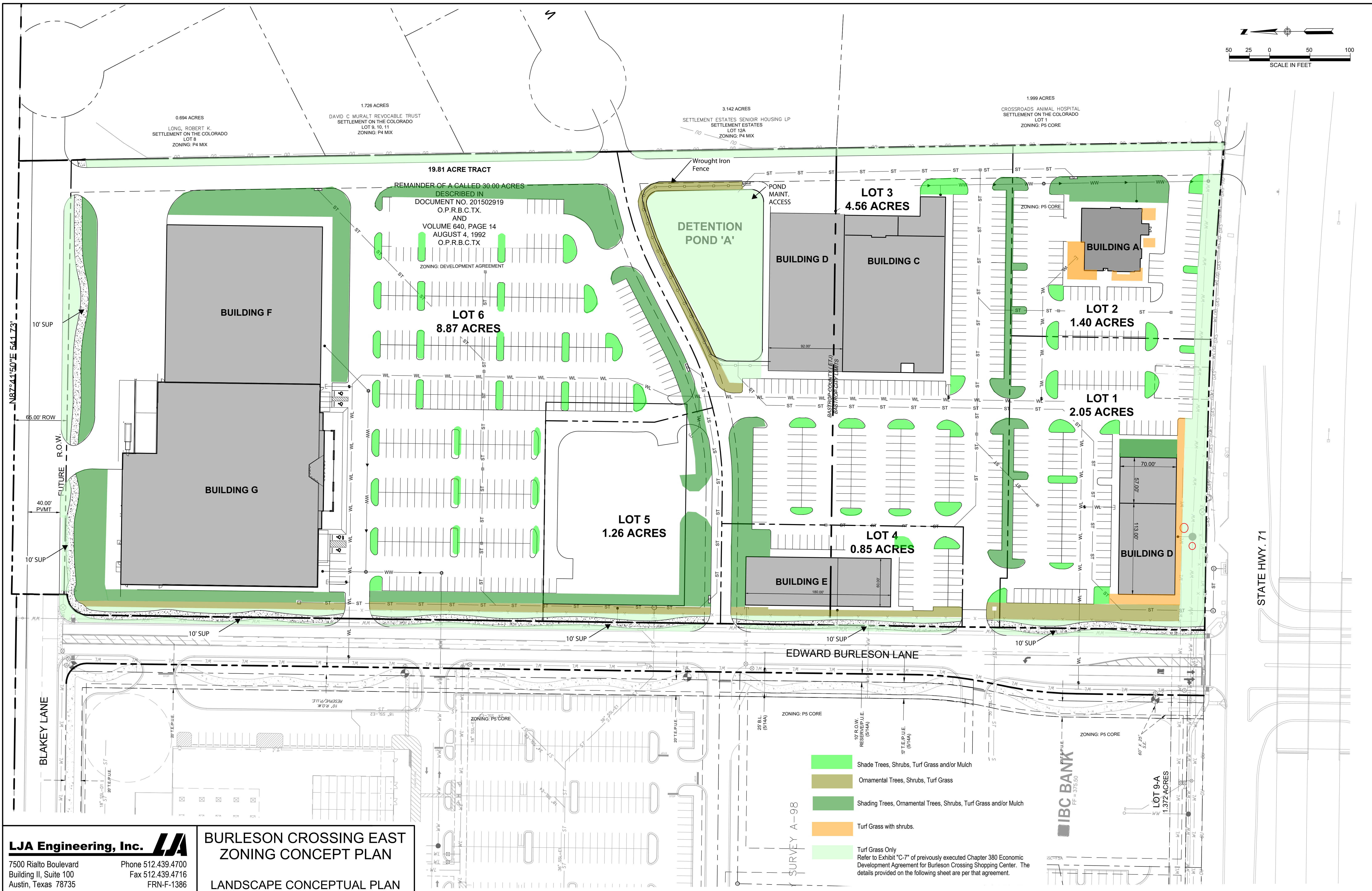
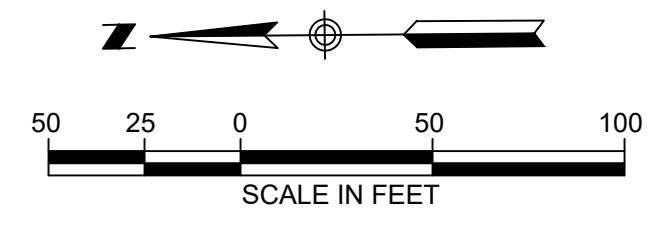
LEGEND		
PROPOSED	EXISTING	
	SS	STORM SEWER LINE
	SSMH	STORMSEWER MANHOLE
	WW	WASTEWATER LINE
	WWMH	WASTEWATER MANHOLE
	WL	WATER LINE
	WV	WATER VALVE



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**BURLESON CROSSING EAST
 ZONING CONCEPT PLAN**
 CONCEPTUAL UTILITY PLAN

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0.694 ACRES
LONG, ROBERT K.
SETTLEMENT ON THE COLORADO
LOT 8
ZONING: P4 MIX

1.726 ACRES
DAVID C MURALT REVOCABLE TRUST
SETTLEMENT ON THE COLORADO
LOT 9, 10, 11
ZONING: P4 MIX

3.142 ACRES
SETTLEMENT ESTATES SENIOR HOUSING LP
SETTLEMENT ESTATES
LOT 12A
ZONING: P4 MIX

1.999 ACRES
CROSSROADS ANIMAL HOSPITAL
SETTLEMENT ON THE COLORADO
LOT 1
ZONING: P5 CORE

19.81 ACRE TRACT
REMAINDER OF A CALLED 30.00 ACRES
DESCRIBED IN
DOCUMENT NO. 201502919
O.P.R.B.C.TX.
AND
VOLUME 640, PAGE 14
AUGUST 4, 1992
O.P.R.B.C.TX
ZONING: DEVELOPMENT AGREEMENT

LOT 6
8.87 ACRES

LOT 3
4.56 ACRES

LOT 2
1.40 ACRES

LOT 1
2.05 ACRES

LOT 5
1.26 ACRES

LOT 4
0.85 ACRES

LOT 9-A
1.372 ACRES

- Shade Trees, Shrubs, Turf Grass and/or Mulch
- Ornamental Trees, Shrubs, Turf Grass
- Shading Trees, Ornamental Trees, Shrubs, Turf Grass and/or Mulch
- Turf Grass with shrubs.
- Turf Grass Only
Refer to Exhibit "C-7" of previously executed Chapter 380 Economic Development Agreement for Burleson Crossing Shopping Center. The details provided on the following sheet are per that agreement.

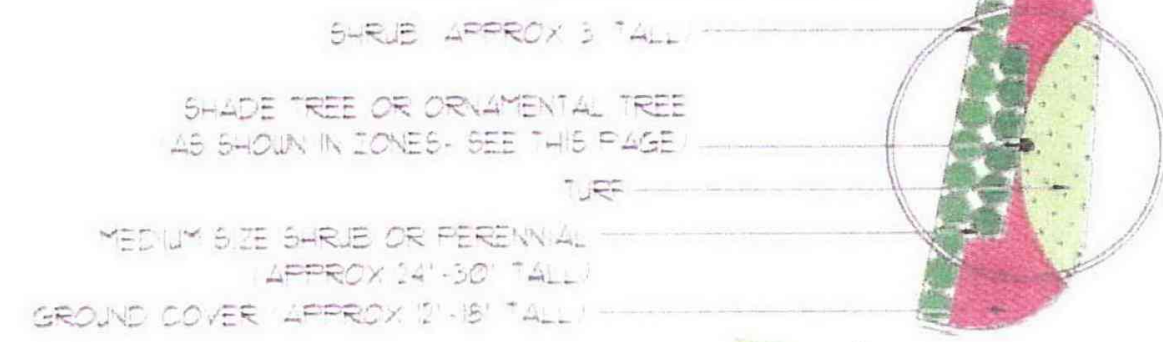
LJA Engineering, Inc.
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Fax 512.439.4716
FRN-F-1386

**BURLESON CROSSING EAST
ZONING CONCEPT PLAN**
LANDSCAPE CONCEPTUAL PLAN

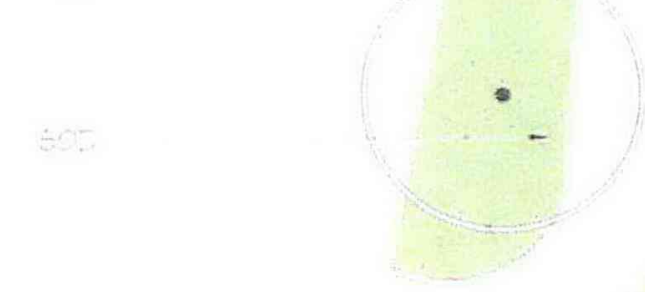
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Detail A: Typical Islands Throughout Parking Areas

Detail A1: Typical Planted Island

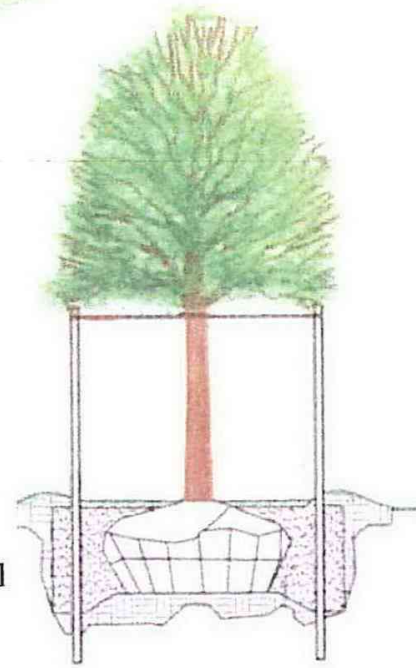


Detail A2: Typical Bermed Island



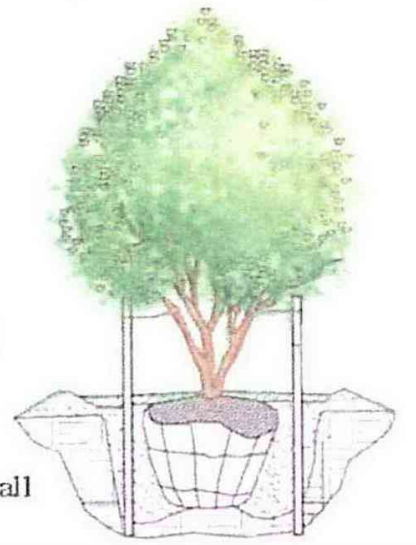
Detail B: Shade Trees

- Site to utilize at least three of the following species:
- Live Oak - 3" caliper / 10' tall
 - Cedar Elm - 3" caliper / 10' tall
 - Red Oak - 3" caliper / 10' tall
 - Burr Oak - 3" caliper / 10' tall
 - Chinquapin Oak - 3" caliper / 10' tall



Detail C: Ornamental Trees

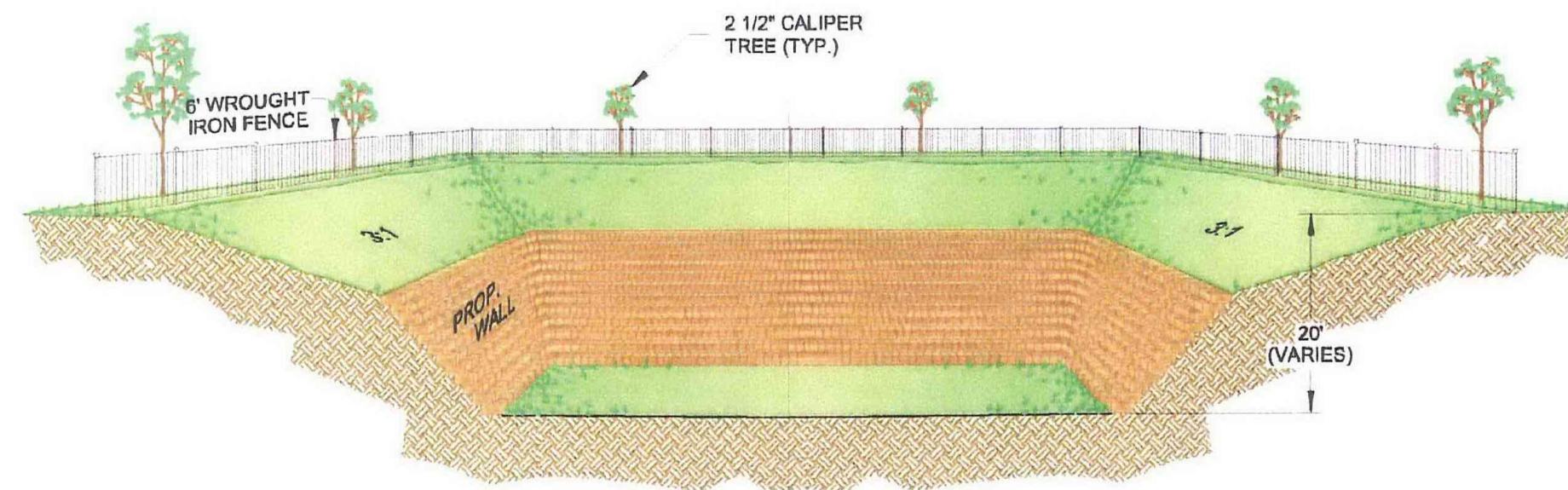
- Site to utilize at least three of the following species:
- Texas Redbud - 1 1/2" caliper / 6' tall
 - Crape Myrtle - 1 1/2" caliper / 6' tall
 - Vitec - 1 1/2" caliper / 6' tall
 - Yaupon - 1 1/2" caliper / 6' tall
 - Mountain Laurel - 1 1/2" caliper / 6' tall



This is a general example of the landscaping in certain end islands and medians.



This is a general example of the landscaping in certain end islands and medians.



This is a general example of the landscaping in certain end islands and medians.



This is a general example of the landscaping in certain end islands and medians.



This is an general example of the landscaping in certain end islands and medians.

THIS IMAGE/DEPICTION/DRAWING IS CONCEPTUAL IN NATURE AND IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. THIS IMAGE/DEPICTION/DRAWING IS ONLY PROVIDED TO DEMONSTRATE THE QUALITY OF THE DESIGN AND MATERIALS THAT MAY BE USED DURING CONSTRUCTION AND NOT THE EXACT IMPROVEMENTS THAT WILL BE CONSTRUCTED.

I:\A\141_Bastrop\407 - Burlason East\401\Exhibits\landscape PLAN.dwg Oct 01, 2021 - 5:53pm

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 7500 Rialto Boulevard
 Building II, Suite 100
 Austin, Texas 78735

Phone 512.439.4700
 Fax 512.439.4716
 FRN-F-1386

**BURLESON CROSSING EAST
 ZONING CONCEPT PLAN**

LANDSCAPE CONCEPTUAL PLAN

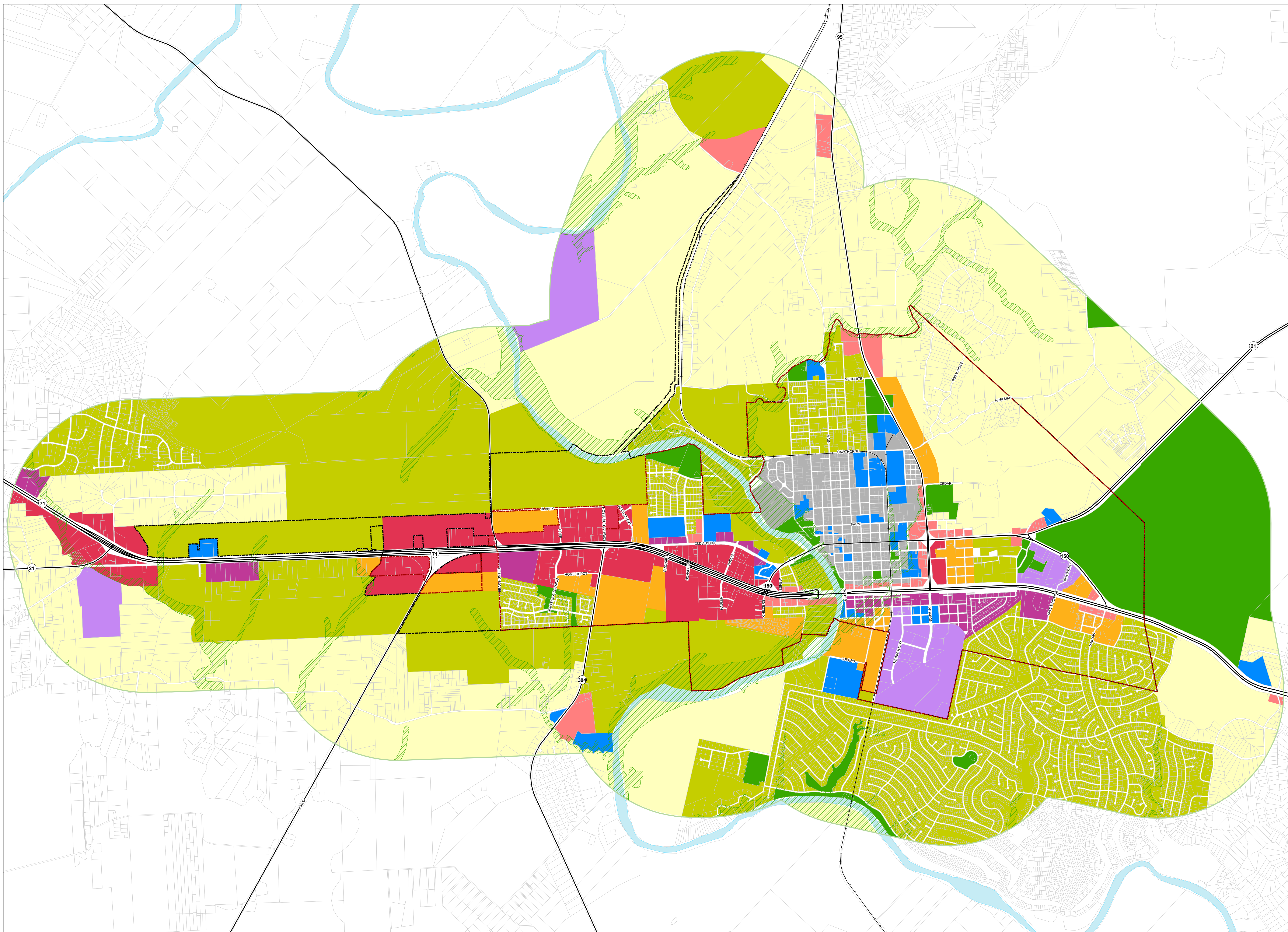
Future Land Use

Legend

- Statutory ETJ
- City Limit
- City Boundary
- Parcels
- Floodplain Overlay

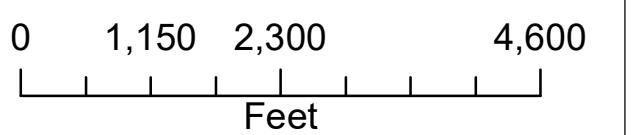
Land Use Description

- Parks and Open Space
- Rural Residential
- Neighborhood Residential
- Transitional Residential
- Neighborhood Commercial
- General Commercial
- Professional Services
- Downtown Bastrop
- Public and Institutional
- Industrial



*Boundary is similar to the DB-FBC

1 inch = 1,700 feet



Date: 4/12/2017

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

Burelson Crossing East

Warrant Requests

B3 Code Section	Description	Development Issue	Proposed Alternative	Warrant Determination	Response
5.2.002(b)	Max block perimeter length of 1,320 ft	Due to the nature of this project (Retail Shopping Center), limiting block perimeter and block size is too restrictive and does not allow major retailers to utilize their prototypical buildings and site plans. Eastern driveway will be used for loading and servicing the shopping center by 18 wheeler trucks. Using the Eastern driveway as a City Street would create a safety issue between non-shopping center traffic and 18 wheeler trucks and other service vehicles, as the street could be used as a cut through street. The additional ROW requested to meet the 330 foot grid would prevent many anchors and small tenant buildings from the shopping center due to the reduced parking and inadequate service / loading areas.	Allow 30' wide private drives without street trees and sidewalks, to be utilized as boundary of blocks rather than public streets, as shown on Concept Site Plan. A public street in this location would encourage cut-through traffic that would conflict with proposed service traffic and create a safety issue.	1,320 block provided by private drive aisle with sidewalks and trees - Approved. 2,880 farm lot provided with private drive aisle - Denied. It does not meet TxDOT spacing for driveways on SH 71. The B ³ Code requires a maximum block perimeter of 1,320 feet in P-5. For this proposed development, staff would support an internal private block perimeter of 1,320 feet, with clearly established private drive aisles, with 6 foot pedestrian walkways on one side of the drive aisles. The 2,880 foot farm lot perimeter must be provided with publically dedicated streets that meet the B ³ Code requirements in Chapter 7.	The bold Warrant Determination would require the Eastern Driveway to be a public street, thereby creating the issues outlined.
5.2.002(c)	330' x 330' block size				
5.2.002(d)	20' wide midblock pedestrian walkway for blocks that exceed (b) and (c)	20' pedestrian walkway, with landscaping, would eliminate 2 rows of parking	Propose a 6' walkway within median between parking rows across Lot 6. Provide additional pedestrian connectivity throughout site and to public ROW's. Alternate pedestrian connectivity will be provided but is not required to align with proposed public or private drives.	Partially approved. All private drives that are taking the place of the 330 grid will have trees and a six foot sidewalk.	
6.3.003(a)(3)	Building façade to be located within 30' of street corner and parking prohibited in First Layer	For a Retail Shopping Center of this nature with large corner lots, this requirement cannot be met due to the parking and service / loading area needs of the retailers	Eliminate this requirement	Denied at this time. This warrant review is appropriate at the time of Site Development Plan.	This warrant needs to be determined with Zoning in order to define the project constraints and to properly plan and market the Shopping Center to potential retailers.
6.3.005(d)	(1) Requires all vehicular access to be taken from alleys, if alleys are provided (3) For Corner Lots, driveways must be located in the Secondary Frontage (4) Driveways shall be located as far as practical from adjacent public streets (5) Mid-block lots with more than 40' of frontage are only allowed one driveway, with a max width of 24' for two-way drives (6) For lots with more than 80' of frontage, driveway spacing shall be 300'	Many proposed private drives would qualify as an alley, thus prohibiting access from public streets. For a Retail Shopping Center of this nature, limiting access would limit options for customers and thus create internal traffic congestion This is an ambiguous statement and requirement	Allow vehicular access from either alleys or public streets To provide adequate traffic circulation, access should be taken from primary and secondary frontages Proposed driveways shall meet the minimum separation from a public street of 40 feet, as required by this section	Private drive aisle provided at the 330 foot block level would be considered in lieu of the publically dedicated street and not an alley. Warrant not needed. Denied. Reviewed at Site Development Plan and has Traffic should take access off of Secondary Frontages based on the 720' grid. Denied at this time. Will determine spacing at Site Development Plan.	This warrant needs to be determined with Zoning in order to define driveway requirements so as to market major large retailers This warrant needs to be determined with Zoning in order to define driveway requirements so as to market major large retailers
6.3.006(b)	(5) Requires parking to be located in the 2nd or 3rd Layer	Major Retailers expect their customers to be able to park in front of the front of the building for convenience, especially for customers with physical challenges	Allow parking in any Layer	Denied. More detail on pedestrian access to each building and specific architectural features that will be provided in lieu of providing interaction between the public and private realms is needed that will be determined at SDP.	This warrant needs to be determined with Zoning in order to ensure that parking meets retailer requirements and an adequate number of spaces can be provided. Shopping Center cannot be planned or marketed otherwise
6.3.006(b)	(8) Requires all parking to be screened either by building or other screening material	By definition, all parking areas would be required to be screened from view up to six feet in height, along public streets and adjacent lots and properties	Limit screening to be required from Wagon Wheel, Edward Burelson and SH 71, and to include landscaping to a height of three feet	Partially Approved. Screening will be provided from all public streets at a height of 3 feet.	
6.3.006(b)	(9) Prohibits parking to be located within the rear setback	For a Retail Shopping Center of this nature, many lot lines could potentially cross shared parking areas Many major retailers standard prototypical buildings have ceiling heights greater than 25'. This would deter those retailers from this shopping center.	Limit this requirement to be from eastern property line along adjacent properties only Allow ceiling heights to exceed 25'	Denied. Setbacks will be determined by the ICC requirements. Denied. Willing to discuss alternative based on architectural elevations and features that meet the intent to be human scale during the site development plan process.	ICC doesn't address parking within setbacks or regulate zoning setbacks. Architectural elevations can be developed to meet human scale independently of allowing 25' ceiling heights.
6.3.009(b)	Building frontage façade must be parallel to the ROW Frontage Line	Due to the definition of "building frontage" and surrounding conditions, this project would require at least one public road to be curvilinear, thus making this requirement architecturally difficult to meet and would limit architectural articulation and creativity.	Allow any building façades to be parallel to street ROW, or all the building front to deviate from being parallel to street ROW's	Denied. Not needed. All buildings shown can be parallel to a public street that is not Wagon Wheel.	This warrant needs to be determined with Zoning to ensure that buildings facing Wagon Wheel do not have to meet this requirement.
6.3.009(d)	First floor of Commercial buildings shall have 70% minimum glazing	As written, this would require the area of all four sides of a building to be glazed with 70% glazing, which is problematic for the sides and rears of any retail building	Limit glazing to 70% of the building front for small multi-tenant buildings, 25% of the building front for larger retail buildings, an no glazing would be required for free-standing single use buildings such as restaurants and banks. The building fronts shall be either the primary side of the building facing a public street, or the side of the building facing the parking area servicing that building, whichever front the tenant / user has the storefront entrance.	Denied. This warrant cannot be considered until the Site Development Plan review with actual building elevations provided.	As codified, the glazing requirement is a deterrent for a number of potential retailers. This warrant needs to be determined with the Zoning as the project cannot be marketed to potential retailers without a clear understanding of what glazing is required.
6.5.003 - A	Requires that front façade be at least 80% of the frontage width, requires the building to be located between 2'-15' from the ROW / Frontage	To measure this for each individual lot is problematic, especially for smaller single building lots like restaurants that require substantial parking area relative to building	Allow façade to frontage width ratio to be reduced to 60% and measured cumulatively for entire block, not individual lots. Remove building placement requirement relative to ROW.	Denied. Willing to discuss a reduction to 60% during Site Development Plan.	This warrant needs to be determined with Zoning in order to define the project constraints and to properly plan and market the Shopping Center to potential retailers.
6.5.003 - D	Limits Parking to Layer 3	Major Retailers expect their customers to be able to park in front of the front of the building for convenience, especially for customers with physical challenges	Allow parking in any Layer	Denied at this time. Can be determined during SDP, once an internal 330' drive aisle grid is depicted that shows internal pedestrian	This warrant needs to be determined with Zoning in order to ensure that parking meets retailer requirements and an adequate number of spaces can be provided. Shopping Center cannot be planned or marketed otherwise
7.3.003 - Reg Comm	16' wide sidewalks along both sides of road, trees every 30' on center both sides of road	16' wide sidewalks are excessively wide for this type of project and would not be consistent with adjacent shopping center. Trees evenly spaced at 30' would detract from a native / natural landscape scheme.	Propose 10' wide sidewalks along one side of Wagon Wheel, and along the project side of Edward Burelson and SH 71. Allow more variation in tree spacing as determined by Landscape Architect, to be consistent and similar to the requirements established in the Burelson Crossing Chapter 380 Agreement.	Partially Approved. A 10' sidewalk will also be required along the 720' grid street to the east.	Encouraging pedestrian traffic along the Eastern Driveway in the close proximity to the loading and servicing area of the shopping center is unnecessary as there are no pedestrian destinations along that route, and creates potential safety issues with service trucks.
7.3.003 - Connector	Trees every 30' on center along both sides of the road	Trees evenly spaced at 30' would detract from a native / natural landscape scheme	Allow more variation in tree spacing as determined by Landscape Architect, to be consistent and similar to the requirements established in the Burelson Crossing Chapter 380 Agreement.	Denied at this time. This warrant review is appropriate at the time of Public Improvement Plan. Staff would be amenable to changing the spacing requirement, but the number of trees required will still be determined on a 30 foot spacing for the length of the street.	
7.3.013(d)(1)	Requires an additional 7' of ROW on each side of a road if P5 is located on both sides of the road	This would require 70' of ROW for Wagon Wheel rather than 56', and would increase Edward Burelson from 60' to 67'.	Propose no additional ROW for Wagon Wheel. Edward Burelson was platted with a 10' ROW Reserve on the opposite side of the street. Any additional ROW required along the project side of Burelson shall be determined and commensurate with any proposed improvements to Burelson	Approved. The 55.5 foot ROW is sufficient for the extension of Wagon Wheel, which is a 60' ROW.	

Burelson Crossing East

Warrant Requests

B3 Code Section	Description	Development Issue	Proposed Alternative	Warrant Determination	Response
7.4.002(a)	330' max block length, 1,320' max block perimeter	Due to the nature of this project (Retail Shopping Center), limiting block perimeter and block size is too restrictive and does not allow major retailers to utilize their prototypical buildings and site plans.	Allow 30' wide private drives without street trees and sidewalks, to be utilized as boundary of blocks rather than public streets, as shown on Concept Site Plan. A public street in this location would encourage cut-through traffic that would conflict with proposed service traffic and create a safety issue.	Partially Approved. The B ³ Code requires a maximum block perimeter of 1,320 feet in P-5. For this proposed development staff would support an internal private block perimeter of 1,320 feet, with clearly established private drive aisles, with 6 foot pedestrian walkways on one side of the drive aisles. The 2,880 foot farm lot perimeter must be provided with publically dedicated streets that meet the B³ Code requirements in Chapter 7.	The bold Warrant Determination would require the Eastern Driveway to be a public street, thereby creating the issues outlined.
7.4.002(b)	20' Pedestrian Way if block length exceeds 330'				
Art. 7.5	Requires a Civic Space for development over 13.6 acres	Though this project slightly exceeds 13.6 acres, it is considered a relatively small shopping center and thus cannot accommodate a dedicated civic space	Propose considering the existing public space constructed with the Burelson Crossing shopping center, which consists of a +/- 9000 SF gathering space, stage, lighting, and historical educational plaques, as consideration for the civic space requirement for this project. According to the management for Burelson Crossing, that public space has not been reserved or used by the public since constructed over ten years ago.	Denied. The Civic Space requirement is approximately 157,251.6 square feet. Staff recommends providing a mix of private civic spaces as open green lawns, bus stop plazas along the streets, outdoor seating and benches. Provide a proposal on the Conceptual Plan.	The Civic Space requirement quoted is approximately 3.6 acres, or 20% of the gross area of the site. We're not aware of a bus service provider in Bastrop other than CARTS, which doesn't run specific bus routes.
B3 Tech. Manual					
2.1.006(a)	Requires parking and drive aisles to be located within Layer 2 or 3	Major Retailers expect their customers to be able to park in front of the front of the building for convenience, especially for customers with physical challenges	Allow parking in any Layer	Denied. All of the building shown (except for lot 3) show at least one side with no parking between the building and the street ROW.	This warrant needs to be determined with Zoning in order to ensure that parking meets retailer requirements and an adequate number of spaces can be provided. Shopping Center cannot be planned or marketed otherwise as Layer 1 is defined as that space between the front of the building and the public realm, not just any building side.
3.2.008(c)	P5 street sidewalks to be min. 10' wide and located wholly within the street ROW.	For a Retail Shopping Center of this nature, sidewalks along both sides of Wagon Wheel is redundant and provides no additional connectivity. Requiring sidewalks to be contained within ROW limits the ability to incorporate sidewalks into a native landscape scheme	Require one 10' sidewalk along one side of Wagon Wheel. Allow all street sidewalks to meander out of ROW, but to be incorporated into a sidewalk easement as necessary	Approved.	
3.2.013(a)(1)	Street trees shall be 4" caliper and spaced every 30' on center	Trees evenly spaced at 30' would detract from a native / natural landscape scheme. 4" caliper trees are very scarce at this time due to last year's freeze and other conditions	Allow more variation in tree spacing and tree size with 2" minimum, as determined by Landscape Architect	Per Section 7.3.014 of the B ³ Code, 2 inch trees are acceptable as long as they are a minimum height of 10 feet.	
3.2.013(a)(4)	Requires plant material to meet very strict nursery / propagation standards	Required standards further limits the availability of procuring a widely varying and diverse mix of plant material and species	Allow plants to be procured from any competent wholesale nursery supplier	Denied. Can be reviewed at Site Development Plan review	
3.2.001(b)	Requires pedestrian shed to have certain place type percentages	With the adjacent existing developments to this project that would be classified as P5 Place Types, this requirement cannot be met	Allow P5 to exceed the maximum pedestrian shed requirement	Partially Approved, if providing private civic space.	

This list of warrants includes only those code sections that can be identified at this stage, and thus may not be all inclusive of warrants ultimately needed for the project. Additional Warrant Requests may be made in the future as the project progresses through the subdivision and site development phases of the project.

MWSW

Draft

August 7, 2023

**PLANNED DEVELOPMENT DISTRICT NO. { }:
BURLESON CROSSING EAST**

Planned Development District Agreement

between the

City of Bastrop, Texas

&

BRP EAST, L.P., a Texas limited partnership

Approved by the Planning & Zoning Commission on:
_____, 2023.

Approved by the City Council on:
_____, 2023.

THIS PLANNED DEVELOPMENT DISTRICT AGREEMENT (this “Agreement” or the “PDD Agreement”) is entered into between the City of Bastrop, Texas, a Home-Rule municipality (“City”), and BRP EAST, L.P., a Texas limited partnership (“Owner”), pursuant to City of Bastrop Code of Ordinances, Article __.__, and Planned Development Districts Ordinance, Section __.__(the “PDD Ordinance”), pertaining to the Property defined below.

RECITALS

WHEREAS, the Owner is the owner of certain real property consisting of approximately 19 acres, commonly known as Burluson Crossing East, located within the city limits of the City of Bastrop, in Bastrop County, Texas, and as more particularly identified and described in *Exhibit A* (the “Property”) to *Attachment “A”*; and

WHEREAS, an affiliate of Owner developed the adjacent Burluson Crossing Shopping Center and continues to own the Burluson Crossing Shopping Center; and

WHEREAS, the Owner intends to develop an integrated, innovative, planned development consisting of a retail shopping center as described herein which will complement the existing Burluson Crossing Shopping Center; and

WHEREAS, the Property is currently zoned P5 Core pursuant to Ordinance No. 2022-15 (the “Original Zoning Ordinance”), which ordinance also grants the Property various warrants set forth therein which are also attached hereto as *Exhibit D* to *Attachment “A”* (the “Warrants”); and

WHEREAS, at the time of approval of the Original Zoning Ordinance, the PDD Ordinance was not in place, which made it difficult to properly address development of large shopping center developments located on freeways; and

WHEREAS, the Parties believe it is in the best interest of the Project to amend and replace the Original Zoning Ordinance with this PDD Agreement; and

WHEREAS, the Property will be developed by Owner, its affiliates or their successors and assigns, for construction and use in general accordance with the PD Master Plan submitted to the City shown as *Exhibit B* to *Attachment “A”*; and

WHEREAS, the City of Bastrop Code of Ordinances, the PDD Ordinance, the PDD {#} Ordinance, and this Agreement set forth the Development Standards that will be applicable to the Property, and which, with the PD Master Plan, will control development of the Property; and

WHEREAS, subject to public notices and public hearings, the City’s Planning and Zoning Commission reviewed and recommended approval of this Agreement; and

WHEREAS, the City Council reviewed this Agreement and the proposed PD Master Plan and

determined that it promotes the health, safety, and general welfare of the citizens of Bastrop and complies with the intent of the PDD Ordinance.

NOW, THEREFORE, BY THIS AGREEMENT WITNESSETH that, in consideration of the covenants and conditions set forth herein, the City and the Owner agree as follows:

ARTICLE I. GENERAL PROVISIONS

- 1.1. Purpose.** The purpose of the PDD Agreement is to ensure a development that includes compatibility of land uses and allows for the adjustment of changing community demands by meeting one or more of the following criteria, namely that it:
- (a) provides for superior design of lots or buildings;
 - (b) provides for open space for public use;
 - (c) provides amenities or features that would be of special benefit to the property users or community;
 - (d) protects, preserves, or adequately mitigates for natural amenities and environmental assets such as trees, creeks, ponds, floodplains, hills, slopes, viewscapes and wildlife habitats;
 - (e) protects or preserves existing historical buildings, structures, features, or places;
 - (f) provides for an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and
 - (g) meets or exceeds the present standards of the City’s Code.
- 1.2. Zoning.** The Property is designated “PDD {#}” with a base district of P5 Core (with Warrants) and shall be developed in accordance with the PDD {#} Ordinance, the PD Master Plan, and this Agreement (including the Development Standards and Warrants). It is hereby acknowledged that regardless of the zoning category approved for the Property, the Property shall be able to be developed for a Retail shopping center in accordance with the PD Master Plan, the Warrants, the Development Standards and the terms and conditions of this Agreement. A hotel is also an approved use within the Project. All matters not specifically addressed in this Agreement shall be regulated by applicable sections of the Code (as hereinafter defined). If there is a conflict between this Agreement and the Code, this Agreement shall supersede the specific conflicting provisions of the Code.
- 1.3. Development Standards Approved.** The Development Standards set out in Article II of this Agreement and listed on *Exhibit C to Attachment “A”* (the “Development Standards”) are hereby approved. Owner agrees that all uses and development within the Property shall substantially conform to the PD Master Plan.
- 1.4. Minor Changes.** Minor changes may be made to this Agreement, including the PD Master Plan, by Owner and the City Manager without action of the City Council or Planning & Zoning Commission. Such minor changes shall include, for example, but not limited to, minor adjustments to the parking layout, pedestrian connectivity layout, lot layout, drainage ways, street and drive alignments, minor changes to any matters depicted on exhibits hereto that are intended to be substantially accurate, but approximate according to

the terms hereof, minor adjustments to building footprints, building location, building size or building elevations and other adjustments that do not result in overall increases to traffic or density as set forth in the PD Master Plan and which do not otherwise frustrate the purposes of this Agreement. The City Manager may approve minor changes in writing following consultation with the City Engineer. Any dispute between the Owner and City Manager regarding whether a change is a “minor change” shall be referred to the Planning & Zoning Commission for recommendation and City Council for final approval.

- 1.5. Major Changes.** Any change which is not a minor change shall require a zoning amendment with recommendation by the Planning & Zoning Commission and final approval by the City Council.
- 1.6. Definitions.** Words and terms used herein shall have their usual meaning except as they may be specifically defined in this Agreement, or, if capitalized and not defined herein, as defined in the City Code of Ordinances, including, without limitation, the PDD Ordinance, the Zoning Ordinance, the Sign Ordinance, and the Lighting Ordinance, as such Code exists on the effective date of this Agreement and as is modified by this Agreement.

Agreement: This contract between the City of Bastrop, Texas, and the Owner, including all Attachments and Exhibits, which are incorporated herein for all intents and purposes.

City: The City of Bastrop, Texas, an incorporated Home-Rule municipality located in Bastrop County, Texas.

City Manager: The chief administrative officer of the City of Bastrop, Texas. The term shall also include the Deputy City Manager.

City Council: The governing body of the City.

City Engineer: The engineer of the City.

City Permit: A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a City ordinance, regulation or rule in order to develop, construct and operate the improvements on the Property.

Code: The City’s Code of Ordinances, including, without limitation, the PDD Ordinance, and the PDD {#} Ordinance, as such Code exists on the Effective Date of this Agreement and as is modified by this Agreement.

Development Standards: As defined in Section 1.3.

Edward Burleson Lane Improvements: As defined in Section 2.4.5.

Effective Date: The Effective Date of this Agreement shall be the date of full execution by both Parties.

Owner: BRP EAST, L.P., a Texas limited partnership, and any subsequent owner(s).

Original Zoning Ordinance: As defined in the Recitals.

PD Master Plan: The Planned Development (“PD”) Master Plan submitted to the City by the Owner and attached hereto as *Exhibit B to Attachment “A”*.

Preliminary Drainage Plans: Shall mean the preliminary Drainage Plans for the Project prepared by LJA Engineering and approved by the City on November 2, 2022.

Preliminary Infrastructure Plans: Shall mean the preliminary Infrastructure Plans for the Project February 22, 2023 prepared by LJA Engineering.

Project: A planned development on the Property consisting of mixed-use retail, commercial services, restaurants and hotel, together with a reciprocal access driveway, parking areas, open spaces, and utilities as described in this Agreement and the PD Master Plan.

Property: As defined in the Recitals.

Public Improvement Construction Plans: As defined in Section 4.6.

Retail: The sale of goods to the public, usually in stores, for use or consumption by the ultimate consumer. Retail shall not include the operation of outdoor storage (except as an accessory use), automotive sales, automotive services (except as an accessory use), warehousing (except as an accessory use), ministorage, call centers, or multifamily residences.

TIA: Shall mean the Traffic Impact Analysis for the Project prepared by LJA Engineering dated April 14, 2023.

Traffic Improvements: Collectively, the Wagon Wheel Improvements and the Edward Burleson Lane Improvements.

Warrants: As defined in the Recitals.

Wagon Wheel Improvements: As defined in Section 2.4.3.

ARTICLE II. PD MASTER PLAN

2.1 General Site Regulations. Except as otherwise provided in this Agreement and the PDD {#} Ordinance, the Property shall be governed by site regulations contained in the Code applicable to the base zoning district, currently, P5 with Warrants. The overall development of the Property shall be substantially similar in look, feel and design to the adjacent, existing Burleson Crossing Shopping Center.

2.2 Open Areas; Landscape; Trees. See Warrants (*Exhibit D to Attachment “A”*) and Development Standards (*Exhibit C to Attachment “A”*).

2.3 Exterior Design. See Warrants (*Exhibit D to Attachment “A”*) and Development Standards (*Exhibit C to Attachment “A”*).

2.3.1 Safe Harbor. Buildings constructed in accordance with the exterior design standards reflected in the renderings included in *Exhibit “C”* shall be deemed adequate and acceptable for purposes of this Agreement. Any modifications or deviations from the exterior design principles of *Exhibit “C”* shall be in accordance with the text of this Agreement.

2.3.2 Alternatives. Upon written request by Owner or Owner’s agent to the City for approval of such an alternative, the City Manager may, in the exercise of the City Manager’s discretion, administratively approve alternatives to the foregoing building and architectural elements otherwise applicable to the Project. To be approved administratively, the proposed alternatives must substantially comply with the foregoing building and architectural elements and must be designed to result in increased aesthetic appeal. A copy or memorandum of any such alternatives, whether approved administratively or by Council, shall be placed in the public record and shall run with the land.

2.3.3 Building Separation. Notwithstanding any other provision of the Code, the minimum separation distance between buildings on the Property may equal the minimum separation distance necessary to satisfy the applicable building and fire codes, including zero separation buildings that meet said Code requirements.

2.4 Access.

2.4.1 Traffic Impact Analysis. The TIA has been prepared and submitted to the City. In consideration for Owner’s agreement to construct and pay for the Traffic Improvements and the dedication of the right-of-way as described in this Agreement, the City hereby waives any requirement for Owner to pay any fees or pro-rata amounts assigned or allocated to the Project pursuant to the TIA.

2.4.2 Access Easements. The Property will be covered by a Reciprocal Access Easement Agreement, which will be recorded in the Official Public Records of Bastrop County, Texas.

2.4.3 Wagon Wheel Improvements. Owner agrees to design, construct and pay for the private road (with a 30’ pavement width as set forth in the Preliminary Infrastructure Plans, the PD Master Plan and this Agreement) that commences at Edward Burleson Lane on the western boundary of the Property and continues easterly through the Property and terminates at the existing section of Wagon Wheel as more particularly described and/or depicted on *Exhibit F to Attachment “A”* attached hereto and made a part hereof (the “Wagon Wheel Improvements”). The Wagon Wheel Improvements will remain private (no public right of way) and

except for purposes of platting, will be treated as a private right-of-way and Owner, or the property owners' association established for the Project, shall be responsible for the maintenance of the Wagon Wheel Improvements after construction is completed. It is hereby acknowledged and agreed that the Wagon Wheel Improvements satisfy Section [redacted] of the Code. The water line within the Wagon Wheel Improvements (as shown on the Preliminary Infrastructure Plans) will be dedicated to the City via an easement upon completion of construction of said water line.

2.4.4 Blakey Lane Right of Way.

- (a) Owner agrees to dedicate the right-of-way in varying widths (but no more than sixty five feet (65') in width or the width needed to match the existing Blakey Lane right of way, whichever is less) at the northern portion of the Property as depicted on *Exhibit G to Attachment "A"* attached hereto and made a part Owner, to allow the City to expand Blakey Lane. The City acknowledges that Owner is not responsible for construction of Blakey Lane. The City shall be responsible for utilities within Blakey Lane and sidewalk(s) for Blakey Lane.
- (b) For a period of three (3) years from the Effective Date (the "Reservation Period"), Owner agrees to reserve the portion of the Property depicted on *Exhibit G of Attachment "A"* ("ROW Reservation Area") for the City to use as right-of-way. During the Reservation Period, the City shall provide Owner with written notice if the City elects to use the ROW Reservation Area as right-of-way ("Election Notice").
- (c) If, at any time during the Reservation Period, Owner receives a bona fide offer from a third party to buy or lease any or all of the ROW Reservation Area and/or the parcel of land immediately adjacent to the ROW Reservation Area, Owner will give written notice to the City. Upon receiving the written notice, the City shall have ninety (90) days to provide the Election Notice. If the City does not provide Owner with an Election Notice prior to the expiration of the 90-day period, then the reservation shall automatically terminate, Owner shall thereafter be allowed to use the land for its purposes without any further actions, and the City agrees to remove any and all plat notes regarding the ROW Reservation Area from the Preliminary Plat and Final Plat.
- (d) If (i) at the end of the Reservation Period, the City has not provided Owner with an Election Notice or (ii) if the City provides an Election Notice, but thereafter fails to (x) commence and complete construction of a public roadway within the ROW Reservation Area within one (1) year from the expiration of the Reservation Period, or (y) purchase the ROW Reservation Area from Owner within one (1) year from the expiration of the Reservation Period, then the reservation shall automatically terminate, Owner shall thereafter be allowed to use the land for its purposes without any further actions, and the City agrees to remove any and all plat notes regarding the ROW Reservation Area from the

Preliminary Plat and Final Plat.

- 2.4.5 Edward Burleson Lane Improvements.** Owner agrees to dedicate approximately 0.76 acres of land located along the western boundary of the Property, as more particularly described and/or depicted on *Exhibit E of Attachment "A"* attached hereto and made a part hereof to the City. Furthermore, Owner shall design, construct and pay to improve Edward Burleson Lane as more particularly described and/or depicted on *Exhibit E of Attachment "A"* attached hereto and made a part hereof ("Edward Burleson Lane Improvements"). Upon completion of the Edward Burleson Lane Improvements, Owner shall dedicate the Edward Burleson Lane Improvements to the City and once dedicated, the Edward Burleson Lane Improvements shall be maintained by the City.
- 2.4.6 Public Improvements.** It is hereby intended that the Traffic Improvements will be constructed generally in accordance with the development specifications set forth on the Public Improvement Construction Plans. To assist in the construction of the Traffic Improvements, the City will make available, at no cost to Owner, the right to use any rights of way or easements held by the City. If offsite easements are required and Owner is unable to obtain all required offsite easements, upon written request and documentation of a good faith effort, the City may consider using its powers of eminent domain to assist with easement/right of way acquisition.
- 2.5 Signs.** Notwithstanding other sign provisions in the Code, *Exhibit C of Attachment "A"* attached hereto shall constitute the sign regulations for the Property and shall govern all signage for the Property.
- 2.6 Property Phasing or Scheduling.** The Project may be developed in phases. Individual lots or pads may be developed as they are required by their end uses. Some lots may not be practically built on until public wastewater service becomes available to some or all of the lots with sufficient capacity to serve the end use.
- 2.7 Impervious Cover.** There shall be a total of no more than 85(%) impervious cover on the Property as a whole, impervious cover may be averaged over the entire Property allowing some lots increased impervious cover offset by lots with lesser impervious cover.
- 2.8 Drainage.** The Project shall comply with the Preliminary Drainage Plan.
- 2.9 Easements.** All lots will be granted an irrevocable easement along one or more shared access easements. These terms will be included in the Reciprocal Access Easement Agreement covering the Property.
- 2.13 Development Plan & Construction.**
- 2.13.1** The City hereby determines that, notwithstanding Section ___ of the PDD Ordinance, the PD Master Plan shall become non-effective if the Owner does not commence construction of the initial phase of the Project within ten (10) years after

the Effective Date. Once construction commences, the PD Master Plan shall be effective indefinitely.

2.13.2 In any event, the PD Master Plan shall remain in effect for at least ten (10) years unless Owner sooner requests that it be replaced or terminated.

2.14 Fees. Owner shall pay the City’s standard application, review and development fees, as set out in the City’s Fee Schedule Ordinance in effect as of the Effective Date. The City’s consultant costs directly and exclusively related to this Agreement and PDD {#} Ordinance shall be reimbursed by the Owner to the City.

ARTICLE III. UTILITY CAPACITY

The City hereby warrants and represents that the City commits to provide water and wastewater service to the Property, subject to execution of a separate utility agreement between Owner and the City. Furthermore, all water and wastewater utility infrastructure shall be constructed and operated in compliance with said separate utility agreement between Owner and the City.

ARTICLE IV. APPLICABLE RULES & REGULATIONS

4.1 Intent. The parties intend that this Agreement authorize certain Property uses and development on the Property; provide for the uniform review and approval of plats and development plans for the Property; provide exceptions to certain ordinances; and provide other terms and consideration. It is the intent of the City and Owner that these vested development rights include the character of land uses and the development of the Property in accordance with the standards and criteria set forth in this Agreement and the Code, as modified in accordance with the exceptions set forth in this Agreement.

4.2 Applicable Rules. Each application for a City Permit including a Site Plan, that may be filed with the City for the Project, shall comply with, and shall be reviewed, processed and approved, only in accordance with the terms of the ordinances that were in enacted on or before the Effective Date, except as modified by this Agreement, subject to the exceptions set forth below. The provisions of this Section shall not apply to the following types of City ordinances, rules, and regulations:

- (a) International building, fire electrical, plumbing, or mechanical codes of the type typically found in the City Code;
- (b) Ordinances and regulations for utility connections (other than with regard to utility capacity commitments described in Article III of this Agreement); and
- (c) Ordinances and regulations to prevent the imminent destruction of property or injury to persons.

Permit applications subject to (a), (b) and (c) above shall be evaluated according to ordinances in effect at the time of application for the individual permit. However, Owner and City may agree that the applicable submission for a permit or approval be evaluated in

accordance with the requirements of a subsequent City ordinance, regulation, or rule.

4.3. Owner's Right to Continue Development.

4.3.1 In consideration of Owner's agreements hereunder, the City agrees that it will not, during the term of this Agreement, impose or attempt to impose:

- (a) any moratorium on building or development within the Property; or
- (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Property.

4.3.2 The preceding subsection does not apply to any temporary moratoriums uniformly imposed throughout the City due to an emergency constituting an imminent threat to public health or safety, provided that such moratorium will continue only during the duration of the emergency.

4.4. Approvals. The City agrees that preliminary plats, final subdivision plats and construction documents submitted in accordance with this Agreement will be reviewed, and processed in a timely manner and otherwise in accordance with the Code, as modified by this Agreement.

4.4.1 Construction plans consistent with the Code, as modified by this Agreement can be approved prior to approval of final plat.

4.4.2 The approval of the preliminary plat of all or a portion of the Property shall expire thirty six (36) months after the City's approval unless:

1. A corresponding final plat on the Property (or a portion of the Property) approved on the preliminary plat is filed; or
2. An extension is granted by the City.

4.5 Preliminary Plat. Sections 4.5 and Section 4.6 of this Agreement are replacing the platting process within the Code. The Project shall follow the process set forth in Sections 4.5 and 4.6 of this Agreement. Notwithstanding anything in the Code to the contrary, the Preliminary Plat for the Property, together with the Preliminary Drainage Plans and the Preliminary Infrastructure Plans shall be submitted at the same time to the City and together shall be deemed to serve as the Preliminary Plat. The Preliminary Drainage Plans and the Preliminary Infrastructure Plans will be used to develop the Public Improvement Construction Plans.

4.6 Final Plat. Final Drainage and Infrastructure Plans shall be submitted as the "Public Improvement Construction Plans" concurrently with the final plat for the Property. The City hereby agrees that the fiscal posting accompanying the final plat for the Property may be in the form of cash, bond, letter of credit or a construction completion agreement executed by Owner. The form of the construction completion agreement shall be substantially in the same form as the

agreement attached hereto as *Exhibit H of Attachment "A"*. The final plat shall be acknowledged and agreed and recorded by City prior to construction. For example, the order of sequence will be: 1) approval of the final plat by the City, 2) fiscal posting or execution of construction completion agreement, 3) recordation of the final plat, and 4) construction of improvements.

4.7 Wagon Wheel ROW. For purposes of platting, Wagon Wheel will be considered a public right of way and will be built to the standards set forth in the Design Standards and Warrants.

4.8 No Regulation Plan. The platting process for the Property shall not include a Neighborhood Regulation Plan because it is not necessary for this type of commercial development.

4.9 Site Development Plan Review.

A. **Purpose.** This section establishes a site plan review process for the Property. The purpose of the review is to ensure efficient and safe land development, harmonious use of land, compliance with appropriate design standards, safe and efficient vehicular and pedestrian circulation, parking and loading, and adequate water supply, drainage and storm water management, sanitary facilities, and other utilities and services.

B. **Applicability.** Site plan review and approval shall be required for new construction or the significant enlargement or alteration of any exterior dimension of any building, structure, or improvement within the Property.

As used in this section, the term "improvements" shall also include alterations made to land only, such as paving, filling, clearing, or excavating. As used in this section, the term "significant enlargement or alteration" shall mean the construction of structures, or the alteration of land, if such construction or alteration impacts or potentially affects other existing or future land uses, including those on adjacent or nearby land.

The City Manager shall make the initial determination of whether a proposed development, construction, enlargement, or improvement requires a site plan or not.

The site development plan must be prepared by a licensed and registered professional land surveyor, and/or a licensed professional engineer.

No building permit shall be issued for any of the above developments unless a site plan is first approved by the City. No certificate of occupancy shall be issued unless all construction and development conforms to the site plan as approved by the City. A public hearing on a site plan is not required.

The fee for a site plan will be determined by the City Manager.

C. **Site Plan Details.** The site plan shall contain sufficient information relative to site design considerations, including but not limited to the following:

1. Location of existing and proposed building(s), structure(s) or other improvement(s), as well as proposed modifications of the external configuration of the building(s), structure(s) or improvement(s),
2. Required front, side and rear setbacks from property lines,
3. Existing or proposed easements or right-of-way, within or abutting the lot where development is being proposed,
4. The dimensions of any street, sidewalk, alley or other part of the property intended to be dedicated to public use. These dedications must be made by separate instrument and referenced on the site plan,
5. On and off-site circulation (including truck loading and pickup areas) and fire lanes,
6. Required parking with dimensions given for layout.
7. Topography,
8. Grading,
9. Landscaping design,
10. The location and size of existing public water and wastewater lines, fire hydrants and manholes available to service the-proposed development; or, if public service is unavailable, the location and size of existing private on site water and wastewater facilities; and any proposed water and wastewater lines, fire hydrants and manholes required to serve the project,
11. Location of screening with dimensions and material used,
12. Engineering for streets and utilities,
13. The location of the 100-year flood plan on the proposed development site, if any,
14. Calculations, prepared by a licensed professional engineer, showing the storm water flow (e.g., rate, velocity, location) before and after the proposed construction. Calculations must take into account storm water that currently enters and exits the site,
15. Building elevations,
16. The location and ownership of adjacent properties,
17. If it is the intent to use groundwater under the land, a licensed engineer registered to practice in Texas must certify that adequate groundwater is available to serve the development, and
18. Location of dumpster(s) and screening for dumpster(s).

Provision of the above items shall conform to the principles and standards set forth in this Agreement.

D. Principles encl standards for site plan review. The City staff shall review the site plan for compliance with all applicable ordinances (as modified by this Agreement).

Based upon its review, the staff may approve, conditionally approve, request modifications, or deny the site plan based on evaluation of the site plan details with respect to the site plan's compliance with all provisions of the PDD {#} Ordinance, and other ordinances of the City of Bastrop including but not limited to off-street parking and loading, lighting, open space, and the generation of objectionable smoke, flames, noise, odors, dust, glare, vibration, or heat, as such

ordinances have been modified by this Agreement (including the Warrants and Development Standards).

4.10. Approval Process.

A. The Director of Planning and Development, or designee, shall review and approve, approve with conditions, or deny all site plans except for PD, CUP or other districts requiring public hearings. Any decision on a site plan with which the applicant disagrees may be appealed to the Planning and Zoning Commission as set forth in (B) below.

B. The City staff shall place the site plan on the regular agenda of the Planning and Zoning Commission within thirty (30) days after the request for appeal. If recommended for approval by the Planning and Zoning Commission, the site plan shall be deemed approved by the City. If the site plan is recommended for denial by the Planning and Zoning Commission, the applicant must request the site plan be placed on the City Council's agenda within ten (10) days from the date the appeal was denied by the Planning and Zoning Commission. The City Council shall have final approval or disapproval on all site plans which are appealed.

C. If development of a lot with an approved site plan has not commenced within five (5) years of the date of final approval of the site plan, the site plan shall be deemed to have expired. Said review and approval shall be evaluated according to the standards above, taking in to account all changes to applicable ordinances which have occurred subsequent to the prior approval of the site plan.

It is recognized that final architectural and engineering design may necessitate minor changes in the approved site plan. In such cases, the Director of Planning and Development shall have the authority to approve minor modifications of an approved site plan, provided that such modifications do not materially change the circulation and building location on the site, or any conditions specifically attached as part of a City Council approval.

ARTICLE V. TERM, ASSIGNMENT & AMENDMENT

5.1 Term. The term of this Agreement will commence on the Effective Date (as defined below) and continue in perpetuity, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Owner. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns of Owner that construct the improvements on the Property contemplated hereunder.

5.2 Amendment by Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and the then current owner of the Property. In the event that the Property shall be owned by more than one owner, then this Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and the owners of sixty (60%) of the land area of the Property; provided, however, that so long as Owner has an ownership interest in the Property, it shall be required to join in any

cancellation, change, amendment or modification of this Agreement.

5.3 Assignment.

- 5.3.1** This Agreement shall run with the land. All the Owners and all future owners of all or any portion of the Property, including, without limitation, any affiliates of Owners to which all or any portion of the Property is conveyed and contributed, shall have the benefits of this Agreement, and the Property may be developed as set forth herein without further action by the City; provided, however, that this Agreement may be amended as otherwise set forth herein.
- 5.3.2** If Owner assigns its rights and obligations as to a portion of the Property, then the rights and obligations of an assignee and Owner will be severable, and Owner will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one Owner, the City may pursue all remedies against that nonperforming Owner as a result of that nonperformance unless and to the limited extent that such nonperformance pertains to a City requirement that also is necessary for the performing Owner's project, which performing Owner may also pursue remedies against the nonperforming Owner.
- 5.3.3** Upon sale, transfer or conveyance of all or portions hereinafter described Property by the Owner thereof (the owner of each portion of the Property called "Owner" of such portion herein), the duties and obligations of the Owner, as it relates to the transferred Property, shall be assumed by the new owner, and the transferring Owner shall have no further liability relating to such transferred Property.
- 5.3.4** The sale, transfer or conveyance of all or portions of the hereinafter described Property by the Owner shall include restrictive covenants that subject the conveyed portions to the terms of this Agreement.
- 5.3.5** This Agreement touches and concerns the Property and runs with the land.

5.4 Cooperation

- 5.4.1** The City and Owner shall cooperate with each other as reasonable and necessary to carry out the intent of this Agreement, including, but not limited to the execution of such further documents as may be reasonably required.
- 5.4.2** The City agrees to cooperate with Owner, at Owner's expense, in connection with any waivers, permits or approvals Owner may need or desire from Bastrop County, the Texas Commission on Environmental Quality, the Texas Department of Transportation, or any other regulatory authority in order to develop the Project in accordance herewith.
- 5.4.3** In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any other actions taken hereunder, Owner and the City agree to

cooperate in the defense of such suit or claim, and to use their respective commercially reasonable efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. Each party agrees to pay its own legal fees in connection with any such third party claim.

ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 Necessary Documents & Actions. Each party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary to effectuate the purposes and intent of this Agreement.

6.2 Severability. In case one or more provisions contained herein are deemed invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provisions hereof and in such event, this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.3 Applicable Law. This Agreement shall be construed under and in accordance with the laws of The State of Texas.

6.4 Venue. All obligations of the parties created hereunder are performable in Bastrop County, Texas and venue for any action arising hereunder shall be in Bastrop County.

6.5 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto (and their respective successors and assigns), any rights, benefits, or remedies under or by reason of this Agreement.

6.6 Duplicate Originals. This Agreement may be executed in duplicate original, each of equal dignity.

6.7 Notices. Until changed by written notice thereof any notice required under this Agreement may be given to the respective parties, by certified mail, postage prepaid or by hand delivery to the address of the other party shown below:

Owner:

BRP East, LP
100 E. Anderson Lane, Suite 200
Austin, Texas 78752
Attn: Steve Durhman

City of Bastrop:

City of Bastrop, Texas
1311 Chestnut Street
Bastrop, Texas 78602
Attn: City Secretary

6.8 Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all parties.

6.9 Binding Effect. This Agreement and the PD Master Plan bind and benefit the Owner and its successors and assigns.

- 6.10 List of Exhibits.** The following attachments and exhibits are attached hereto and incorporated into this Agreement for all intents and purposes.
- 6.11 Force Majeure.** Owner and the City agree that the obligations of each party shall be subject to force majeure events such as unavailability of materials, labor shortages, natural calamity, fire or strike.
- 6.12 Estoppel Certificates.** From time to time upon written request by any seller or purchaser of all or a portion of the Property, or any lender or prospective lender of the Owner or its assignees, the City shall execute a written estoppel certificate to such seller or purchaser stating, if true that the City has not given or received any written notices alleging any events of default under this Agreement.

Attachment “A” – Planned Development District No. __ and Zoning Map

- Exhibit A.....Property Legal Description
- Exhibit BPD Master Plan
- Exhibit CDevelopment Standards
- Exhibit C- 1Signage
- Exhibit C-1-1Multiple-Tenant Building
- Exhibit C-1-2Single-Tenant Buildings
- Exhibit C-2.....Inline Shop Space & Anchor/Junior Anchor
Building Elevations Front, Side & Rear
Elevations
- Exhibit C-4.....Plaza Area
- Exhibit C-5.....Parking Lot Lighting
- Exhibit C-6.....Anchor/Junior Anchor/Inline Outside Sales
& Display Areas
- Exhibit C-7Landscaping
- Exhibit D.....Warrants
- Exhibit EEdward Burleson Improvements
- Exhibit F.....Wagon Wheel Improvements
- Exhibit G.....Blakely Lane
- Exhibit H.....Form of Completion Agreement

[Signatures on following page.]

THE UNDERSIGNED PARTIES HEREBY EXECUTE THIS AGREEMENT :

CITY OF BASTROP, TEXAS:

BRP EAST, LP

by: _____
Lyle Nelson, Mayor

by: _____
Steve Durhman, Manager

Date of Execution

Date of Execution

ATTEST:

ATTEST:

by: _____
Ann Franklin, City Secretary

by: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

by: _____
Alan J. Bojorquez, Attorney for
City of Bastrop, Texas

by: _____
Talley J. Williams, Counsel for
BRP EAST, L.P.

ATTACHMENT “A”

EXHIBIT “A”

PROPERTY

ATTACHMENT "A"

EXHIBIT "B"

PD MASTER PLAN

ATTACHMENT "A"
EXHIBIT "C"
DEVELOPMENT STANDARDS

ATTACHMENT “A”

EXHIBIT “D”

WARRANTS

ATTACHMENT "A"

EXHIBIT "E"

EDWARD BURLESON IMPROVEMENTS

ATTACHMENT "A"
EXHIBIT "F"
WAGON WHEEL IMPROVEMENTS

ATTACHMENT "A"

EXHIBIT "G"

BLAKELY LANE

ATTACHMENT "A"
EXHIBIT "H"
FORM OF COMPLETION AGREEMENT

Subdivision Name

City Case No. _____

Subdivision Construction Agreement

Recitals:

- A. Subdivider owns the land included in the proposed final subdivision plat of the _____ Subdivision, City Project No. _____ and more particularly described on the attached and incorporated **Exhibit A** (the "Property").
Subdivision Name City Case No.
- B. City ordinances require Subdivider to complete various Subdivision improvements to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions.
- C. Subdivider desires to subdivide the Property in accordance with all applicable state and local laws, rules, and regulations.
- D. This Subdivision Construction Agreement (the "Agreement") that the Subdivider has agreed to provide per the City approved Planned Development District Ordinance is authorized by and consistent with state law and the City's ordinances, regulations, and other requirements governing development of a subdivision.
- E. This document is executed to memorialize Subdivider's responsibility to provide certain improvements to the Subdivision required by the platting process ("Subdivision Improvements").
- F. The City of Bastrop will not accept the Subdivision and release the Subdivider from its obligations under this Agreement, until all applicable Subdivision Improvements have been approved and accepted by the City
- G. This Agreement requires the Subdivider to post fiscal guarantees for certain improvements, which protects the City from, at its expense, completing subdivision improvements that the Subdivider has agreed to provide per the City approved Planned Development District, Ordinance No. _____. Subdivider's fiscal surety may be used only to complete those improvements listed on the attached and incorporated **Exhibit B**.
- H. Under certain circumstances outlined in the Agreement, Subdivider can assign all of its obligations hereunder to another Subdivider through an Assignment and Assumption of this Subdivision Construction Agreement.

;
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IN CONSIDERATION of the mutual covenants set forth in this Agreement, the parties agree as follows:

Agreement:

- 1. **Incorporate Recitals.** The above Recitals, and all defined terms therein are incorporated in this Agreement for all purposes.
- 2. **Parties.** The parties to this Agreement are _____ Subdivider Name _____ (individually and collectively, the "Subdivider") and the City of Bastrop, a Texas home-rule municipal corporation, acting through its duly authorized City Manager, or designee, (the "City").
- 3. **Effective Date.** This Agreement will become effective once signed by all Parties and the effective date will be the date of the last signature.

Subdivider's Obligations

- 4. **Improvements.** Subdivider covenants to construct and install, at Subdivider's expense, all Subdivision Improvements that the Subdivider has agreed to provide per the City approved Planned Development District, Ordinance No. _____ for Burleson Crossing East _____ Subdivision, as shown on **Exhibit B**. Prior to starting construction of the Subdivision Improvements, the construction plans and specifications must be certified by Subdivider's engineer of record for the Subdivision as compliant with all applicable state and local development regulations (including environmental protections such as erosion controls and site restoration) and released for construction by the City (collectively called "Released Construction Plans"). All Subdivision Improvements must be constructed in conformance with the Released Construction Plans. Final acceptance of the Subdivision Improvements after completion is subject to inspection, certification and acceptance by the City, as being in conformance with the Released Construction Plans.
- 5. **Fiscal Deposit.** Subdivider must provide and continually maintain financial guarantees in the estimated total cost to construct each improvement(s) listed in **Exhibit B** in conformance with the Released Construction Plans, as shown on **Exhibit B** to assure performance of its obligations. The guarantee can be a cash deposit, surety bond, or irrevocable letter of credit in a form acceptable to the City Attorney, or designee held by the City ("Fiscal Deposit"). The stated amount of the Fiscal Deposit is _____ Total Fiscal Amount (Spelled Out) _____ and (____/100) (\$ _____) (the "Stated Amount").

- (a) **Cash Deposit.** A cash deposit must be received for the full amount, held by the City, and placed in an interest bearing escrow fund and invested as if it were funds of the City. All interest earned on the cash deposit will be credited to the Subdivider. The City will maintain a balance of 100% of the cost of construction of the improvements shown on **Exhibit B**, all interest in excess of that amount may be disbursed to the Subdivider upon City's receipt of Subdivider's written request therefor. Subdivider cannot request an initial disbursement of interest until the Fiscal Deposit has been placed with the City for 365 days. Subdivider cannot request interest disbursements more frequently than once a year.
- (b) **Surety Bond.** A surety bond must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) be listed with the United States Treasury http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm (iv) be issued by an insurance company licensed to transact business in the state of Texas and (v) have a rating equivalent to the minimum acceptable rating established by the City's Financial Services Department in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 24**, the City Attorney may revise the standard form surety bond as is reasonably considered acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard surety bond form is revised, the new form will not be required to be used until the next time the amount of the bond is adjusted, if any.
- (c) **Letter of Credit.** A letter of credit must: (i) be in the full Stated Amount; (ii) be a standard form acceptable to the City Attorney; (iii) have an expiration date no earlier than one year from the date of its issuance; and (iv) be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the City's financial institution rating system in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 24**, the City Attorney may revise the standard form letter of credit as he reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard letter of credit form is revised, the new form will not be required to be used until the next renewal period, if any.

6. **Intentionally Deleted.**

7. **Ownership and Lien Search Certificate.** Subdivider must provide an Ownership and Lien Search Certificate prepared and signed by a title company acceptable to the City. The Ownership and Lien Search Certificate must identify who title of the Property is vested with, the legal description of the property, and must name all lienholders having current liens against the Property. The Ownership and Lien Search Certificate must be dated no more than 30 calendar days prior to the Effective Date of this Agreement. The Ownership and Lien Search Certificate must be accompanied by a Consent of Lienholder that is signed by duly qualified representatives of all lienholders identified on the Ownership and Lien Search Certificate. The Fiscal Deposit will not be accepted without the Ownership and Lien Search Certificate and the executed Consent of Lienholder, if applicable.
8. **Right of Entry.** The Subdivider hereby grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property to construct, maintain, and repair such Subdivision Improvements.

City's Obligations

9. **Partial Release of Fiscal Deposit.** After accepting any improvements listed in **Exhibit B**, the City can reduce the estimated cost of the Stated Improvements, as amended, if applicable, if Subdivider is not in default under this Agreement. Notwithstanding the preceding sentence, the City shall not authorize reductions in the Stated Amount more frequently than every 90 days; nor will the Stated Amount be reduced to zero until all Subdivision Improvements have been completed.
10. **Full Release of Fiscal Deposit.** Upon Subdivider completing all Subdivision Improvements, and complying with all requirements of, as verified by the City, applicable City Specifications and Standards, in conjunction with the approved Planned Development District, Ordinance No. _____, the Fiscal Deposit will be released and thus Agreement will be terminated.
11. **Inspection and Certification.** The City agrees to inspect Subdivision Improvements during and at the completion of construction, and, if completed in accordance with the Released Construction Plans, to certify the Subdivision Improvements as complying with the Released Construction Plans. The inspections and certifications will be conducted in accordance with standard City policies and requirements. The Subdivider grants the City, its agents, employees, officers, and contractors a Right of Entry to enter the Property to perform such inspections as it deems appropriate.
12. **Notice of Subdivision Improvement Defect.** The City, will provide timely notice to the Subdivider whenever inspection reveals that any Subdivision Improvement is not constructed or completed in accordance with the Released Construction Plans or is otherwise defective, followed by written notice and period to cure, if Subdivider fails to cure the defect upon being given oral notice. The Subdivider must cure or substantially cure the defect within the time period set out in the written notice.

- 13. Default.** If one of the events described in **Section 14** occur, the City may declare the Subdivider in default under this Agreement and may draw the amount they considers necessary to perform Subdivider's obligations under **Section 4**. For each improvement shown on **Exhibit B** constructed by the City, the City may draw 100% of the amount allocated in **Exhibit B** in accordance with the Released Construction Plans.
- 14. Conditions of Draw on Fiscal Deposit.** The City may draw upon any financial guarantee posted in accordance with **Section 5** upon the occurrence of one or more of the following events:
- (a) Subdivider did not properly construct one or more improvements and failed to remedy the construction deficiency within the cure period;
 - (b) Subdivider did not renew or replace the Fiscal Deposit at least 45 days prior to its expiration date;
 - (c) Subdivider did not replace the Fiscal Deposit within 45 days after notice that the Issuer failed to maintain the minimum rating acceptable to the City, in accordance with **Section 5**;
 - (d) The Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure; or
 - (e) If City elects to construct one or more of the Subdivision Improvements shown on **Exhibit B**.

The City shall provide written notice of the occurrence of one or more of the above events to the Subdivider.

- 15. Procedures for Drawing on the Fiscal Deposit.** The process by which the City can draw upon the Fiscal Deposit is dependent upon the type of event that triggered the default. If the default occurred because:
- (a) improvements were not constructed properly or cured as required under **Section 14 (a)**, the City will send notice that states the specific construction deficiency and include a statement that the City intends to perform some or all of Subdivider's obligations under **Section 4** for specified improvements shown on **Exhibit B**.
 - (b) a renewal or replacement Letter of Credit is not provided at least 45 days prior to expiration, as required under **Sections 14 (b), (c) and (d)**, then within 15 days prior to expiration of such Letter of Credit the City will send a draw letter to Issuer, with a copy to Subdivider.
 - (c) the City has elected to construct Subdivision Improvements as described in **Section 14 (e)**, then the City must give notice to Issuer, with a copy to Subdivider, no less than 15 days prior to its drawing on the Fiscal Deposit.

If the City draws on the Fiscal Deposit under **Sections 14 (b) or (c)** the funds received will be converted to a Cash Deposit for the benefit of Subdivider, as if originally deposited as Cash under **Section 5 (a)**. For all circumstances, the City may draw upon the Fiscal Deposit by submitting a draft to the Issuer that complies with the terms governing such draft. Non-cash Fiscal Deposits must be surrendered upon presenting any draft that exhausts the Stated Amount of such Fiscal Deposit. The City may not draft under a Fiscal Deposit unless the City has substantially complied with all obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with its terms. To draw on a cash Fiscal Deposit, the City will provide a letter of explanation to the person who posted the cash Fiscal Deposit, which meets the requirements to draw upon the City's most currently approved Letter of Credit form.

- 16. Use of Proceeds.** If the Subdivider is in default of this Agreement, the City will invest all funds obtained by one or more draws under the Fiscal Deposit ("Escrowed Funds") in the same manner as if they were funds of the City. The City will invest such Escrowed Funds, and accrued interest thereon, until they are used by the City. All Escrowed Funds and interest accrued thereon belong to the City and the Subdivider forfeits all rights to the Escrowed Funds and accrued interest. The City will use the Escrowed Funds, and interest thereon, only to complete the improvements shown on **Exhibit B**, in conformance with the Released Construction Plans, or to correct defects in or failures of the improvements shown on **Exhibit B**. The City may, in its sole discretion, complete some or all of the improvements unfinished at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, and without incurring any obligation to complete any of the unfinished improvements.
- 17. Replacing of Fiscal.**
- (A) Fiscal guarantee may be replaced with another form of fiscal guarantee upon the submittal and acceptance of either the replacement fiscal guarantee pursuant to **Section 5**.
- (B) If the Issuer has acquired all or part of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on a **Section 14 (d)** default, the Issuer may deliver a substitute or by confirming Fiscal Deposit to the City.

General Provisions:

- 18. Remedies.** The remedies available to the City and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.
- 19. Third Party Rights.** No person or entity who or which is not a party to this Agreement has any right of action under this Agreement. Nor does any such person or entity, other than the City, (including without limitation a trustee in bankruptcy) have any interest in or claim to Escrowed Funds drawn on the Fiscal Deposit in accordance with this Agreement.

20. **Indemnification.** Subdivider covenants to fully indemnify, save, and hold harmless the City of Bastrop, its officers, employees, and agents (collectively called "Indemnitees") from, and against, all claims, demands, actions, damages, losses, costs, liabilities, expanses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person [including without limitation, Workers' Compensation and Death Claims], or property loss or damage of any kind whatsoever, to the extent any damage or injury may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the construction, existence, use, operation, maintenance, alteration, repair, or removal of any Improvement installed by or on behalf of Subdivider in the Property; the performance of this Agreement; an act or omission, negligence, or misconduct on the part of Subdivider, or any of its agents, servants, employees, contractors, patrons, guests, licensees, invitees, or other persons entering upon the Property under this Agreement, whether authorized with the expressed or implied invitation or permission of Subdivider (collectively called "Subdivider's Invitees"); including any injury or damage resulting, proximately or remotely, from the violation by Subdivider or Subdivider's Invitees of any law, ordinance, or governmental order of any kind, including any injury or damage in any other way arising from or out of the use of the Improvements on the Property or the Property itself by any person, whether authorized to use the Improvements. Subdivider covenants and agrees that if the City or any other Indemnitee is made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions with counsel acceptable to City, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions.
21. **No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement executed by duly authorized representatives of each party. The failure at any time to enforce this Agreement or any covenant by the City, the Subdivider, or the Issuer, their respective heirs, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.
22. **Attorney's Fees.** If either party sues to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

23. **Assignability.** The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs and successors. The Subdivider's obligations under this Agreement may not be assigned without completing and recording an Assignment and Assumption Agreement and obtaining the written approval of the Subdivider, Assignee, and the City. The City's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required Fiscal Deposit. Subdivider's obligations hereunder continue, notwithstanding any assignment until the City has received a recorded Assignment and Assumption Agreement. The City, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment is effective upon notice to the Subdivider and the Issuer.
24. **Notice.** Any notice required or permitted by this Agreement is deemed delivered when personally delivered in writing or three days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider: Subdivider Name _____
 Subdivider Address _____
 Subdivider Address Continued _____

if to City: _____

if to the Issuer: at Issuer's address shown on the Fiscal Deposit

The parties may, from time to time, change their respective addresses listed above to any other location in the United States. A party's change of address is effective when notice of the change is provided to the other party in accordance with this **Section 24**.

25. **Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability does not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.
26. **Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Fiscal Deposit, is only deemed proper if commenced in District Court for Travis County, Texas, or the United States District Court for the Western District of Texas, Bastrop Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Fiscal Deposit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

27. **Release.**
- A. **Upon Completion.** Upon accepting all Subdivision Improvements, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs and successors, and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.
- B. **Upon Vacation of Plat.** Upon receipt of notice of Vacation of Plat under the City's usual process for same, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs and successors and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.
28. **Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this Agreement are for convenience only and must not be considered in construing this Agreement.
29. **Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date.
30. **Modification and Amendment.** This Agreement may only be modified, amended, or terminated upon the filing of a written modification, amendment, or termination document in the Official Public Records of Travis County, Texas. Such document will be executed, acknowledged, and approved by (a) the Director of the Development Services Department or assignee, or successor department; (b) all the Owners of the Property at the time of the modification, amendment, or termination; (c) the Subdivider; and (d) any mortgagees holding first lien security interests on any portion of the Property.
31. **Authorization to Complete Blanks.** By signing and delivering this Agreement to the appropriate official of the City, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.
32. **Binding Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the City. Further, the execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action of both the Subdivider and Issuer. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the Effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Fiscal Deposit.

Executed by the parties to be Effective on _____, 20__.

SUBDIVIDER:

Subdivider Name _____
Company Type (ex: a limited liability company) _____

By: _____
Name: Printed Signer Name _____
Title: Signer Title _____

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

Before me _____, a Notary Public on this day personally appeared _____, as _____, known to me personally or through valid photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

Notary Public, State of Texas

CITY OF BASTROP, a Texas Home-Rule municipal corporation

By: _____
_____ Managing Engineer
Or Designee

Delegated by: _____
Director Development Services
Department

STATE OF TEXAS §
 §
COUNTY OF BASTROP §

Before me _____, a Notary Public on this day personally appeared _____, Managing Engineer or Designee of Development Services Department as delegated by _____, Interim Director for the Development Services Department of the City of Bastrop, a Texas municipal corporation, on behalf of the corporation.

Given under my hand and seal of office this ____ day of _____, 20____.

Notary Public, State of Texas

EXHIBIT LIST:

- Exhibit A - Property Description
- Exhibit B - Subdivision Improvements

**IF THERE IS A Lienholder
shown on the Lien Search Certificate
Use the **Consent of Lienholder** form
Next Document attached**

**All highlighted areas must be filled in with correct
information. I suggest leaving the highlighting.**

**If Lien Search Certificate shows no
lienholder delete this page and the
Consent of Lienholder form and go
straight to Exhibit List page.**

CONSENT OF LIENHOLDER TO Execution of Subdivision Construction Contract

STATE OF TEXAS §
COUNTY OF BASTROP §

Whereas, _____ Subdivider Name _____, is the Owner ("Owner") of the following described property:

That tract of land situated in Bastrop County, Texas described in the attached and incorporated EXHIBIT "A" ("Property"), and

Whereas, _____ Bank Name _____ is the lienholder ("Lienholder") of the Property under the terms and conditions of the following described documents:

Deed of Trust dated _____ Date _____, _____ Subdivider Name _____, to from _____ Trustee Name _____, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$ _____, payable to _____ Bank Name _____. Deed of Trust of record in Document Number _____ Deed of Trust Number _____, of the Official Public Records of Bastrop County, Texas.

Whereas, Owner has executed a Subdivision Construction Agreement with the City of Bastrop ("City") governing installation of Improvements in the _____ Subdivision Name _____

("Development"), and;

NOW THEREFORE, in consideration of \$10 the Lienholder agrees as follows:

_____ Bank Name _____ consents to the execution of the Subdivision Construction Agreement and the rights and obligations of Subdivider set out therein, and subordinates all of its liens on this Property to the rights and interests of the City in the Subdivision Construction Agreement, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Subdivision Construction Agreement.

_____ Bank Name _____ affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on _____, 20____.

Bank Name _____,
Bank Type _____

By: _____
Name: Printed Lienholder Name _____
Title: Lienholder Title _____

STATE OF Notary State §
COUNTY OF Notary County §

Before me _____, Notary Public, on this day personally appeared _____, known to me personally or through valid photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

[SEAL]

Notary Public, State of Notary State

EXHIBIT A:
METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT B:
Subdivision Improvements

External Subdivision Improvements and Internal Subdivision Improvements are collectively referenced as the "Subdivision Improvements".

External Subdivision Improvements. Subdivider and City agree the following improvements located outside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "External Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the Fiscal Surety Office in an amount equal to Subdivider's pro-rata share of the estimated cost to construct and install the External Subdivision Improvements, in the amount listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
a) Water Quality Pond(s)	\$ _____
b) Erosion and Sedimentation Controls	\$ _____
c) Restoration	\$ _____
d) Sidewalks	\$ _____
e) Parkland	\$ _____

Internal Subdivision Improvements. Subdivider and City agree the following improvements located inside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "Internal Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the Fiscal Surety Office in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)	Estimated Cost of Completion
a) Water Quality Pond(s)	\$ _____
b) Erosion and Sedimentation Controls	\$ _____
c) Restoration	\$ _____
d) Sidewalks	\$ _____
e) Parkland	\$ _____

TOTAL \$ 0.00

AFTER RECORDING, RETURN TO:

City of Bastrop
Planning and Development
211 Jackson Street
Bastrop, Texas 78602



STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve Resolution No. R-2023-128 of the City Council of the City of Bastrop, Texas, approving Amendment Number 1 to Capital Area Council of Governments (CAPCOG) "Lease of Site for Air Quality Monitoring" for a portion of property in the City's Mayfest Park, located at 25 American Legion Drive, for a term of three (3) years at a total rent of One and 00/100 Dollar (\$1.00); attached as Exhibit A; authorizing City Manager to execute all appropriate documentation; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Sylvia Carrillo, ICMA-CM, CPM, City Manager

BACKGROUND/HISTORY:

The Austin-Round Rock Metropolitan Statistical Area (MSA), which consists of Bastrop, Caldwell, Hays, Travis, and Williamson Counties, has air pollution levels that are close to violating the federal standards for ground-level ozone (O₃). The U.S. Environmental Protection Agency (EPA) sets federal air quality standards at levels it considers necessary to protect human health and public welfare from harm. The Austin-Round Rock MSA's continued compliance with federal air quality standards is important to ensure public health, protect economic growth, and address the region's transportation needs. The Austin-Round Rock MSA's air pollution regularly reaches levels that the EPA considers "moderate" or "unhealthy for sensitive groups" based on its air quality index (AQI).

On July 25, 2017, City Council approved Resolution No. R-2017-51, which authorized the City Manager to execute an Interlocal Agreement with CAPCOG for continuation and support of the CAPCOG Regional Air Quality Program. At that time, the Central Texas Regional Air Quality Program was in jeopardy due to the Governor's line item veto of the 2018-2019 "near nonattainment" area grant funding in the state budget. Central Texas has relied on this state funding for the last twenty years to support a successful and nationally acclaimed regional air quality program. The City has contributed to this program in both FY 2017 and FY 2018.

On September 25, 2018, City Council approved Resolution No. R-2018-99, formally authorizing the City of Bastrop to participate in a new regional air quality plan for 2019-2023. The goals of the new regional air quality plan are to: 1) maximize the probability of compliance with federal air quality standards, and 2) minimize health and environmental impacts associated with regional air pollution. Controlling and reducing emissions of nitrogen oxides (NO_x) and improving public awareness about air quality are critical to supporting the goals of the new regional air quality plan.

On November 13, 2018, City Council approved Resolution No. R-2018-109, approving a Site Agreement Lease for Air Quality Monitoring with the Capital Area Council of Governments

(CAPCOG) for a portion of property in the City's Mayfest Park, located at 25 American Legion Drive, for a term of five (5) years at a total rent of One and 00/100 Dollar (\$1.00).

POLICY EXPLANATION:

Continuing CAPCOG's air quality program is important to ensure that the region remains in compliance with federal standards, and to ensure that we continue to collect and analyze irreplaceable air quality monitoring data. CAPCOG owns ten (10) continuous air quality monitoring stations (CAMS) across the five-county Austin-Round Rock-San Marcos Metropolitan Statistical Area (MSA), which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties. Without the Air Quality Program, the Austin MSA could be declared a nonattainment area which would lead to increased costs for industry, permitting delays, restrictions on industry expansion in the area as well as increased costs for businesses and consumers, and loss of federal highway and transit funding.

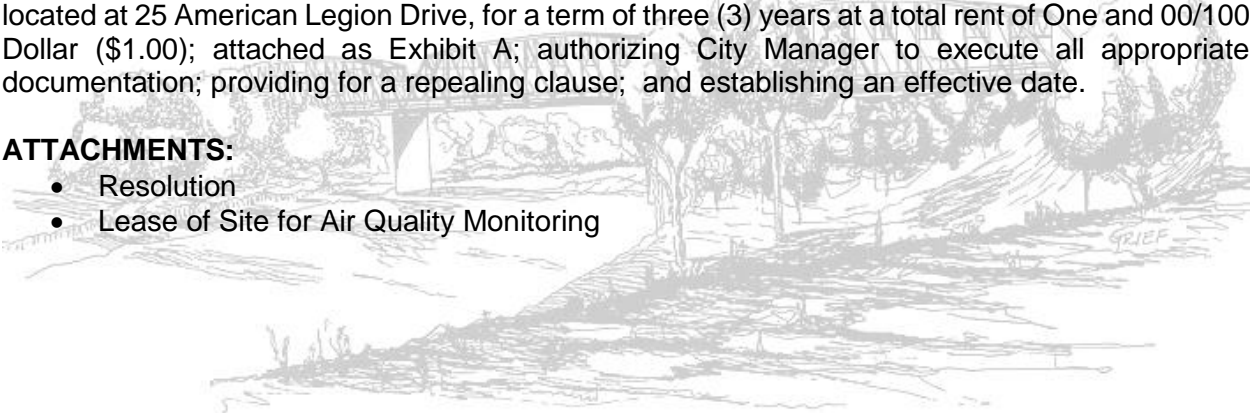
FUNDING SOURCE:

RECOMMENDATION:

Consider action to approve Resolution No. R-2023-128 of the City Council of the City of Bastrop, Texas, approving Amendment Number 1 to Capital Area Council of Governments (CAPCOG) "Lease of Site for Air Quality Monitoring" for a portion of property in the City's Mayfest Park, located at 25 American Legion Drive, for a term of three (3) years at a total rent of One and 00/100 Dollar (\$1.00); attached as Exhibit A; authorizing City Manager to execute all appropriate documentation; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution
- Lease of Site for Air Quality Monitoring



RESOLUTION R-2023-128

A RESOLUTION OF THE CITY COUNCIL OF BASTROP APPROVING AMENDMENT NUMBER 1 TO CAPITAL AREA COUNCIL OF GOVERNMENTS (COPCOG) LEASE OF SITE FOR AIR QUALITY MONITORING FOR A PORTION OF PROPERTY IN THE CITY'S MAYFEST PARK, LOCATED AT 25 AMERICAN LEGION DRIVE, FOR A TERM OF THREE (3) YEARS FOR A TOTAL RENT OF \$1.00 (ONE DOLLAR); AS ATTACHED IN EXHIBIT A; AUTHORIZING CITY MANAGER TO EXECUTE ALL APPROPRIATE DOCUMENTATION; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Central Texas Clean Air Coalition (CAC), of which the City of Bastrop is a member, is charged with the development and implementation of a clean air plan to maintain compliance with federal air quality standards and the development of policies and strategies to guide CAC members about actions that will achieve clean air in Texas; and

WHEREAS, the CAC has requested that the City of Bastrop take action to formally participate in a regional air quality plan for 2023-2026; and

WHEREAS, the Capital Area Council of Governments (CAPCOG) approached the City of Bastrop and Bastrop County in 2018 to relocate an air quality monitor near a center of population; and

WHEREAS, the City and Bastrop County researched several locations in conjunction with CAPCOG, and Mayfest Park was selected due to its location, accessibility, and readily available utilities; and

WHEREAS, CAPCOG relocated an air quality monitor from McKinney Roughs that needed to be closer to a more populated area and away from trees, which can interfere with ozone measurements to Mayfest Park; and

WHEREAS, controlling and reducing emissions of nitrogen oxides (NO_x) and improving public awareness about air quality are critical to supporting the goals of the regional air quality plan; and

WHEREAS, participating with CAPCOG on this project continues the policy, previously set by City Council, to assist other local governmental entities with projects that are mutually beneficial; and

WHEREAS, as of January 15, 2019, the City of Bastrop entered into a Capital Area Council of Governments Lease of Site for Air Quality Monitoring for a term ending on December 31, 2023.

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

Section 1: That the City Council authorizes the City Manager to enter into Amendment Number 1 to a Lease of Site Agreement with CAPCOG for a portion of property at Mayfest Park for a term of three (3) years at a total rent of \$1.00 (One Dollar).

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, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 26th day of September 2023.

ATTEST:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**AMENDMENT NUMBER 1 TO
CAPITAL AREA COUNCIL OF GOVERNMENTS "LEASE OF SITE FOR AIR QUALITY
MONITORING"**

Recitals

The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the state of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code. The City of Bastrop ("City") is a city that has leased land to CAPCOG for the purpose of ambient air quality monitoring since January 6, 2019. This agreement was authorized by Chapter 791 of the Government Code and is captioned "Lease for Air Quality Monitoring" (hereinafter "Original Lease").

Purpose of Amendment

The purpose of Amendment Number 1 is to extend the Term of the Original Lease from its current end date of December 31, 2023, to December 31, 2026, in order to enable continued collection of ambient air quality data at this site through the expiration date of CAPCOG's 2019-2026 Regional Air Quality Plan Addendum.

CAPCOG and City are willing to amend the Original Lease agreement as stated below. This Amendment is pursuant to the authority implicit in Article 8.2, which indicates that the Original Lease may be amended by a writing signed by all parties.

REVISION 1. Section 3. "Term" is amended as follows:

"3.1 This Lease begins on the date it is executed on behalf of City and it ends December 31, ~~2023~~2026."

Sections 3.2 is not affected by this Amendment and remain as seen in the Original Lease.

Miscellaneous

Each individual signing this Amendment 1 to the Original Lease on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

This Amendment 1 to the Original Lease is executed in duplicate originals.

Except as amended herein, the terms and conditions of the Original Lease remain in full force and effect.

CITY OF BASTROP

CAPITAL AREA COUNCIL OF
GOVERNMENTS

By: _____

Sylvia Carrillo
City Manager

By: _____

Betty Voights
Executive Director

Date: _____

Date: _____

Capital Area Council of Governments Lease of Site for Air Quality Monitoring

Sec.1. Parties and Purpose

1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the state of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code.

1.2. The City of Bastrop ("Bastrop") is a home rule city of the State of Texas, located in Bastrop County, Texas that owns land suitable for location of air quality monitoring equipment ("City Property").

1.3. CAPCOG has received funding from Clean Air Coalition members to monitor air quality in the Central Texas region. CAPCOG has acquired air quality monitoring equipment and a meteorological tower to carry out the grant, and CAPCOG has a contractor to operate the equipment. Bastrop has a site suitable for locating monitoring equipment, and CAPCOG desires to lease the site for this purpose.

Sec.2. Lease

2.1. Bastrop leases to CAPCOG and CAPCOG leases from Bastrop the site which is a portion of City Property, shown on the Attachment "A" to this lease, generally described as:

A 175 square foot portion of Mayfest Park in the City of Bastrop, Bastrop County, Texas, as depicted in Attachment A attached hereto and incorporated herein by reference (the "Premises").

2.2. Bastrop agrees that CAPCOG may locate air quality monitoring equipment and a meteorological tower on the Premises ("Equipment") and such is the exclusive permitted use of the Premises. CAPCOG agrees to pay for installation and provision of necessary utilities to the Equipment. A list of the specific Equipment installed shall be attached to this Agreement as Attachment "B". CAPCOG shall provide an updated list of the name of the equipment, manufacturer and serial number and whether the Equipment is owned by CAPCOG or its contractor prior to installation of the equipment and will update the list when Equipment is replaced, or in any event, at least semi-annually on February 15 and August 15 of each year to ensure there is adequate insurance coverage for the installed Equipment at all times. The most recent updated Equipment list shall be attached as Attachment B to this Lease without need for a formal amendment.

2.3. Bastrop agrees that employees of CAPCOG and CAPCOG's contractor have access to the Premises during Bastrop's normal business hours (Monday to Friday, 8 am to 5 pm, except holidays), to operate the monitoring equipment. CAPCOG agrees that Bastrop employees have access to the Premises for inspection.

2.4. CAPCOG shall have the right to enter the City Property only to access the Premises. CAPCOG agrees to provide Bastrop with notification (email or hand-delivered notice) prior to entry into the facility of any employee of CAPCOG or CAPCOG's contractor. CAPCOG agrees to provide the names and other information Bastrop may reasonably require for each employee of CAPCOG or CAPCOG's

contractor who will have access to the Premises. To the extent that any regulatory body requires that such person(s) be licensed, a copy of the license will be provided to Bastrop.

2.5. Bastrop acknowledges that CAPCOG or CAPCOG's contractor owns the air quality monitoring equipment and the meteorological tower located on the Premises, as shown in Attachment "B", and that this Lease does not transfer ownership of the air quality monitoring equipment or meteorological tower to Bastrop or create a security interest in them for Bastrop's benefit.

2.6. CAPCOG may not assign this Lease or sublet under this Lease without the prior written consent of the Bastrop City Council. An attempted assignment or sublet in violation of this paragraph is void.

2.7. Bastrop agrees to limit any request to relocate the air quality monitoring station to another site within the same City Property to situations which, in Bastrop's discretion, amount to good cause to relocate the operation and provide at least two weeks' advance notice before the effective date of any relocation. In the event that the Equipment is located to a replacement site that is not the area described as the Premises, the parties shall enter into an Amendment to this Lease.

Sec. 3. Term

3.1. This Lease begins on the date it is executed on behalf of Bastrop and it ends on December 31, 2023.

3.2. When this Lease ends, CAPCOG agrees at its expense to remove the air quality monitoring equipment and meteorological tower (aka the Equipment) from the Premises and to restore the Premises to its prelease condition, ordinary wear and tear excepted.

3.3. Either Party may terminate this contract with thirty (30) days written notice to the other Party.

Sec. 4. Rent

4.1. Total rent for lease of the Premises is \$1, the receipt and adequacy of which Bastrop acknowledges.

4.2 As additional consideration for this Lease, Bastrop finds that the air quality monitoring that is the permitted use is of municipal benefit to the citizens of Bastrop and the parties agree such public benefit and the rent is adequate consideration for the lease of the Premises to CAPCOG.

Sec. 5. Insurance

5.1. Throughout the term of this Lease, CAPCOG shall provide or cause its contractor to provide and keep in force for the benefit of Bastrop and CAPCOG, at its sole cost and expense, comprehensive general liability insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for bodily injury for each occurrence, and for property damage, or automobile insurance in the amount of Five Hundred Thousand Dollars (\$500,000) in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

CAPCOG warrants that (1) CAPCOG is insured through the Texas Municipal League Intergovernmental Risk Pool if CAPCOG provides any of the air quality monitoring equipment or meteorological tower; and (2) CAPCOG's contractor has workers' compensation insurance covering its employees working on the Premises, and such comprehensive general liability and automobile liability insurance against death, personal injury, and property damage arising from its operations on the Premises, in at least the amounts set forth in Section 5.1, and Bastrop is named an additional insured on both liability insurance policies. A copy of the certificate of insurance shall be delivered to Bastrop at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued.

5.2 In the event of any construction on the Premises, CAPCOG, at its own cost and expense, shall cause to be made, executed, and delivered to Bastrop payment and performance bonds in compliance with Texas Government Code Section 2253.

Sec. 6. Dispute Resolution

6.1. The parties desire to resolve disputes arising under this Lease without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute among themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Sec. 6, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Sec. 6.

6.2. At the written request of a party, each party shall appoint a representative to negotiate informally and in good faith to resolve any dispute arising under this Lease. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations within 15 calendar days of the date of the notice.

6.3. If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services. Each party shall pay half the cost, if any, of the procedure.

6.4. The parties agree to continue performing their duties under this Lease, which are unaffected by the dispute, during the negotiation and mediation process.

Sec. 7. Notice to Parties

7.1. Notice to be effective under this Lease must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in paragraph 7.2 and signed on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in paragraph 7.2.

7.2. CAPCOG's address is 6800 Burluson Road, Building 310, Suite 165, Austin, TX 78744, Attention: Betty Voights, Executive Director. Bastrop's address is 1311 Chestnut Street, Bastrop, Texas 78602, Attention: City Manager.

7.3. A party may change its address by providing notice of the change in accordance with paragraph 7.1.

Sec. 8. Miscellaneous

8.1. Each individual signing this Lease on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

8.2. This Lease is the entire agreement of the parties, and an amendment is not effective unless in writing and signed by all parties.

8.3. The Attachments are part of this Lease, and integrated into this agreement as if fully set forth herein.

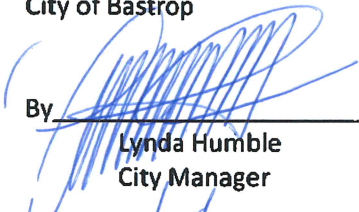
8.4. This Lease is binding on and inures to the benefit of the parties and the parties' successors in interest.

8.5. This Lease is performable in Bastrop County, Texas, and Texas law governs the interpretation and application of this Lease. Venue shall lie in Bastrop County, Texas.

8.6. CAPCOG may not permit any liens or encumbrances upon its leasehold estate or on the Premises or City Property, and will promptly take action to remove any such encumbrances upon notification by Bastrop.

8.7 This Lease may be executed in duplicate originals.

City of Bastrop

By 
Lynda Humble
City Manager
Date 1/15/19

Capital Area Council of Governments

By 
Betty Voights
Executive Director
Date 12/20/18

Attachment "A"

The following map shows the approximate location, outlined in red, where CAPCOG plans to locate the monitoring equipment, which will consist of, at a minimum, a trailer, an ozone monitor equipment, meteorological equipment, and communications equipment. CAPCOG may also install additional instruments to measure concentrations of particulate matter, nitrogen oxides, or other pollutants. Prior to setting up the equipment, CAPCOG will secure agreement with the facility management on the precise location on the Premises where the Equipment will be set and any procedures for site installation and access. The address of the location is Mayfest Park, 25 American Legion Dr., Bastrop, TX 78602.



Attachment "B"

Inventory will be provided prior to installation. Installation is expected by the end of February 2019.



STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve Resolution No. R-2023-144 of the City Council of the City of Bastrop, Texas appointing Mayor Lyle Nelson as the General Assembly Representative to the Capital Area Council of Government (CAPCOG) and replacing current member Connie Schroeder; authorizing the Mayor to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Sylvia Carrillo, ICMA-CM, CPM, City Manager

BACKGROUND/HISTORY:

The City of Bastrop, Texas is a member of the Capital Area Council of Governments (CAPCOG). CAPCOG is composed of official representatives including cities, counties, school districts, chambers of commerce, non-profit agencies and other agencies that have an interest in regionalism and programs such as emergency communications, homeland security, planning and economic development, law enforcement, and air quality.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve Resolution No. R-2023-144 of the City Council of the City of Bastrop, Texas appointing Mayor Lyle Nelson as the General Assembly Representative to the Capital Area Council of Government (CAPCOG) and replacing current member Connie Schroeder; authorizing the Mayor to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution

RESOLUTION R-2023-144

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS DESIGNATING MAYOR LYLE NELSON AS THE GENERAL ASSEMBLY REPRESENTATIVE TO THE CAPITAL AREA COUNCIL OF GOVERNMENT (CAPCOG) AND REPLACING CURRENT MEMBER CONNIE SCHROEDER; AUTHORIZING THE MAYOR TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop, Texas is a member of the Capital Area Council of Governments (CAPCOG); and

WHEREAS, CAPCOG is composed of official representatives including cities, counties, school districts, chambers of commerce, non-profit agencies and other agencies that have an interest in regionalism and programs such as emergency communications, homeland security, planning and economic development, law enforcement, and air quality; and

WHEREAS, Mayor Nelson represents the City of Bastrop on the CAPCOG Clean Air Coalition and the community benefits by active participation in the CAPCOG and regionalism;

WHEREAS, the City Council designates Mayor Nelson to be the General Assembly Representative to CAPCOG.

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

Section 1. The Mayor is hereby authorized to execute Appointment Form - General Assembly Representative-CAPCOG designating Mayor Pro Tern Nelson as Bastrop's designee.

Section 2. All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3. This 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 26th day of September 2023.

ATTEST:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



Staff Report

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve the first reading of Ordinance No. 2023-38, of the City Council of the City of Bastrop, Texas, establishing and adopting transportation impact fees; amending the Bastrop Code of Ordinances, Chapter 13, Article 13.12, by enacting sections 13.12.094 - 13.12.099 providing for definitions; providing for assessment of said impact fees; providing for the general administration of said impact fees; providing a severability clause; providing an effective date and an open meetings clause, providing adoption, repealer, severability, filing and enforcement; establishing an effective date; providing for proper notice and meeting; and move to include on the October 10, 2023, agenda for second reading.

AGENDA ITEM SUBMITTED BY:

Sylvia Carrillo, ICMA-CM, CPM, City Manager

BACKGROUND/HISTORY

The City of Bastrop hired Kimley Horn's engineers to review and workshop the components needed to adopt transportation impact fees. As part of the impact fee study the planned land uses for the city were workshopped at the planning and zoning commission twice and again at the Bastrop Regular City Council meetings. The P&Z commission and City Council took action to affirm that the land use assumptions were accurate with the expected growth of Bastrop and came to consensus that the proposed capital improvements to the transportation network were necessary to support the future growth and the proposed land uses.

RECOMMENDATION:

Staff recommends approval of first reading of Ordinance 2023-38.

ATTACHMENTS:

- Ordinance 2023-38

CITY OF BASTROP, TX

ORDINANCE NO. 2023-38

ROADWAY IMPACT FEE

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS, ESTABLISHING AND ADOPTING ROADWAY IMPACT FEES; AMENDING THE BASTROP CODE OF ORDINANCES, CHAPTER 13, ARTICLE 13.12, BY ENACTING SECTIONS 13.12.094 - 13.12.099 PROVIDING FOR DEFINITIONS; PROVIDING FOR ASSESSMENT OF SAID IMPACT FEES; PROVIDING FOR THE GENERAL ADMINISTRATION OF SAID IMPACT FEES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND AN OPEN MEETINGS CLAUSE.

WHEREAS, Texas Local Government Code, chapter 395, authorizes and provides the requirements for political subdivisions to impose impact fees on new developments in order to generate funding or recoup the costs of capital improvements or facility expansion necessitated by and attributable to the new development; and

WHEREAS, the Statute requires the City to conduct an impact fee study to determine the feasibility of adopting impact fees and the study includes development of the City's Land Use Assumptions and Capital Improvements Plan Report and the calculation of the maximum allowable impact fees; and

WHEREAS, pursuant to Texas Local Government Code, Section 395.058, the City appointed the Impact Fee Advisory Committee, which is composed of the City's Planning and Zoning Commission to assist in adopting land use assumptions and reviewing the capital improvements plan; and

WHEREAS, after notice of a public hearing was given as required by Texas Local Government Code, chapter 395, the City Council held a public hearing on June 13th, 2023, at which it approved the land use assumptions and capital improvements plan; and

WHEREAS, the City Council held a public hearing on September 19th, 2023 to consider the imposition of impact fees, and the Capital Improvement Advisory Committee filed its written comments on the proposed impact fees before the fifth business day of the date of the said public hearing; and

WHEREAS, the City Council files that the City has fully complied with Texas Local Government Code, chapter 395, in adopting an imposing the impact fees in this ordinance; and

WHEREAS, the City Council finds it to be in the best interest of the citizens of the City to adopt and approve the impact fees and related administrative processes described herein.

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

- Section 1. Findings of Fact.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.
- Section 2. Adoption of Roadway Impact Fees.** The City Council hereby approves and adopts “Roadway Impact Fees” consistent with this ordinance.
- Section 2. Amendment:** Chapter 13, Division 13.12 of the City of Bastrop Code of Ordinances is hereby amended by revising Sections 13.12.001- 13.12.005 and adding Section 13.12.094 – 13.12.099 entitled “Roadway Impact Fees” to read as set forth in *Exhibit A* attached hereto and incorporated herein for all purposes.
- Section 3. Repealer:** To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated.
- Section 4. Severability:** Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.
- Section 5. Codification:** The City Secretary is hereby directed to record and publish the attached rules, regulations, and policies in the City’s Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.
- Section 6. Effective Date:** This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City’s Charter, Code of Ordinances, and the laws of the State of Texas. The provisions set forth in *Exhibit “A”* shall take effect on October 10th, 2023.
- Section 7. Proper Notice & Meeting:** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said

meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED on *First Reading* by the City Council of the City of Bastrop, on this, the 26th day of September, 2023.

PASSED & APPROVED on *Second Reading* by the City Council of the City of Bastrop, on this, the 10th day of October, 2023.

APPROVED:

by: _____
Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit A

**City of Bastrop
Code of Ordinances
Chapter 13: Utilities
Article 13.12 : IMPACT FEES**

DIVISION 1. - GENERALLY**Sec. 13.12.001 - Short title. (Amended)**

This ordinance shall be known and cited as the ~~water and wastewater~~-impact fees ordinance.

Sec. 13.12.002 - Intent. (Amended)

This article is intended to impose roadway, water and wastewater impact fees, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the designated service area.

Sec. 13.12.003 - Authority. (Amended)

This article is adopted pursuant to Texas Local Government Code, chapter 395 and the city Charter. The provisions of this article shall not be construed to limit the power of the city to utilize all powers and procedures authorized Texas Local Government Code, chapter 395, or other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by ordinance, resolution, or otherwise to implement and administer this article.

Sec. 13.12.004- Definitions. (Amended)

Capital improvement means a roadway facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the city (including the city's share of costs for roadways and associated improvements designated on the City's master plan but constructed by another entity. "Capital improvement" includes a newly constructed roadway facility or the expansion of an existing roadway facility necessary to serve new development.

City means the City of Bastrop, Texas.

Credit means an amount equal to:

- (1) That portion of ad valorem tax revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

- (2) In the alternative, a credit equal to 50 percent of the total projected cost of implementing the roadway improvements plan.

(Credit is not to be confused with offset which is defined below.)

Development Agreement means a written agreement, including a consent agreement, between the City and the owner or developer of a property that establishes comprehensive defined transportation improvement requirements for the entire development.

Development unit(s) is the expression of the size of each land use planned within a particular development and is used to compute the number of service units consumed by each individual land use application.

Final plat approval means the point at which the applicant has complied with all conditions of approval and the plat has been released for filing with the county. This term applies to both original plats and replats.

Final plat recordation means the point at which the applicant has complied with all conditions precedent to recording an approved final plat in the county, including the final completion of and acceptance by the city of any infrastructure or other improvements required by the subdivision ordinance or any other ordinance and the plat is filed for record with the county clerk's office.

Land use assumptions means and includes a description of the service areas and the projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the city, as may be amended from time to time, in each service area over a ten-year period upon which the roadway improvements plan is based. The land use assumptions are set out in the most recently updated land use assumptions for roadway impact fees adopted by resolution of the city council as amended from time to time.

Land use vehicle-mile equivalency tables or *LUVMET* are tables set forth in Table C in Section 13.12.095(c) that provide the standardized measure of consumption or use of roadway facilities attributable to a new development based on the land use category of the development and historical data and trends applicable to the city during the previous ten years. The LUVMET recognizes and expresses the magnitude of the transportation demand created by different land use categories within a particular development and allows different uses of land to more accurately bear the cost and expense of the impacts generated by such uses. The LUVMET expresses the number of service units consumed by each individual land use application as "vehicle miles per development unit".

Maximum assessable roadway impact fees mean the fees set out in Table A in Section 13.12.095(a).

New development means the subdivision of land and/or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land which has the

effect of increasing the requirements for capital improvements, measured by an increase in the number of service units to be generated by such activity.

Offset or *offsets* means the amount of the reduction of an impact fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility agreed to or required by the city as a condition of development approval, pursuant to rules herein established or pursuant to city council-approved administrative guidelines which value shall be credited on an actual cost basis against roadway facilities impact fees otherwise due from the development. (Offset is not to be confused with "credit", which is defined above.)

Recoup means to reimburse the city for capital improvements which the city has previously installed or caused to be installed.

Roadway means any or arterial or collector streets or roads designated in the city's adopted master thoroughfare plan, as may be amended from time to time. The term includes the city's share of costs for roadways designated as a numbered highway on the official federal or state highway system.

Roadway facility means an improvement or appurtenance to a roadway which includes, but is not limited to, rights-of-way, whether conveyed by deed or easement; intersection improvements; traffic signals; turn lanes; drainage facilities associated with the roadway; street lighting or curbs. "Roadway facility" also includes any improvement or appurtenance to an intersection with a roadway officially enumerated in the federal or state highway system. "Roadway facility" includes the city's share of costs for roadways and associated improvements designated as a numbered highway on the official federal or state highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, drainage appurtenances, and rights-of-way. "Roadway facility" excludes those improvements or appurtenances to a roadway which are site-related facilities.

Roadway impact fee means a charge or assessment imposed by the city, as set forth in subsection 13.12.095(b), against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. "Impact fees" or "roadway impact fees" do not include road escrow payments for site-related facilities imposed under facility agreements in existence on the 7th day of January, 2023, roadway adequacy fees, or fee in lieu of TIA. The term is inclusive of both the maximum assessable roadway impact fee and the roadway impact fee collection rate as herein described. The term also does not include dedication of rights-of-way or easements or construction or dedication of drainage facilities, streets, sidewalks, or curbs if the dedication or construction is required by the subdivision ordinance and is necessitated by and attributable to the new development.

Roadway impact fee collection rate means the fees set out in Table B in Section 13.12.095(B)

Roadway improvements plan identifies the capital improvements or facility expansions and associated costs for each roadway service area that are necessitated by and which

are attributable to new development within the service area, for a period not to exceed ten years, which capital improvements are to be financed in whole or in part through the imposition of roadway impact fees pursuant to this article. The roadway improvements plan and land use assumptions were adopted by resolution of the city council, and may be amended from time to time. This definition does not include the City's approved 5-year CIP evaluated on an annual basis pursuant to City Charter and local ordinance.

Roadway service area means the geographic area(s) within the city's corporate limits, which do not exceed six miles and within which geographic area(s) roadway impact fees for capital improvements will be collected for new development occurring within such area, and within which fees so collected will be expended for those capital improvements identified in the roadway improvements plan to be located within the roadway service area. "Roadway service area" does not include any land outside the city limits.

Service unit means one vehicle mile of travel in the afternoon peak hour of traffic and is also referred to as a "vehicle mile."

Site-related facility means an improvement or facility which is constructed for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of roadway facilities to serve the new development and which is not included in the roadway improvements plan and for which the developer or property owner is solely responsible under the subdivision, and/or other applicable, regulations. Site-related facility may include an improvement or facility which is located offsite, or within or on the perimeter of the development site.

System facility means a capital improvement which is designated in the roadway improvements plan and which is not a site-related facility. A system facility may include a capital improvement which is located off-site, within, or on and along the perimeter of the new development site.

TIA means a traffic impact analysis prepared in accordance with applicable City ordinances, guidelines, manuals, and policies. TIA does not include a fee in lieu of a TIA.

Sec. 13.12.005 - Applicability (Amended)

- (a) This article shall be uniformly applicable to new development that occurs within the water and wastewater service areas. This article shall be uniformly applicable to new development in roadway impact fee service areas, except for section 13.12.007 through section 13.12.016 and section 13.12.018 through section 13.12.022 and section 13.12.024 through section 13.12.026, which are not applicable. Specific provisions for roadway impact fees are included in section 13.12.094 through section 13.12.099.
- (b) No new development shall be exempt from the assessment of impact fees except as defined in this article or in Texas Local Government Code Chapter 395.

DIVISION 4. – ROADWAY FACILITIES (New)

Sec. 13.12.094 Service areas; applicability; effective date

(a) The city is hereby divided into two roadway service areas as shown on the official roadway service area map. The official roadway service area map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this article. The official roadway service area map shall be identified by the signature of the mayor attested by the city secretary and bearing the seal of the City of Bastrop under the following words:

“This is to certify that this is the official roadway service area map referred to in Article 13.12.027 of the Code of Ordinances, City of Bastrop, Texas.”

- (b) The provisions of this article apply to all new development within the service areas described above. The provisions of this article apply uniformly within each roadway service area.
- (c) This article is intended to ensure the provision of adequate roadway facilities to serve new development in the city by requiring each development to pay its share of the costs of such improvements necessitated by and attributable to such new development.
- (d) This article shall take effect on September 26th, 2023.

Sec. 13.12.095 Roadway impact fees per service unit.

(a) The City hereby adopts the maximum assessable roadway impact fee per service unit for each roadway service area set forth in Table A below. Each new development shall be assessed the maximum assessable roadway impact fee and shall pay the roadway impact fee collection rate set forth in Table B, as applicable, minus any applicable offsets, as described herein.

**Table A
MAXIMUM ASSESSABLE ROADWAY IMPACT FEE PER SERVICE UNIT**

Service Area A	\$2,349.00
Service Area B	\$1,414.00

(b) The roadway impact fee per service unit for all service areas shall be adopted, assessed, and collected as set forth below. No building permit shall be issued until an assessment of an impact fee pursuant to this article is made and paid in accordance with the assessment and collection procedures set forth herein.

(1) For all property with final plat approval dated before the effective date of this article, the roadway impact fees will be assessed on September 26th, 2023 and will be charged at building permit application dated on or after September

- 26th, 2024 as set forth in Table B. No roadway impact fees shall be collected for any building permit issued prior to September 26th, 2024
- (2) For all property with final plat approval on or after the effective date of this article, the roadway impact fees will be assessed at final plat approval and will be charged at building permit application as set forth in Table B. No roadway impact fees shall be collected for any building permit issued prior to September 26th, 2024

Table B – Collection Rate Table

Service Areas	Collection Rate
A	\$1,562.85
B	\$919.10

- (c) The land use vehicle-mile equivalency tables are set forth below:

Table C
Land Use Vehicle-Mile Equivalency Table ("LUVMET")

Land Use Category	ITE Land Use Code	Development Unit	Trip Gen Rate (PM)	Pass-by Rate	Trip Rate	Trip Length (mi)	Adj. For O-D	Adj. Trip Menth (mi)	Max Trip Length (mi)	Veh-Mi Per Dev-Unit
									6.00	
PORT AND TERMINAL										
Truck Terminal	30	1,000 SF GFA	1.87	0%	1.87	13.20	50%	6.60	6.00	11.22
INDUSTRIAL										
General Light Industrial	110	1,000 SF GFA	0.65	0%	0.65	13.20	50%	6.60	6.00	3.90
Industrial Park	130	1,000 SF GFA	0.34	0%	0.34	13.20	50%	6.60	6.00	2.04
Warehousing	150	1,000 SF GFA	0.18	0%	0.18	13.20	50%	6.60	6.00	1.08
Mini-Warehouse	151	1,000 SF GFA	0.15	0%	0.15	13.20	50%	6.60	6.00	0.90
RESIDENTIAL										
Single-Family Detached Housing	210	Dwelling Unit(s)	0.94	0%	0.94	7.81	50%	3.91	3.91	3.68
Single-Family Attached Housing	215	Dwelling Unit(s)	0.57	0%	0.57	7.81	50%	3.91	3.91	2.23
Multifamily Housing (Low-Rise)	220	Dwelling Unit(s)	0.51	0%	0.51	7.81	50%	3.91	3.91	1.99
Multifamily Housing (Mid-Rise)	221	Dwelling Unit(s)	0.39	0%	0.39	7.81	50%	3.91	3.91	1.52
Multifamily Housing (High-Rise)	222	Dwelling Unit(s)	0.32	0%	0.32	7.81	50%	3.91	3.91	1.25
Senior Adult Housing-Detached	251	Dwelling Unit(s)	0.30	0%	0.30	7.81	50%	3.91	3.91	1.17
Senior Adult Housing-Attached	252	Dwelling Unit(s)	0.25	0%	0.25	7.81	50%	3.91	3.91	0.98
Assisted Living	254	Bed(s)	0.24	0%	0.24	7.81	50%	3.91	3.91	0.94
LODGING										
Hotel	310	Room(s)	0.59	0%	0.59	6.41	50%	3.20	3.20	1.89
Motel	320	Room(s)	0.36	0%	0.36	6.41	50%	3.20	3.20	1.15
RECREATIONAL										
Campground/RV Park	416	Occupied Campsites	0.27	0%	0.27	10.95	50%	5.47	5.47	1.48
Golf Driving Range	432	Driving Position(s)	1.25	0%	1.25	10.95	50%	5.47	5.47	6.84
Golf Course	430	Hole(s)	2.91	0%	2.91	10.95	50%	5.47	5.47	15.92
Recreational Community Center	495	1,000 SF GFA	2.50	0%	2.50	10.95	50%	5.47	5.47	13.68
Ice Skating Rink	465	1,000 SF GFA	1.33	0%	1.33	10.95	50%	5.47	5.47	7.28
Miniature Golf Course	431	Hole(s)	0.33	0%	0.33	10.95	50%	5.47	5.47	1.81
Multiplex Movie Theater	445	Screen(s)	13.96	0%	13.96	10.95	50%	5.47	5.47	76.36
Racquet/Tennis Club	491	Court(s)	3.82	0%	3.82	10.95	50%	5.47	5.47	20.90
INSTITUTIONAL										
Elementary School	520	Student(s)	0.16	0%	0.16	1.67	50%	0.83	0.83	0.13
Middle School/Junior High School	522	Student(s)	0.15	0%	0.15	1.67	50%	0.83	0.83	0.12
High School	525	Student(s)	0.14	0%	0.14	1.67	50%	0.83	0.83	0.12
Church	560	1,000 SF GFA	0.49	0%	0.49	1.51	50%	0.75	0.75	0.37
Day Care Center	565	1,000 SF GFA	11.12	44%	6.23	1.67	50%	0.83	0.83	5.17
University/College	550	Student(s)	0.15	0%	0.15	1.67	50%	0.83	0.83	0.12
MEDICAL										
Clinic	630	1,000 SF GFA	3.69	0%	3.69	5.99	50%	3.00	3.00	11.07
Hospital	610	1,000 SF GFA	0.86	0%	0.86	5.99	50%	3.00	3.00	2.58
Nursing Home	620	Bed(s)	0.14	0%	0.14	5.99	50%	3.00	3.00	0.42
Animal Hospital/Veterinary Clinic	640	1,000 SF GFA	3.53	30%	2.47	5.99	50%	3.00	3.00	7.41
OFFICE										
Corporate Headquarters Building	714	1,000 SF GFA	1.30	0%	1.30	7.04	50%	3.52	3.52	4.58
General Office Building	710	1,000 SF GFA	1.44	0%	1.44	7.04	50%	3.52	3.52	5.07
Medical-Dental Office Building	720	1,000 SF GFA	3.93	0%	3.93	7.04	50%	3.52	3.52	13.83
Single Tenant Office Building	715	1,000 SF GFA	1.76	0%	1.76	7.04	50%	3.52	3.52	6.20
Office Park	750	1,000 SF GFA	1.30	0%	1.30	7.04	50%	3.52	3.52	4.58
COMMERCIAL										
Automobile Related										
Automobile Care Center	942	1,000 SF GFA	3.11	40%	1.87	5.83	50%	2.92	2.92	5.46
Automobile Parts Sales	843	1,000 SF GFA	4.90	43%	2.79	5.83	50%	2.92	2.92	8.15
Gasoline/Service Station	944	Fueling Position(s)	13.91	57%	5.98	1.51	50%	0.75	0.75	4.49
Gasoline Station w/ Convenience Market	945	Fueling Position(s)	18.42	56%	8.10	1.51	50%	0.75	0.75	6.08
Automobile Sales (New)	840	1,000 SF GFA	2.42	20%	1.94	5.83	50%	2.92	2.92	5.66
Quick Lubrication Vehicle Shop	941	Service Position(s)	4.85	40%	2.91	5.83	50%	2.92	2.92	8.50
Automated Car Wash	948	Car Wash Tunnel(s)	77.50	40%	46.50	1.51	50%	0.76	0.76	35.34
Tire Store	848	1,000 SF GFA	2.09	25%	1.57	5.83	50%	2.92	2.92	4.58
Dining										
Fast-Food Restaurant w/ D.T.	934	1,000 SF GFA	33.03	50%	16.52	1.55	50%	0.78	0.78	12.89
Fast-Food Restaurant w/o D.T.	933	1,000 SF GFA	33.21	50%	16.61	1.55	50%	0.78	0.78	12.96
High-Turnover (Sit-Down) Restaurant	932	1,000 SF GFA	9.05	43%	5.16	1.55	50%	0.78	0.78	4.02
Quality Restaurant	931	1,000 SF GFA	7.80	44%	4.37	1.55	50%	0.78	0.78	3.41
Coffee/Donut Shop w/ D.T.	937	1,000 SF GFA	38.99	70%	11.70	1.55	50%	0.78	0.78	9.13
Other Retail										
Free Standing Discount Store	813	1,000 SF GFA	4.83	20%	3.86	5.83	50%	2.92	2.92	11.27
Nursery (Garden Center)	817	1,000 SF GFA	6.94	30%	4.86	5.83	50%	2.92	2.92	14.19
Home Improvement Superstore	862	1,000 SF GFA	2.29	42%	1.33	5.83	50%	2.92	2.92	3.88
Pharmacy/Drugstore w/o Drive-Through Window	880	1,000 SF GFA	8.51	53%	4.00	5.83	50%	2.92	2.92	11.68
Pharmacy/Drugstore w/ Drive-Through Window	881	1,000 SF GFA	10.25	49%	5.23	5.83	50%	2.92	2.92	15.27
Shopping Center (>150k SF)	820	1,000 SF GFA	3.40	29%	2.41	5.83	50%	2.92	2.92	7.04
Shopping Plaza (40-150k)	821	1,000 SF GFA	5.19	40%	3.11	5.83	50%	2.92	2.92	9.08
Strip Retail Plaza (<40k SF)	822	1,000 SF GFA	6.59	40%	3.95	5.83	50%	2.92	2.92	11.53
Supermarket	850	1,000 SF GFA	8.95	24%	6.80	5.83	50%	2.92	2.92	19.86
Toy/Children's Superstore	864	1,000 SF GFA	5.00	30%	3.50	5.83	50%	2.92	2.92	10.22
Department Store	875	1,000 SF GFA	1.95	30%	1.37	5.83	50%	2.92	2.92	4.00
SERVICES										
Walk-In Bank	911	1,000 SF GFA	12.13	40%	7.28	6.11	50%	3.05	3.05	22.20
Drive-In Bank	912	Drive-In Lane(s)	21.01	35%	13.66	6.11	50%	3.05	3.05	41.66
Hair Salon	918	1,000 SF GLA	1.45	30%	1.02	6.11	50%	3.05	3.05	3.11

- (d) The maximum assessable roadway impact fee per service unit set forth in Table A that is assessed to new development is declared to be the roughly proportionate measure of the impact(s) generated by a new unit of development on the city's transportation system. To the extent that the roadway impact fee per service unit collected is less than the maximum assessable roadway impact fee per service unit, such difference is hereby declared to be founded on policies unrelated to the measurement of the actual impacts of the development on the city's transportation system. The maximum assessable roadway impact fee per service unit may be used in evaluating any claim by an applicant, developer, or property owner that the dedication, construction, or contribution of a capital improvement imposed as a condition of development approval pursuant to the city's regulations is not roughly proportionate to the impact(s) of the new development on the city's transportation system.
- (e) Except as herein otherwise provided, the payment of a roadway impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the new development.

13.12.096 Assessment of roadway impact fees.

- (a) Assessment of the roadway impact fee per service unit for any new development shall be made as set forth in Section 13.12.095.
- (b) Following assessment of the roadway impact fee pursuant to subsection (a), the amount of the roadway impact fee assessed per service unit for that new development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or replat approval or other development applicant that results in approval of additional service units, in which case new assessment shall occur at the rate then in effect, as set forth in Section 13.12.095(b).
- (c) Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with the then current impact fee as set forth in Section 13.12.095.
- (d) Approval of an amending plat pursuant to Texas Local Government Code § 212.016, is not subject to reassessment of a roadway impact fee hereunder provided that the use of the property remains the same.
- (e) The City Manager or designee shall compute the assessment of roadway impact fees for new development by first determining whether the new development is eligible for offsets calculated in accordance with section 13.12.098, which would further reduce roadway impact fees otherwise due in whole or in part.

13.12.097 Payment and collection of roadway impact fees.

- (a) For all new developments, roadway impact fees shall be collected at the time of application for and in conjunction with the issuance of a building permit; however, the City has the ability to require construction greater than the transportation impact fee collection rate for amounts up to the maximum assessable

transportation impact fee. The roadway impact fees to be paid and collected are listed in Section 13.12.095(b). The city reserves the right to enter into an agreement with a developer for a different time and manner of payment of roadway impact fees in which case the agreement shall determine the time and manner of payment.

- (b) The city shall compute the roadway impact fees to be paid and collected for the new development in the following manner:
- (1) Determine the number of development units for each land use category in the new development using Table C then in effect.
 - (2) Multiply the number of development units for each land use category in the new development by the vehicle miles (per development unit) for each such land use category also found in Table C then in effect to determine the number of service units attributable to the new development.
 - (3) The amount of roadway impact fees to be collected shall be determined by multiplying the number of service units for the new development by the roadway impact fee per service unit for the applicable roadway service area and shall be calculated at the time of application for and in conjunction with the issuance of a building permit.
 - (4) If an agreement as described in section 13.12.098 providing for offsets exists, the amount of the offsets shall be deducted from the roadway impact fees as calculated above.
- (c) If the building permit for which a roadway impact fee has been paid has expired, and a new application is thereafter filed, the roadway impact fees shall be computed using the LUVMET found in Table C and section 13.12.095(b) then in effect with credits for previous payment of fees being applied against any new fees due.
- (d) Whenever the property owner proposes to increase the number of service units for a development, the additional roadway impact fees collected for such new service units shall be determined by using the LUVMET found in Table C and section 13.12.095(b) then in effect, and such additional fees shall be collected at the times prescribed by this section.
- (e) Where an application for a building permit is for a "shell" or speculative building proposed to be used as a shopping center, the amount of the roadway impact fee will be calculated assuming that the entire building will be used as a "shopping center" as shown on Table C. Where a subsequent application for a building permit is made for the finish-out of the shell building, or portion thereof, for the ultimate use, an additional roadway impact fee shall be charged and paid if the ultimate use is different from a "shopping center".
- (f) Where an application for a building permit is for a "shell" or speculative building proposed to be used as an office building, the amount of the roadway impact fee will be calculated assuming that the entire building will be used as a "general office building" as shown on Table C. Where a subsequent application for a building permit is made for the finish-out of the shell building, or portion thereof, for the

ultimate use, an additional roadway impact fee shall be charged and paid if the ultimate use is different from a "general office building".

- (g) Where an application for a building permit is for a "shell" or speculative building proposed to be used as an industrial use or industrial flex space, the amount of the roadway impact fee will be calculated assuming that the entire building will be used as "general light industrial" as shown on Table C. Where a subsequent application for a building permit is made for the finish-out of the shell building, or portion thereof, for the ultimate use, an additional roadway impact fee shall be charged and paid if the ultimate use is different from "general light industrial".

13.12.098 Offsets against roadway impact fees.

- (a) The city may offset the cost of construction of any system facility that is required or agreed to by the city, pursuant to rules established in this section or pursuant to administrative guidelines promulgated by the city with the following limitations:
- (1) The offset shall be associated with the plat or other detailed plan of development for the property that is to be served by the roadway facility.
 - (2) Projects that consist of multiple phases, whether approved before or after the effective date of this article, may apply for offsets against roadway impact fees for the entire project based upon improvements or funds toward construction of system facilities, or other roadway capital improvements supplying excess capacity. Offset shall be determined by comparing the actual costs of roadway capital improvements supplied by the project with the costs of roadway capital improvements to be utilized by development within the project, utilizing a methodology approved by the city. The offset determination shall be incorporated within an agreement for offsets, in accordance with this article. The roadway requirements of an agreement for offsets shall not be less than what is required by the zoning and development code.
 - (3) The city's then-current policies and regulations shall apply to determine a new development's obligations to construct adjacent system facilities. The obligation to construct, however, shall not exceed the maximum assessable roadway impact fees assessed against new development under Table A. Construction required under such policies and regulations shall be an offset against the amount of impact fees otherwise due. If the costs of constructing a system facility in accordance with the then current city policies and regulations are greater than the amount of the roadway impact fees due, the amount of the credit due shall be deemed to be one hundred percent (100%) of the assessed impact fees and no roadway impact fees shall be collected thereafter for the development, unless the number of service units is subsequently increased.
 - (4) All offsets against roadway impact fees shall be based upon standards promulgated by the city, which may be adopted as administrative guidelines, including the following standards:
 - a. No offset shall be given for the dedication or construction of site-related facilities.

- b. No offset shall be given for a roadway facility which is not identified within the roadway improvements plan, unless the facility is on or qualifies for inclusion on the transportation master plan and the city agrees that such improvement supplies capacity to new development other than the development paying the roadway impact fee and provisions for offsets are incorporated in an agreement for offsets pursuant to this article.
 - c. In no event will the city grant an offset when no roadway impact fees can be collected pursuant to this article or for any amount exceeding the roadway impact fees due for the new development, unless expressly agreed to by the city in writing.
 - d. The value of right-of-way dedicated for site-related facilities will not be considered for an offset.
 - e. The fair market value of right-of-way conveyed for roadway facilities that are not required by the new development will be entitled to an offset. If said roadway facilities are partially required by the new development, said portion shall not be entitled to an offset. The fair market value of the conveyed right-of-way will be determined by either:
 - 1. The appropriate Central Appraisal District,
 - 2. By agreement, or
 - 3. By a MAI appraisal obtained by the city.
 - f. The city may participate in the costs of a system facility to be dedicated to the city, including costs that exceed the amount of the impact fees due for the development, in accordance with policies and rules established by the city. The amount of any offset for construction of a system facility shall be reduced by the amount of any participation funds received from the city.
 - g. Where funds for roadway facilities have been escrowed under an agreement that was executed with the city prior to the effective date of this article, the following rules apply:
 - 1. Funds expended under the agreement for roadway facilities shall first be credited against the amount of roadway impact fees that would have been due under section 13.12.095(b) for those units of development for which building permits already have been issued;
 - 2. Any remaining funds shall be credited against roadway impact fees due for the development under section 13.12.095(b) at the time building permits are issued.
- (b) Except as provided below, offsets for construction of capital improvements shall be deemed created when the capital improvements are completed and the city has accepted the facility. In the case of capital improvements constructed and accepted prior to the September 26th, 2023, the offset shall be deemed created on said date. Offsets created on or before September 26th, 2023 shall expire ten years from such date. Offsets created after September 26th, 2023 shall expire ten years from the

date the offset was created. Upon application by the property owner, the city may agree to extend the expiration date for an offset on mutually agreeable terms.

- (c) Unless an agreement for offsets, as described herein, is executed providing for a different manner of applying offsets against roadway impact fees due, an offset associated with a plat shall be applied at the time of application for the first building permit and, at each building permit application thereafter, to reduce roadway impact fees due until the offset is exhausted.
- (d) An owner of new development who has constructed or financed a roadway capital improvement or roadway facility expansion designated in the roadway impact fee capital improvements plans, or other roadway capital improvement that supplies excess capacity, as required or authorized by the city, shall enter into an agreement with the city to provide for offsets against roadway impact fees due for the development in accordance with this subsection. The agreement shall identify the basis for and the method for computing and the amount of the offset due and any reduction in offsets attributable to consumption of road capacity by developed lots or tracts served by the roadway capital improvements. For multi-phased projects, the city may require that total offsets be proportionally allocated among the phases. If authorized by the city, the agreement also may provide for allocation of offsets among new developments within the project, and provisions for the timing and collection of roadway impact fees.

13.12.099 Use of proceeds of roadway impact fees.

- (a) The roadway impact fees collected within each roadway service area may be used to finance, pay for or to recoup the costs of any roadway facility identified in the roadway improvements plan for the roadway service area, including the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees), and amounts designated in any reimbursement agreements executed pursuant to section 13.12.098
- (b) Roadway impact fees may be used to pay for the contract services of an independent qualified engineer or financial consultant preparing or updating the roadway improvements plan who is not an employee of the political subdivision.
- (c) Roadway impact fees also may be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvement.

13.12.100 – 13.12.115 Reserved.



STAFF REPORT

MEETING DATE: September 26, 2023

TITLE:

Consider action to approve Resolution No. R-2023-145 approving an amendment to the Animal Control Services Interlocal Agreement with Bastrop County to extend the agreement through October 31, 2023.

AGENDA ITEM SUBMITTED BY:

Submitted by: Vicky Steffanic, Chief of Police

BACKGROUND/HISTORY:

The current agreement with Bastrop County expires on September 30, 2023. In years past the City of Bastrop has paid a flat fee rate of \$12,000 per fiscal year. The county desires to change this flat fee to a per animal fee with a rate of \$225.00 for the first year of the contract and \$270.00 for the second year. The City of Bastrop is requesting an itemization of how the figures are calculated along with clarification on some of the language in the contract.

FISCAL IMPACT:

Currently, the City has allocated the previous standard of \$12,000 for the upcoming fiscal year. The contract extension will be pro-rated (\$1,000 for the month of October).

RECOMMENDATION:

Chief Vicky Steffanic recommends approval of Resolution No. R-2023-145 of the City Council of the City of Bastrop, Texas, approving the extension of the current agreement for one to clarify points in the upcoming contract.

ATTACHMENTS:

- Resolution
- A pending contract that is being negotiated.

RESOLUTION NO. R-2023-145

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AN EXTENSION TO THE CURRENT ANIMAL CONTROL SERVICES AGREEMENT BETWEEN BASTROP COUNTY AND THE CITY OF BASTROP; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City of Bastrop ("City") and the County of Bastrop ("County") are working on negotiations reference an updated agreement

WHEREAS, The County of Bastrop has the facilities and personnel necessary to provide animal shelter services to the City of Bastrop and

WHEREAS, Bastrop County and the City of Bastrop have in the past entered into agreements concerning the provision of animal shelter services by the County to the City and desire to continue such inter-local contract arrangement pending an extension of the current agreement to continue working on an updated agreement.

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

Section 1: That the City Manager is hereby authorized to execute an extension to the current Animal Control Services Interlocal Agreement with Bastrop County for services provided to the City of Bastrop.

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 on October 1, 2023.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 26th day of September 2023.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**INTERLOCAL AGREEMENT FOR EMERGENCY COMMUNICATIONS SERVICES
BETWEEN BASTROP COUNTY AND THE CITY OF BASTROP**

The Agreement was effective on October 1, 2021, by and between Bastrop County (the "County") and the City of Bastrop (the "City"), a Home Rule Municipality incorporated and operating under the laws of the State of Texas, (collectively referred to herein as the "Parties").

The following terms of the Agreement are hereby amended. All other terms and conditions of the original Agreement remain in full force and effect.

ARTICLE V. COMPENSATION

- 1) Beginning October 1, 2023, the City agrees to pay the County the sum of **Three Hundred twenty-five thousand dollars** (\$325,000.00) per year, in quarterly installments of **Eighty-one Thousand two Hundred fifty dollars** (\$81,250.00), for the term of the Agreement. The quarterly installment payments by the City shall be due and payable within thirty (30) days of October 1, January 1, April 1, and July 1 of each year for the term of the Agreement. All payments made by the City under this Agreement shall be from current funds.

The Interlocal agreement, executed below upon full authority of each Parties governing body, will take effect October 1, 2023, and remain in effect for two years, or until thereafter modified or terminated by either Party.

CITY OF BASTROP

ATTEST:

By: _____
Sylvia Carrillo, City Manager

Date: _____

Approved as to from: By: _____
Alan Bojorquez, City Attorney
City of Bastrop, Texas

BASTROP COUNTY

By: _____
Gregory Klaus, County Judge

ATTEST: _____
Krista Bartsch County Clerk

Date: _____

Approved as to form:

By: _____
Greg Gilleland, First Assistant District Attorney Bastrop County, Texas



**INTERLOCAL AGREEMENT
BASTROP COUNTY AND CITY OF BASTROP FOR ANIMAL CONTROL SERVICES**

This Interlocal Cooperation Agreement, related to Animal Shelter Services ("Agreement"), is made and entered by and between the City of Bastrop, a municipal corporation, (the "City") and Bastrop County, a local governmental entity ("the "County"). The County and the City may be herein referred to jointly as the "Parties" and singularly as "Party."

RECITALS

WHEREAS, pursuant to the authority granted under State law and as reflected in its Municipal Code, the City has established a Department of Animal Control, related to the operation of a comprehensive Animal Control Program within its City limits. The City's Animal Control Code provisions are generally enforced by the City, and more specifically its Animal Control Officer, in order to promote the health, welfare, and safety of humans and animals within its municipal jurisdiction; and

WHEREAS, pursuant to its Municipal Charter, State law and its Code, the City has the authority to contract with one or more public and/or private entities for the purpose of maintaining and operating an animal shelter to serve the City's Animal Control requirements and the public's needs; and

WHEREAS, pursuant to the authority provided to it by State law and the Local Government Code, the County has established and currently operates and maintains an Animal Shelter to provide services related to Animal Control to residents and animals located in Bastrop County, Texas; and

WHEREAS, pursuant to the above noted authorities held by both the County and the City, the Parties have determined that the City desires to delegate to the County, and the County desires to be responsible for the operation and management of certain activities related to Animal Control within the City's jurisdiction. More specifically, the County and the City desire to formalize their mutual agreement that the County will assume the responsibilities and duties concerning post-impoundment shelter/housing of strays and other impounded animals, the humane euthanasia of same (when deemed necessary by the County and in compliance with State and local laws and regulations), and the disposal of impounded animals, as set forth herein, which activities shall be conducted by the County at the County's Animal Shelter facility ("Shelter");

NOW, THEREFORE, in consideration of these premises it is mutually agreed between the Parties as follows:

1. GENERAL TERMS AND CONDITIONS

- 1.1** The Parties acknowledge and agree that all terms used in this Agreement, when not specifically defined herein, shall have the meanings set forth in the Bastrop County Rabies and Animal Control Ordinance, a copy of which is attached hereto and made a part of this Agreement.
- 1.2** The City shall not deliver domestic livestock or Exotic Animals to the Shelter, unless otherwise specifically approved and agreed in advance by the County Shelter personnel. The County shall have sole authority to determine, on a case-by-case basis, whether it will accept domestic livestock or Exotic Animals at the County's facilities, under the terms set forth herein.
- 1.3** OPERATIONAL DAYS The Bastrop County Shelter is generally open to the public and available to the City seven (7) days a week, between the hours of 8am and 4pm, with the exception of County recognized holidays when the hours may be reduced. Other exceptions to these hours may be due to County declared emergencies per the County Judge or other adverse conditions, with County Commissioner liaison approval. Dates that the County recognizes as holidays are available to the public by viewing the online calendar or by contacting County administrative offices. During the above mentioned hours, the Shelter is available for owners to reclaim impounded or held animals.
- 1.4** Animals impounded by the City and held by the County at the Shelter will become property of the County if they are not reclaimed during the holding period as noted herein. The County will dispose of such unclaimed animals as the County deems appropriate to the specific circumstances. (E.g., via adoption, humane euthanasia, and/or transfer to a rescue society).

2. GENERAL PROVISIONS OF ANIMAL CARE

- 2.1** City Authority to Impound/Deliver Animals to the Shelter
- 2.1.A** Animals owned or harbored in violation of City Code of Ordinances, or laws of the State of Texas, may be taken into custody by an Animal Control Officer or other designated official and impounded under the provisions of the City's laws and regulations. Included is the authority to deliver such animals to the Shelter, per terms of this Agreement. This Agreement pertaining to sheltering, fees, reclaim periods, quarantine, disposition, and other requirements shall apply to all animals brought in from within City Limits, including those brought by City Animal Control Officers, other designated officials, or private citizens. The City may request the assistance of the County in controlling or capturing animals within their city limits. However, The County's assistance will be based on availability between the hours of 0800 and 1600 during regularly staffed days (not including holidays). Bastrop County may respond to emergencies (ex. due to arrest, accident, medical emergency or death of a person -with no caregiver for animal able to be located, confirmed possible rabies exposure from an animal without a known owner). If the County is available and provides such assistance, there will be a separate hourly charge for those services (see Section 4).

- 2.1.B Owners of impounded animals are required to pay all fees and other costs related to the impoundment as set forth by Bastrop County and as agreed between the parties for operation of the Shelter. The fees for the impoundment of animals are to be collected by the Shelter on behalf of the City and the City agrees that, as partial consideration for this Agreement, the County shall have the right to retain all assessed and collected fees due from owners or harborers of impounded animals, as set forth in Bastrop County Rabies and Animal Control Ordinances.

2.2 Holding Periods and Disposition of Impounded Animals

- 2.2.A Dogs or Cats that are Impounded **Without** Identification. Dogs or cats impounded by the Animal Control Department or taken to the Shelter by a person other than the harbinger or owner of that animal, **and which do not have traceable Identification**, shall be held for a minimum of **48 hours**, during which time period the owner may present proof of ownership at the Shelter and reclaim the animal, upon payment of all applicable fees and costs incurred during and/or related to the impoundment of the animal at the Shelter. In the event that a dog or cat is not claimed at the Shelter within 48 hours, that animal shall become the property of the County, as the City's designee.
- 2.2.B Dogs or Cats Impounded **With** Identification. Dogs or cats impounded by the Animal Control Department or taken to the Shelter by a person other than the harbinger or owner of that animal that have traceable identification or when an owner or harbinger of the animal is otherwise known by the County or City Animal Control personnel, shall be held by the Shelter, or its assignee, for a minimum of five (5) operational days from the date the animal enters the Shelter.
- 2.2.B.1 During this time, the City Animal Control Department or County Shelter personnel will attempt to notify the owner or harbinger of the impoundment of the animal, as shown on the identification or as otherwise determined by the County. Holidays and other days that the facility is closed are specifically excluded from the minimum five (5) day holding period, noted herein.
- 2.2.B.2 The owner or harbinger of such animals may claim them from the County at any time during the five (5) day confinement period, after compliance with the requirements herein.
- 2.2.C In the event that such an impounded animal is not claimed as set forth above, the impounded animal shall be deemed **voluntarily surrendered** by the owner or harbinger, and shall become the property of the County as of the start of business on the **sixth (6th)** day of impoundment, or at the start of business on the day following the written agreed upon date and time as stipulated under (3) (a), and the County may dispose of the animal as it deems appropriate.

- 2.3The five (5) day holding period may be extended if the owner or harbinger of an animal that is impounded with identification has:

- 2.3.A Notified the Bastrop County Animal Shelter in writing, on or before the close of business on the **fifth (5th) day** of impoundment, and made written arrangements with the Director of the Shelter for a date and time to reclaim the animal, and
- 2.3.B Pays all applicable fees and **satisfies other County requirements necessary for claiming the impounded animal.**

2.4 **Animals Surrendered by the Owner/Harbinger.** In addition to the voluntary surrender of animals that are not timely claimed from impoundment, as noted above, all other animals surrendered by the owner or harbinger to the County shall become the property of the County **immediately** upon completion of the owner or harbinger surrender form. Fees for owner or harbinger surrendered animals are as shown in the "Bastrop Animal Shelter Fee Schedule", as published on the Bastrop County Website / Animal Shelter. A current fee is attached hereto as Exhibit "A".

2.5 **Animals other than dogs and cats that are impounded.** All animals, other than dogs or cats, that are impounded by the Animal Control Department or the Shelter, or animals that are brought to the Shelter by a person other than the owner or harbinger, shall become the property of the Shelter **immediately upon surrender**, unless such ownership is prohibited by state or federal law.

2.6 **Disposition of animals.** Any animal that cannot be adopted or transferred to a proper and appropriate agency or person shall be euthanized by the Shelter by means approved by the American Veterinary Medical Association and/or the Texas Veterinary Medical Association or by other State of Texas approved method. S u c h euthanasia is to be administered in compliance with the laws of the State. Animals listed as endangered or protected shall be transferred to the proper authority at the earliest possible date or otherwise maintained in accordance with State and Federal laws.

2.7 **Animals Held on Complaint or by Court Order.** If a complaint has been filed in municipal court against the owner and/or harbinger of an animal that is impounded at the Shelter for a violation of the Code, the animal shall not be released except on the order of the City's Animal Control Department, which may also direct the owner and/or harbinger to pay any penalties for violation of its Code, in addition to payment of all impoundment fees and costs incurred by the Shelter. Surrender of an animal by the owner and/or harbinger thereof, to the Shelter or the Animal Control Department, does not relieve or render the owner or harbinger immune from the decision of the Court related to that animal, nor from the fees, fines, or other costs that may result from a violation of the Code.

2.8 **Removal of Animals from Confinement Shelter.**

- 2.8.A **Removal of animal from confinement-** It is unlawful for any person to remove or allow escape from any place of confinement any dog, cat, or other animal which has been ordered to be confined in the Shelter, without the express consent of a Court of Law, or the County and/or the City.

- 2.8.B Delivery of Impounded Animals** The Parties agree that City's authorized agents shall have the right to deliver impounded animals to the custody or control of the County as follows:
- 2.8.B.1** When feasible, the City will deliver impounded animals to the Shelter during the hours that the Shelter is generally open to the public, as set forth herein in Article I, Paragraph 3.
 - 2.8.B.2** In addition to its general public business hours, the County will provide access to the Shelter to the City, for the delivery of animals to the Shelter.
 - 2.8.B.3** **Dead Animals and Fowl.** Dead animals will not be accepted by the County at the Shelter unless such deceased animals are brought to be prepared for rabies specimen testing. The City Animal Control Officer shall perform the required preparation, proper storage, disposal, labeling, and transfer to the Texas Department of State Health Services testing facility.
 - 2.8.B.4** At the time of delivery, the City's authorized agent(s) shall complete all Shelter Release Forms and Impoundment Forms for each animal delivered to the Shelter, including animals that are dead and submitted for rabies testing.

3. COUNTY RIGHTS and RESPONSIBILITIES

- 3.1.** Bastrop County will provide the necessary impoundment and release Shelter forms for use by the City's representatives and agents.
- 3.2.** Upon taking custody of impounded animals at the Shelter, the County will care for and hold such animals as per the terms of this Agreement, as follows:
- 3.3.** Animals that are brought to the Shelter by the City as a result of formal complaints filed in a Court of Jurisdiction shall be held by the County as ordered by the Court. The staff at the shelter must be notified of the required hold period at the time of drop off and the ordered hold period must be clearly noted in the impound documentation.
- 3.4.** Sick, injured, or animals deemed a danger to the health and welfare of citizens or Shelter staff may be humanely euthanized by the County at any time deemed appropriate, in the County's sole discretion.
- 3.5.** Bastrop County shall not be obligated to provide veterinary care for any sick or injured animal that is taken by the Shelter. If either the City or County determines that it will, at its sole discretion, seek veterinary care for an impounded animal, then the owner/harbinger of such animal shall be responsible for payment of any veterinarian fees or medical care costs incurred while the animal is under impoundment at the Shelter.

- 3.6.** Bastrop County will not be obligated to provide quarantine facilities or services under this Agreement, but may do so at its sole discretion. If the County elects to provide such quarantine facilities or services, then all applicable quarantine fees will be paid, by the animal owner/harbinger prior to initiating the quarantine holding period. Fees for quarantine services shall be those set by the Commissioners Court. Any fees paid for quarantine services shall be the property of Bastrop County.
- 3.7.** Owners of impounded animals are required to pay all fees and other costs related to the impoundment as set by Bastrop County and as detailed in the Bastrop County Rabies and Animal Control Ordinances.
- 3.8.** Quarantine of Animals at the Shelter and Disposition of suspected animals. Any Animal that has bitten or scratched a person may be quarantined for observation and disposed of by the Shelter as follow:
- 3.8.A be **immediately** euthanized and submitted to DSHS for rabies testing; or
 - 3.8.B. held for a period of **forty-eight (48) hours**, while attempting to contact the owner, then euthanized and submitted to DSHS for rabies testing; or
 - 3.8.C. held for a period of **ten (10) days** from the date of the bite/scratch, after which 1) the owner may reclaim (upon payment of fees), 2) the animal may be transferred to a rescue agency or adopted out; or 3) the animal may be euthanized and disposed of.
- 3.9.** The County will collect and retain all fees paid by animal owners who reclaim animals that have been impounded and reclaimed, regardless of which entity or agency placed the animal(s) at the Bastrop County Shelter.
- 3.10.** The County will require owners who desire to reclaim their animals to show proper identification and current rabies vaccination, prior to release of each impounded animal. Any owner located within the jurisdiction of the City that fails to provide proof of rabies vaccination may be referred to the City Animal Control Officer for the purpose of citation in accordance with City/State law.

4. TERM and FINANCIAL CONSIDERATION

- 4.1** This Agreement shall be effective for a term of **two (2) years**, beginning October 1, 2021 and ending September 30, 2023.
- 4.2** The Parties agree that the financial consideration to be paid by the City to the County for performance of the services, obligations, and responsibilities under this Agreement are as follows:
- 4.3** The City shall remit to the County Twelve Thousand Dollars (\$12,000.00) for the first year of this Agreement and Twelve Thousand Dollars (\$12,000.00) for the second year this Agreement, which amounts are due and payable by the City on or about October 1 for each year of this agreement. The County shall provide an invoice to the City for each payment due.

- 4.4** If the County provides requested assistance in capturing or controlling animals within their city limits, there will be a \$50 per hour charge for those services. These fees will be in addition to the service fees in subsection 4.3 above. Any such fees will be invoiced to the City within 60 days of the services being provided.

5. MISCELLANEOUS PROVISIONS

- 5.1.** Amendment or Revision The City and the County agree that a request to renegotiate, amend, or revise this Agreement may be made by either Party at any time during its term, upon a minimum of 90 days written notice to the other Party.

- 5.2. Notices** Written notices related to this Agreement shall be as follows:

5.2.A. To the County:

Bastrop County Judge
804 Pecan Street
Bastrop, Texas 78602

With Copy to:

Bastrop County District Attorney
804 Pecan Street
Bastrop, TX 78602

5.2.B. To the City:

City Manager Sylvia Carrillo
1311 Chestnut St
PO BOX 427
Bastrop, Texas 78602

- 5.3.** Effective Date- It is mutually understood and agreed to by the Parties hereto that this Agreement shall become **effective on the later of the dates noted below**, and shall remain in effect for a term as set out herein, unless otherwise terminated as per the provisions set forth herein.
- 5.4.** Written Notice Not to Renew- If either Party intends not to renew this Agreement, they shall give written notice to the other Party at least 90 days prior to the expiration date.
- 5.5.** Automatic Renewal Scenario- Since the services provided in this Agreement are essential to the health and safety of the citizens of the City, without such written notice to not renew, and without a new Agreement regarding the matters covered in the Agreement, then this Agreement will automatically be extended in full force and effect on a year to year basis, and the fees due by the City will be increased by 20% for each ensuing year the services are provided by the County under such automatic extension.

- 5.6.** No Liability of City or County Personnel - The Parties agree that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the City or County may have to Immunity under the laws of the State of Texas.
- 5.7.** Amendments- This Agreement may be amended only by a written instrument so stating which is executed by the Parties hereto.
- 5.8.** Severability- If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby, but shall be enforced to the greatest extent permitted by law.
- 5.9.** Headings- All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- 5.10.** Waivers- No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.
- 5.11.** Governing Law- This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by, the laws applicable to the State of Texas. Any disputes regarding this Agreement will be heard in the courts of Bastrop County, Texas, or in the Federal District Court in Austin, Western District of Texas, Austin District.

THE CITY OF BASTROP



Sylvia Carrillo (Dec 5, 2022 17:33 CST)

 City Manager

Date 12/5/2022

ATTEST: Ann Franklin
 City Secretary

COUNTY OF BASTROP



 County Judge

Date 11/2/22

ATTEST: 
 County Clerk

**AMENDMENT TO THE
INTERLOCAL AGREEMENT FOR ANIMAL CONTROL
SERVICES BETWEEN BASTROP COUNTY AND THE CITY
OF BASTROP**

This Amendment is made between Bastrop County (“County”) and the City of Bastrop, Texas (“City”) for an extension of the term of the Interlocal Agreement between the County and the City for Animal Control Services, attached hereto as Attachment “A” (“Agreement”).

The terms of the Agreement are hereby amended as follows.

- 1) The term of the Agreement is extended such that the Agreement shall remain in effect from October 1, 2023, through October 31, 2023.
- 2) The City agrees to pay the County a pro-rated amount, being the sum of One Thousand Dollars and 00/100 Dollars (\$1,000.00), for the continued provision of services under the Agreement during this extension of the term. Such payment shall be due by October 15, 2023.
- 3) All other terms and conditions of the original Agreement remain in full force and effect.

This Amendment, executed below upon full authority of each party’s governing body, will take effect October 1, 2023, and remain in effect through October 31, 2023, unless otherwise modified or terminated by the parties.

CITY OF BASTROP

ATTEST:

By: _____
City Manager

City Secretary

Date: _____

BASTROP COUNTY

By: _____
County Judge

ATTEST: _____
County Clerk

Date: _____