

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



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**March 28, 2023**

**2<sup>ND</sup> AMENDMENT Regular Council Meeting at 6:30 PM**

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*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.*

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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** - Sarah Dominguez and Sienna Guterrez, Lost Pines Elementary, Girl Scouts  
  
**TEXAS PLEDGE OF ALLEGIANCE** - *Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*
- 3. INVOCATION** - Pastor Bernie Jackson, Trinity Zion Ministries
- 4. PRESENTATIONS**
  - 4A. Mayor's Report
  - 4B. Council Members' Report

4C. City Manager's Report

- Iredell District Update
- DEI/Park Board Mural Update
- Vibe Tribe Sign

4D. A proclamation of the City Council of the City of Bastrop, Texas, welcoming Best Warrior Competition to the City of Bastrop.

Submitted by: Ann Franklin, City Secretary

4E. A proclamation of the City Council of the City of Bastrop, Texas, recognizing April as National Sexual Assault Awareness Month.

Submitted by: Ann Franklin, City Secretary

4F. A proclamation of the City Council of the City of Bastrop, Texas, recognizing April as Child Abuse Prevention Month.

Submitted by: Ann Franklin

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

**6. STAFF AND BOARD REPORTS**

6A. Receive presentation on the unaudited Monthly Financial Report for the period ending February 28, 2023.

Submitted by: Tracy Waldron, Chief Financial Officer

6B. Receive presentation and update from the Bastrop Economic Development Corporation from the March 27, 2023, meeting.

Submitted by: Sylvia Carrillo, City Manager

6C. Receive presentation and update of the Development Process from George Arimes, Intelligent Consulting.

Submitted by: Sylvia Carrillo, City Manager

**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](http://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 February 28, 2023, Regular meeting and March 7, 2023, Special Called meeting.

Submitted by: Ann Franklin, City Secretary

8B. Consider action to approve Resolution No. R-2023-49 of the City Council of the City of Bastrop, Texas, approving a Memorandum of Agreement with Bastrop County to use grant funds (if awarded) for the Riverwood Water Line Project; as attached in Exhibit A; providing for a repealing clause, and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

8C. Consider action to approve Resolution No. R-2023-51 of the City Council of the City of Bastrop, Texas, approving an additional professional services contract with Carollo Engineers, Inc. to continue to provide the services of project management, construction management and inspection for capital and non-capital improvement projects in the amount of four hundred thousand seven hundred fifty dollars (\$400,750) for approximately 12 months; attached in Exhibit B; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

8D. Consider action to approve the second reading of Ordinance No. 2023-04 of the City Council of the City of Bastrop, Texas, amending the Bastrop Building Block (B<sup>3</sup>) Code, Chapter 6, Section 6.5.003 and amending Bastrop Code of Ordinances Section 3.01.001 International Code Council (ICC); International Code Family; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

Submitted by: Keehren Baah, Assistant Planning Director

8E. Consider action to approve Resolution No. R-2023-52 by the City Council of the City of Bastrop, Texas responding to the application of CenterPoint Energy Resources Corp., D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division (CenterPoint), to increase rates under the Gas Reliability Infrastructure Program; suspending the effective date of this rate application for forty-five days; authorizing the city's participation in a coalition of cities known as the "Alliance Of CenterPoint Municipalities (ACM); requiring the reimbursement of costs; determining that the meeting at which the resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date.

Submitted by: Ann Franklin, City Secretary

## 9. ITEMS FOR INDIVIDUAL CONSIDERATION

9A. Consider action to approve a workplan for the Diversity, Equity, and Inclusion Board.

Submitted by: Sylvia Carrillo, City Manager

9B. Consider action to approve Resolution No. R-2023-48 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars (\$24,049,935); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

9C. Consider action to approve Resolution No. R-2023-47 of the City Council of the City of Bastrop, Texas, approving a professional engineering services contract with Freese and Nichols, Inc. (FNI) for the Wastewater Master Plan (WWMP) for a not to exceed amount of One Hundred Sixty-Five Thousand Dollars (\$165,000.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

9D. Consider action to approve Resolution No. R-2023-45 of the City Council of the City of Bastrop, Texas, approving a construction contract with Texas Materials Group Inc., dba Gulf Coast a CRH Company (Gulf Coast) for the Old Austin Highway Pavement Rehabilitation to a not-to-exceed amount of One Million Four Hundred Ninety Thousand One Hundred and Seven Dollars (\$1,490,107.00);authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

9E. Consider action to approve the first reading of Ordinance No. 2023-05 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2023 in accordance with existing statutory requirements; appropriating the various amounts herein as attached in Exhibit A; repealing all prior ordinances and actions in conflict herewith; establishing an effective date, and move to include on the April 11, 2023, City Council agenda for a second reading.

Submitted by: Tracy Waldron, Chief Financial Officer

9F. Consider action to approve Resolution No. R-2023-50 of the City Council of the City of Bastrop, Texas, approving the Financial Procedures Manual, which is attached as Exhibit A; providing for a repealing clause and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

9G. Consider action to approve Resolution No. R-2023-53 by the City Council of the City of Bastrop, Texas, to select the proxy to represent the City of Bastrop Texas at the Bluebonnet Electric Cooperative Annual meeting and instruct the proxy to vote for candidate(s) selected by Council.

Submitted by: Ann Franklin, City Secretary

9H. Consider action to approve the first reading of Ordinance No. 2023-08, the City Council of the City of Bastrop, Texas, amending Ordinance No. 2022-22 Fee Schedule of the City of Bastrop to amend Appendix A-Fee Schedule, A14.01.001, of the Code of Ordinances, to amend the cost of variance for Subdivision Variance Review, Zoning Review, and Zoning Board of Adjustment review fee from \$3,681 to \$500, as attached in Exhibit A; and providing for findings of fact, adoption, repealer, and severability; and establishing an effective date; and include in the April 11, 2023, consent agenda for the second reading.

Submitted by: Sylvia Carrillo, City Manager

9I. Consider action to approve the first reading of Ordinance No. 2023-07 of the City Council of the City of Bastrop Texas, amending the Bastrop Building Block (B3) Code Chapter 6, Section 6.3.009 private frontage, Subsections (d) and (f); and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting; and include on the April 11, 2023, consent agenda for second reading.

Submitted by: Sylvia Carrillo, City Manager

9J. Hold a public hearing and consider action to approve the first reading of Ordinance No. 2023-06 of the City Council of the City of Bastrop Texas, approving the zoning change for 1.998 acres out of the Nancy Blakey Survey, abstract 98, Bastrop County, Texas from P2 Rural to PS Core; 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; and include on the April 11, 2023, consent agenda for second reading.

Submitted by: Keerhen Baah, Assistant Director of Planning & Development

## **10. EXECUTIVE SESSION**

10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss potential acquisition of real estate relating to the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities 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 consideration of action to approve amendments to the Development Agreement between the City of Bastrop and Colorado Bend, LLC.**

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

## 12. 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](http://www.cityofbastrop.org) and said Notice was posted on the following date and time: Friday, March 24, 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:** March 28, 2023

**TITLE:**

Mayor's Report

**AGENDA ITEM SUBMITTED BY:**

Sylvia Carrillo, City Manager

**POLICY EXPLANATION:**

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

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

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

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

**ATTACHMENTS:**

1. PowerPoint

*Mayor's Report*  
*March 28, 2023*





# Latest Activities

Feb 25 – Mar 23

Events in 2023: 99



# Planned Events

March 24 - 28

Item 4A.

- March 24
  - Heart of Bastrop Talk Show Filming
  - CARTS Focus Group
  - Bastrop Little League Opening Day
- March 26
  - Commissioner's Court
  - Lead a Walk – Bastrop Recreation Center
  - BEDC Monthly Meeting
  - Diversity Board Meeting
- March 28
  - Rotary Presentation
  - City Council Meeting

# Upcoming Events & City Meetings

Item 4A.

- March 30 – Bastrop County Emergency Food Pantry mtg
- March 31
  - BEST Breakfast
  - Compass Rose – Women’s History Month Presentation
  - Heart of Bastrop Talk Show Filming
  - State of the City/Roast Event
- April 1 – 2023 Best Warrior Competition
- April 4 – Government Affairs Committee Meeting
- April 5
  - National Walking Day
  - Chamber Luncheon
- April 6 – Farm Street Opry
- April 7 – Good Friday (City offices closed)
- April 10 – Commissioner’s Court
- April 11- City Council Meeting



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Council Members' Report

**AGENDA ITEM SUBMITTED BY:**

Sylvia Carrillo, City Manager

**POLICY EXPLANATION:**

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

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

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

- (1) expressions of thanks, congratulations, or condolence;
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- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

City Manager's Report

- Iredell District Update
- DEI/Park Board Mural Update
- Vibe Tribe Sign

**AGENDA ITEM SUBMITTED BY:**

Sylvia Carrillo, City Manager

**POLICY EXPLANATION:**

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

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



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

A proclamation of the City Council of the City of Bastrop, Texas, welcoming Best Warrior Competition to the City of Bastrop.

**AGENDA ITEM SUBMITTED BY:**

Ann Franklin, City Secretary

**ATTACHMENTS:**

- Proclamation





# PROCLAMATION



**WHEREAS**, the “Best Warrior” Competition is an annual state-wide and International event that will take place 27 March 2023 through 1 April, 2023 at the Camp Swift Training Center in Bastrop, Texas; and

**WHEREAS**, this friendly contest puts the best Soldiers and Airmen from all National Guard units within the State of Texas along with Soldiers from the countries of Republic of Chile and Czech Republic, against each other to win the Best Non-Commissioned Officer and Best Junior Enlisted for both the Army and Air National Guard; and

**WHEREAS**, the U.S. winners of these four categories go onto Regional competition and hopefully on to represent the State of Texas at National competitions; and

**WHEREAS**, to honor the winners, their families, employers and supporters, the Texas Army National Guard Senior Enlisted Advisor, Command Sergeant Major Michelle L. Thompson, will hold a banquet on 1 April, 2023;

**NOW, THEREFORE**, I, Connie B. Schroeder, Mayor of the City of Bastrop, Texas, do hereby, welcome the “Best Warrior” Competition to the City of Bastrop and appreciate the presence of the Texas National Guard in our City and encourage our citizens to support this event by welcoming these Guard members into their businesses and our grateful community.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 28<sup>th</sup> day of March, 2023.

\_\_\_\_\_  
Connie B. Schroeder, Mayor



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

A proclamation of the City Council of the City of Bastrop, Texas, recognizing April as National Sexual Assault Awareness Month.

**AGENDA ITEM SUBMITTED BY:**

Ann Franklin, City Secretary







# PROCLAMATION



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

**WHEREAS**, The Family Crisis Center Sexual Assault Awareness campaign for 2022 calls attention to the fact that sexual violence is widespread and impacts every person in this community. The goal of SAAM is to raise public awareness about sexual violence and educate communities on how to prevent it. Rape, sexual assault, and sexual harassment harm our community, and statistics show one in five women and one in 67 men will be raped at some point in their lives (Smith et al., 2017). Child sexual abuse prevention must be a priority to confront the reality that one in six boys and one in four girls will experience sexual assault before age 18 (Dube et al., 2005). On campus, one in five women and one in 16 men are sexually assaulted during their time in college (Krebs, Lindquist, Warner, Fisher, & Martin, 2007); and

**WHEREAS**, Sexual harassment, assault, and abuse can happen anywhere, including in online spaces. Now more than ever, screens and technology connect us with others — but for too long, harassment, cyberbullying, and sexual abuse have been seen as unavoidable behaviors online; and

**WHEREAS**, Each of us has the power to change that. Together, we can make a difference to build inclusive, safe, and respectful communities that thrive online and offline; and

**WHEREAS**, 2023 marks the twenty-second anniversary of SAAM, and the theme of this year's campaign is "Drawing Connections: Prevention Demands Equity." We can build online communities free from sexual harassment, abuse, and assault by practicing digital consent, intervening when we see harmful behaviors, and promoting online communities that value inclusion, safety, and respect; and

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

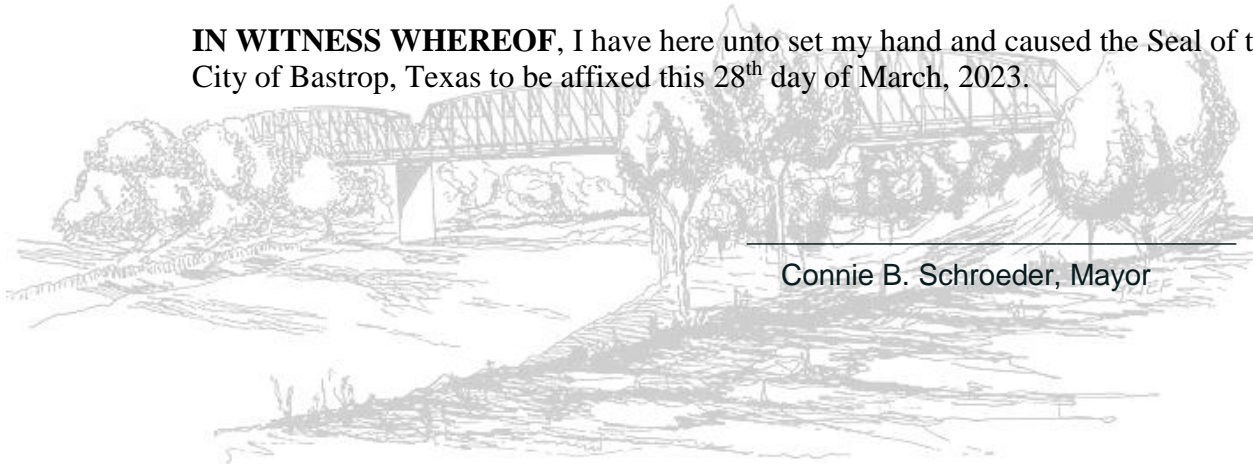
**WHEREAS**, Programs designed to educate and provide information to individuals about ways to help prevent sexual assault are encouraged throughout the community, while also providing survivors with safety, help, and justice through services and resources.

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

**NATIONAL SEXUAL ASSAULT AWARENESS MONTH**

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

**IN WITNESS WHEREOF**, I have here unto set my hand and caused the Seal of the City of Bastrop, Texas to be affixed this 28<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Connie B. Schroeder, Mayor



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

A proclamation of the City Council of the City of Bastrop, Texas, recognizing April as Child Abuse Prevention Month.

**AGENDA ITEM SUBMITTED BY:**

Ann Franklin, City Secretary



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# ROCLAMATION



**WHEREAS**, every child is a precious and unique gift who deserves the security of a loving and nurturing home; and

**WHEREAS**, every child deserves to grow up in a nurturing environment, free from abuse, neglect, violence, or endangerment of any kind; and

**WHEREAS**, children are vital to our community's future success, prosperity, and quality of life as well as being our most valuable assets; and

**WHEREAS**, child abuse and neglect cause serious harm to child development and have lifelong effects that endanger safety, hinder permanency in relationships, and reduce well-being, creating greater demands on society; and

**WHEREAS**, child abuse is considered to be one of the most serious public health problems with scientific studies documenting the link between the abuse and neglect of children and a wide range of medical, emotional, psychological, and behavioral disorders; and

**WHEREAS**, child abuse and neglect are a community responsibility affecting both the current and future quality of life of a community; and

**WHEREAS**, communities that provide parents with the social support, knowledge of parenting, child development, and concrete resources they need to cope with stress and how to nurture their children will ensure all children grow to their full potential; and

**WHEREAS**, effective child abuse prevention strategies succeed because of partnerships created among citizens, human service agencies, faith communities, health care providers, civic organizations, law enforcement agencies, and the business community.

**NOW, THEREFORE**, I, Connie B. Schroeder, Mayor of the City of Bastrop, Texas, do hereby proclaim the month of April 2023 as:

**Child Abuse Prevention Month**

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 28<sup>th</sup> day of March, 2023.

\_\_\_\_\_  
Connie B. Schroeder, Mayor





# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Receive presentation on the unaudited Monthly Financial Report for the period ending February 28, 2023.

**AGENDA ITEM SUBMITTED BY:**

Submitted by: Tracy Waldron, Chief Financial Officer

**BACKGROUND/HISTORY:**

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

**REVENUE**

General Fund exceeded the forecast by 7.3%

- Sales tax is 9% above forecast.
- Development fees are 33% above forecast due to Valverde subdivision Public Improvement Fees collected in advance.

Impact Fee Fund is running 11.5% short of forecast. This is due to timing of development activity.

Electric Fund is running 4.6% short of forecast. This month's billings was over forecast but did not make up January's negative variance.

All other funds are performing positive to forecast.

**EXPENDITURES**

Vehicle/Equipment Replacement Fund – this was the fund effected by the fraud transaction. This will come back to council in the future for a budget amendment.

All other funds are positive to forecast amounts.

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

**ATTACHMENTS:**

- Unaudited Monthly Financial Report for the period ending February 28, 2023.

# CITY OF BASTROP

Comprehensive Monthly Financial Report  
February 2023



# Performance at a Glance as of February 28, 2023



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



# COMPREHENSIVE MONTHLY FINANCIAL REPORT – February 2023

<u>Revenues:</u>	<u>FY2023 Approved Budget</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
General	\$ 16,847,515	\$ 9,651,117	\$ 10,358,043	7.3%
Designated	63,200	16,958	46,730	175.6%
General Fund One-time	382,395	382,395	386,331	1.0%
Street Maintenance	803,500	334,792	337,627	0.8%
Debt Service	3,870,175	3,411,798	3,449,180	1.1%
General Gov's Projects	3,052,000	152,083	154,546	1.6%
Water/Wastewater	7,927,692	2,910,244	3,193,591	9.7%
Water/Wastewater Debt	3,665,227	1,079,553	1,099,821	1.9%
Water/Wastewater Capital Proj	885,100	368,792	376,261	2.0%
Impact Fees	3,330,450	425,842	376,838	-11.5%
Vehicle & Equipment Replacement	1,435,490	1,037,734	1,101,444	6.1%
Electric	7,809,241	2,789,119	2,659,672	-4.6%
HOT Tax Fund	3,131,554	960,784	1,220,973	27.1%
Library Board	20,750	6,313	7,469	18.3%
Cemetery	184,700	66,958	88,345	31.9%
Capital Bond Projects	44,000	16,133	40,407,263	250363.4%
Grant Fund	4,665,330	70,000	70,587	0.8%
Park/Trail Land Dedicaiton	1,465	1,407	1,512	7.5%
Hunter's Crossing PID	575,879	561,732	572,114	1.8%
Bastrop EDC	4,213,909	1,663,084	1,836,280	10.4%
<b>TOTAL REVENUES</b>	<b>\$ 62,909,572</b>	<b>\$ 25,906,838</b>	<b>\$ 67,744,627</b>	<b>161.5%</b>

<b>POSITIVE</b>	= Positive variance or negative variance < 1% compared to forecast
<b>WARNING</b>	= Negative variance of 1-5% compared to forecast
<b>NEGATIVE</b>	= Negative variance of >5% compared to forecast

## BUDGET SUMMARY OF ALL FUNDS

	<u>FY2023</u> <u>Approved Budget</u>	<u>FY2023</u> <u>Forecast YTD</u>	<u>FY2023</u> <u>Actual YTD</u>	<u>Variance</u>
<b><u>Expense:</u></b>				
General	\$ 19,852,982	\$ 9,570,103	\$ 9,006,752	-5.9%
Designated	323,780	37,000	37,344	0.9%
General Fund One-time	456,200	97,000	96,525	-0.5%
Street Maintenance	807,927	75,000	72,445	-3.4%
Debt Service	3,850,699	688,105	684,289	-0.6%
General Gov't Projects	3,152,000	28,500	28,014	-1.7%
Water/Wastewater	8,592,325	3,797,410	3,609,922	-4.9%
Water/Wastewater Debt	3,823,204	1,073,896	1,073,897	0.0%
Water/Wastewater Capital Proj.	1,252,500	240,000	89,768	-62.6%
Revenue Bond, Series 2020	156,919	30,000	28,162	-6.1%
CO, Series 2021	20,450,575	9,312,000	9,380,933	0.7%
Impact Fees	7,884,300	562,250	562,023	0.0%
Vehicle & Equipment Replacement	918,623	543,360	828,540	52.5%
Electric	8,175,434	3,087,810	3,092,901	0.2%
HOT Tax Fund	3,899,827	2,169,264	1,900,197	-12.4%
Library Board	49,000	19,167	3,773	-80.3%
Cemetery	217,901	98,459	59,122	-40.0%
Hunter's Crossing PID	552,405	117,110	54,690	-53.3%
CO, Series 2013	210,791	76,000	50,277	-33.8%
CO, Series 2018	461,631	8,000	7,595	-5.1%
Limited Tax Note, Series 2020	149,948	66,000	63,944	-3.1%
America Rescue Plan	2,156,205	-	-	0.0%
CO, Series 2022	3,599,999	-	-	0.0%
CO, Series 2023	-	-	107,779	0.0%
Grant Fund	4,665,330	287,000	283,285	-1.3%
Bastrop EDC	9,409,248	1,089,583	904,241	-17.0%

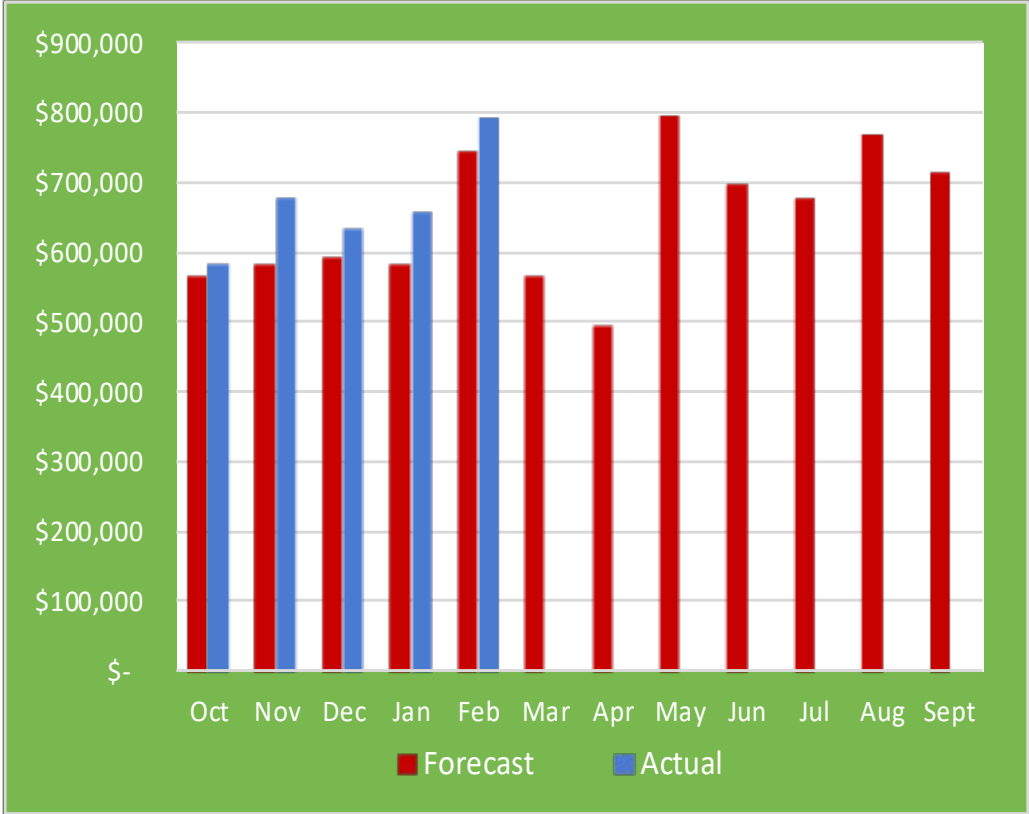
POSITIVE
WARNING
NEGATIVE

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

REVENUE ANALYSIS

**SALES TAX REVENUE**

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 564,594	\$ 580,268	\$ 15,674
Nov	580,384	675,521	\$ 95,137
Dec	589,203	632,136	\$ 42,933
Jan	581,720	655,945	\$ 74,225
Feb	741,498	787,504	\$ 46,006
Mar	564,577		\$ -
Apr	491,577		\$ -
May	790,561		\$ -
Jun	694,574		\$ -
Jul	675,685		\$ -
Aug	764,669		\$ -
Sept	710,958		\$ -
<b>Total</b>	<b>\$ 7,750,000</b>	<b>\$ 3,331,374</b>	<b>\$ 273,975</b>
Cumulative Forecast	\$ 3,057,399		
Actual to Forecast	\$ 273,975	9.0%	

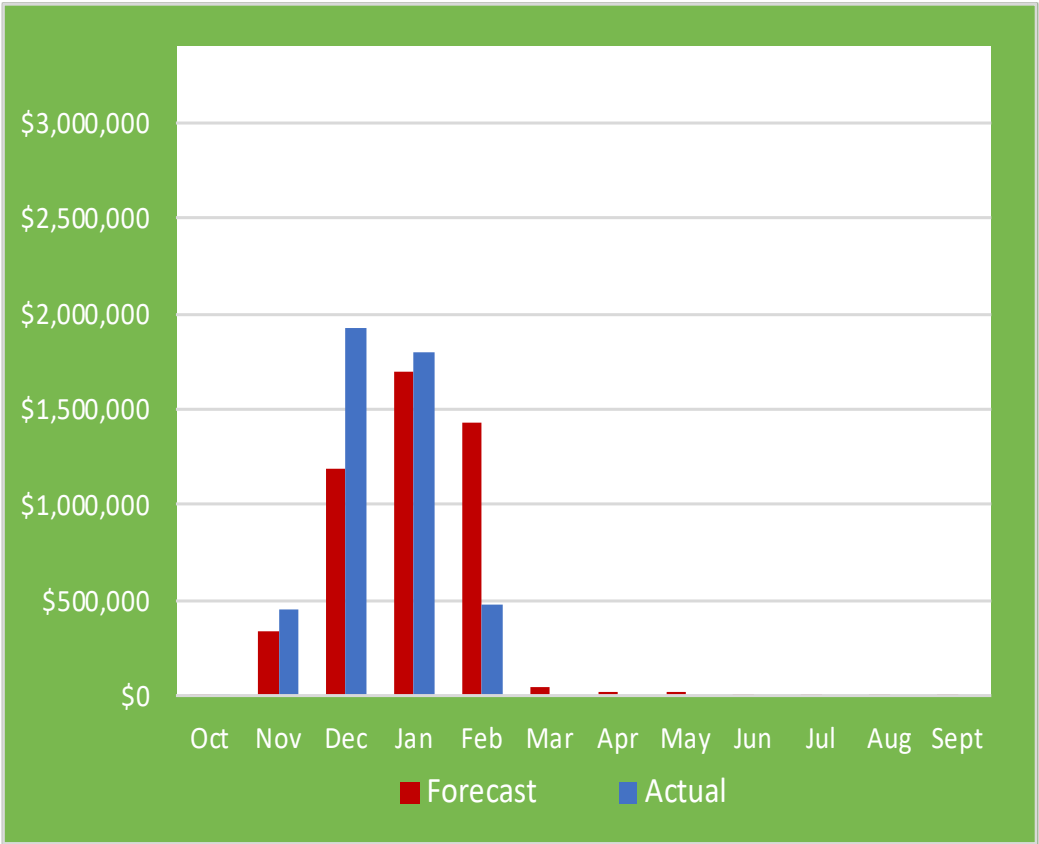


**POSITIVE**

Sales Tax is 46% of the total budgeted revenue for General Fund. The actual amounts for Oct. and Nov. are estimated due to the State Comptroller's two month lag in payment of these earned taxes. The actual is 9% greater than forecasted.

# PROPERTY TAX REVENUE

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 10,451	\$ 13,108	\$ 2,657
Nov	334,933	453,349	\$ 118,416
Dec	1,196,190	1,924,618	\$ 728,428
Jan	1,692,354	1,803,389	\$ 111,035
Feb	1,435,428	479,900	\$ (955,528)
Mar	47,848		
Apr	19,139		
May	19,138		
Jun	9,570		
Jul	9,570		
Aug	9,570		
Sept	570		
<b>Total</b>	<b>\$ 4,784,761</b>	<b>\$ 4,674,364</b>	<b>\$ 5,008</b>
Cumulative Forecast	\$ 4,669,356		
Actual to Forecast	\$ 5,008	0.11%	



POSITIVE

Property tax represents 29% of the total General Fund revenue budget. As you can see from the forecast, they are generally collected from December to February. The actual is breakeven with forecast.

## GENERAL FUND EXPENDITURES BY DEPT.

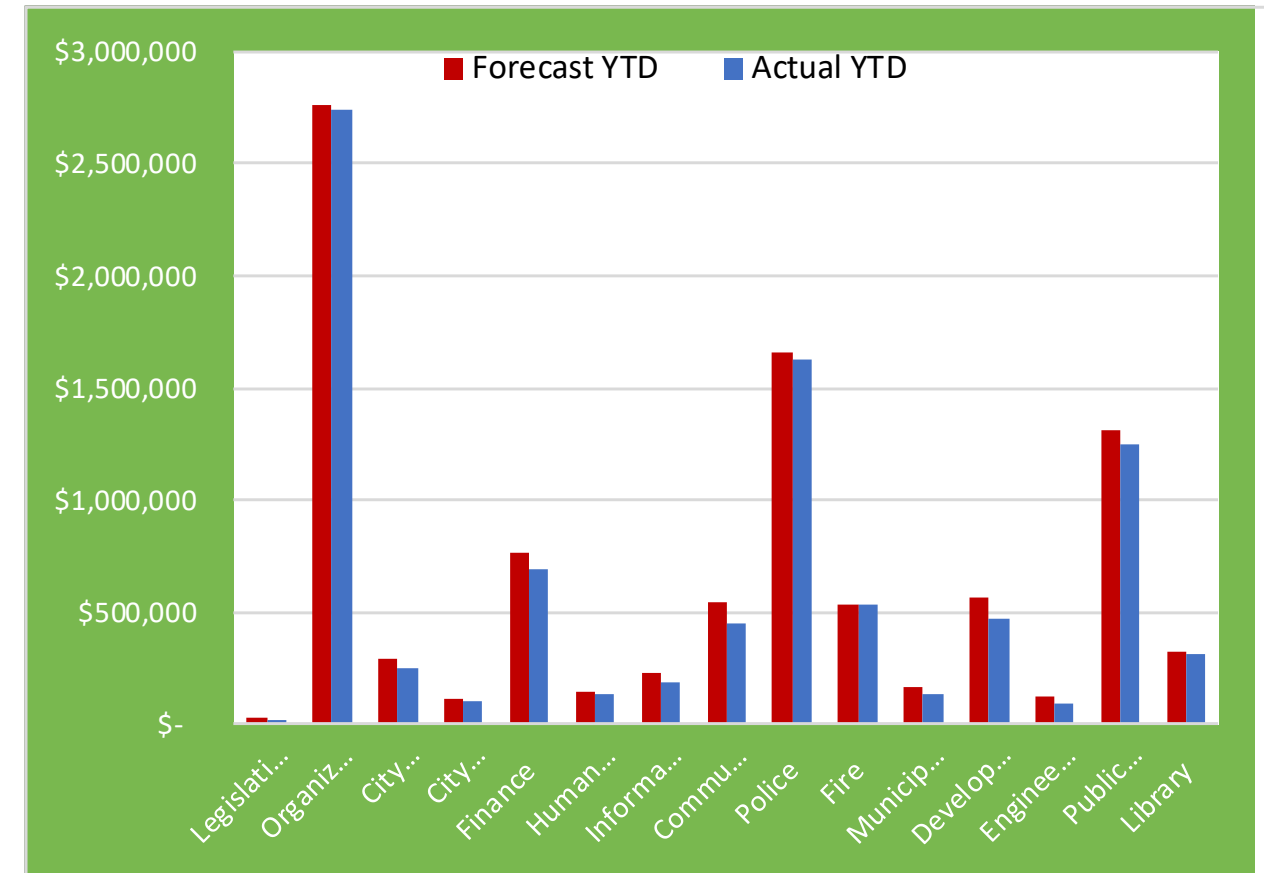
<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Legislative	\$ 28,835	\$ 17,277	\$ (11,558)
Organizational	2,760,335	2,738,060	\$ (22,275)
City Manager	297,236	251,373	\$ (45,863)
City Secretary	115,881	103,181	\$ (12,700)
Finance	770,286	688,854	\$ (81,432)
Human Resources	149,410	138,723	\$ (10,687)
Information Technology	233,015	192,071	\$ (40,944)
Community Engagemen	547,644	454,175	\$ (93,469)
Police	1,654,098	1,624,272	\$ (29,826)
Fire	535,271	537,641	\$ 2,370
Municipal Court	164,857	135,781	\$ (29,076)
Development Services	564,632	467,061	\$ (97,571)
Engineering	126,375	95,868	\$ (30,507)
Public Works	1,316,610	1,253,233	\$ (63,377)
Library	326,017	309,183	\$ (16,834)
<b>Total</b>	<b>\$ 9,590,502</b>	<b>\$ 9,006,753</b>	<b>\$ (583,749)</b>

Actual to Forecast

93.9%

POSITIVE

This page compares forecast to actual by department within the General Fund. YTD the actual is almost 94% of forecast.

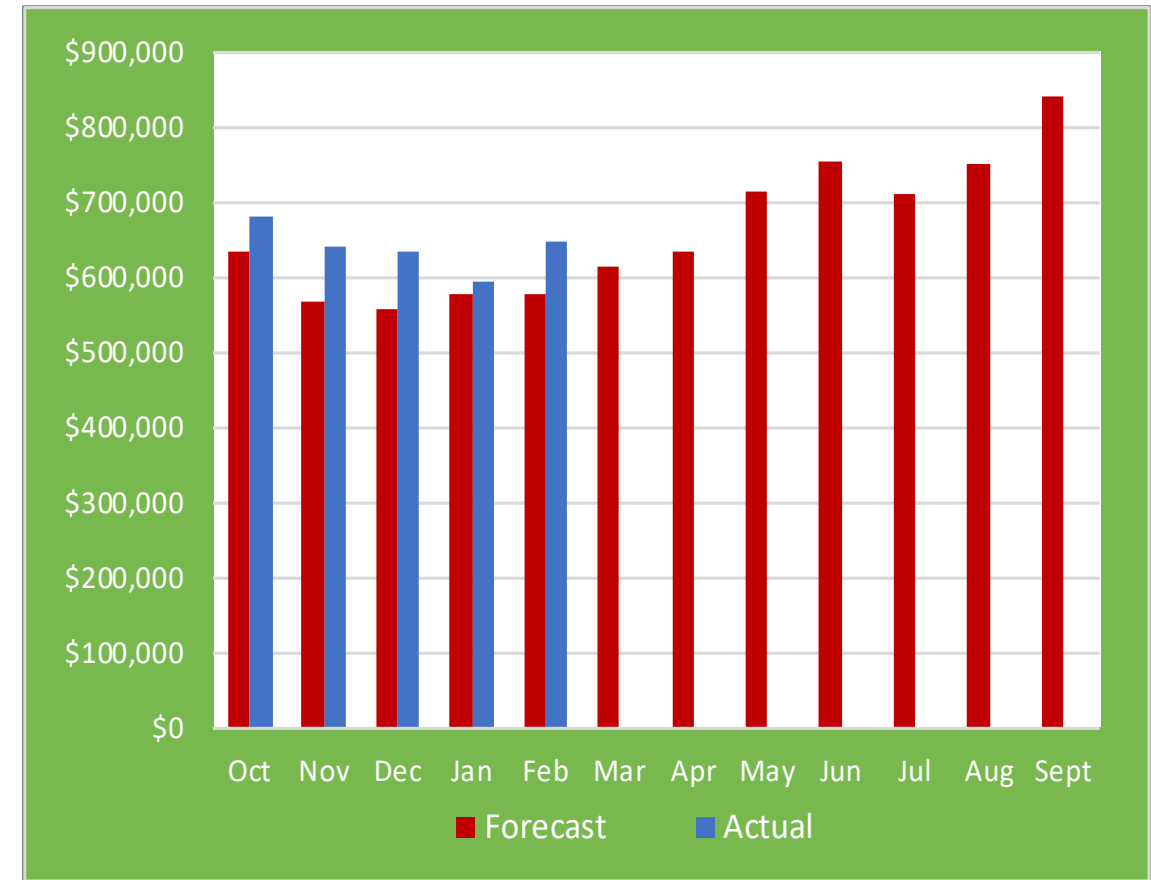


# COMPREHENSIVE MONTHLY FINANCIAL REPORT – February 2023

## REVENUE ANALYSIS

# WATER/WASTEWATER REVENUE

Month	FY2023 Forecast	FY2023 Actual	Monthly Variance
Oct	\$ 634,316	\$ 681,114	\$ 46,798
Nov	565,847	638,648	\$ 72,801
Dec	556,864	633,214	\$ 76,350
Jan	577,369	592,464	\$ 15,095
Feb	575,847	648,152	\$ 72,305
Mar	613,812		
Apr	634,316		
May	713,290		
Jun	752,777		
Jul	711,768		
Aug	751,255		
Sept	840,231		
<b>Total</b>	<b>\$ 7,927,692</b>	<b>\$ 3,193,592</b>	<b>\$ 283,349</b>
Cumulative Forecast	\$ 2,910,243		
Actual to Forecast	\$ 283,349	9.74%	



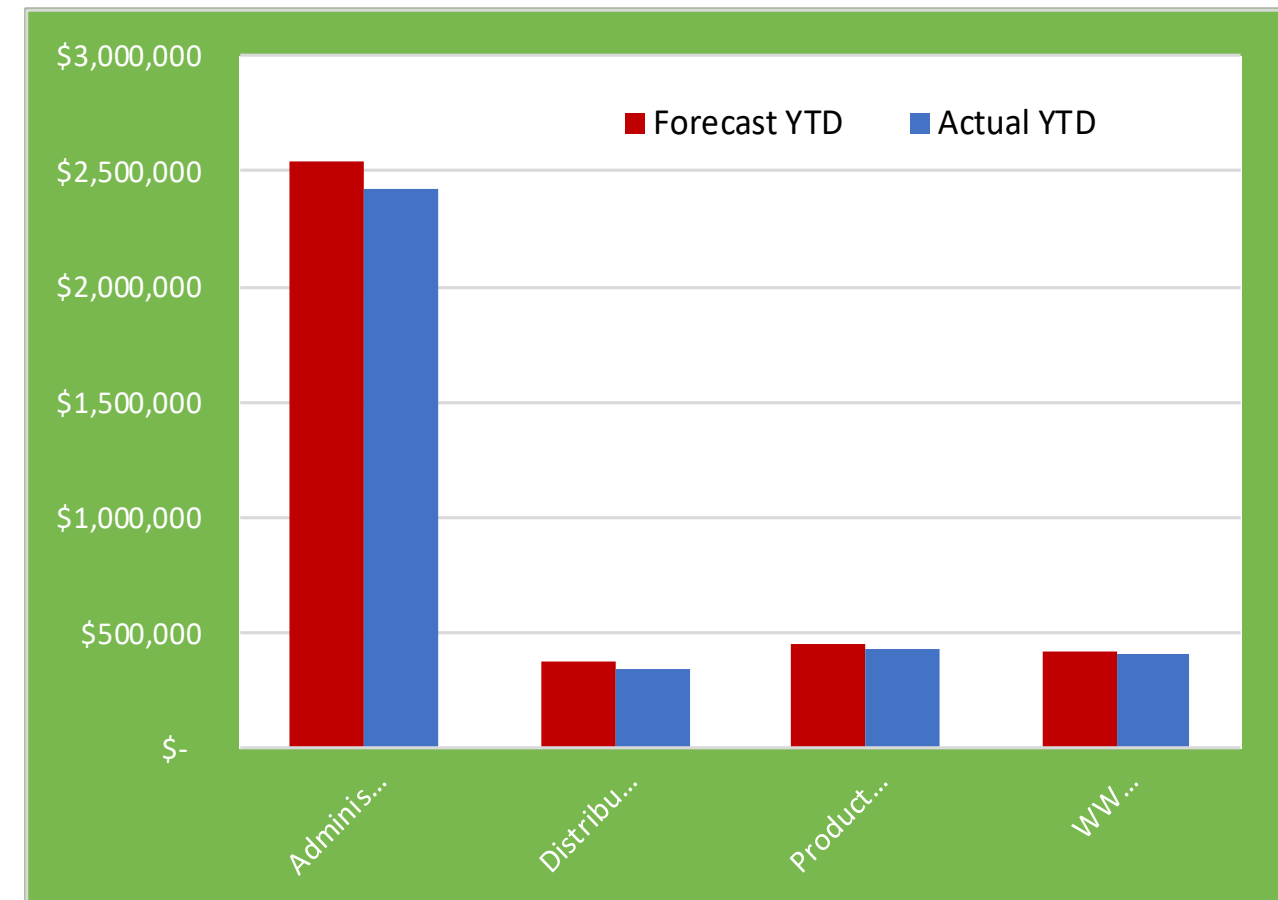
POSITIVE

The water and wastewater actual revenue is higher than forecast 9.7%. There were 18 new meters set this month, all residential.

EXPENSE ANALYSIS

# WATER/WASTEWATER EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Administration	\$ 2,542,322	\$ 2,418,211	\$ (124,111)
Distribution/Collection	376,648	347,374	\$ (29,274)
Production/Treatment	452,436	429,846	\$ (22,590)
WW Treatment Plant	<u>426,004</u>	<u>414,491</u>	<u>\$ (11,513)</u>
<b>Total</b>	<b><u>\$ 3,797,410</u></b>	<b><u>\$ 3,609,922</u></b>	<b><u>\$ (187,488)</u></b>
Actual to Forecast		95.1%	



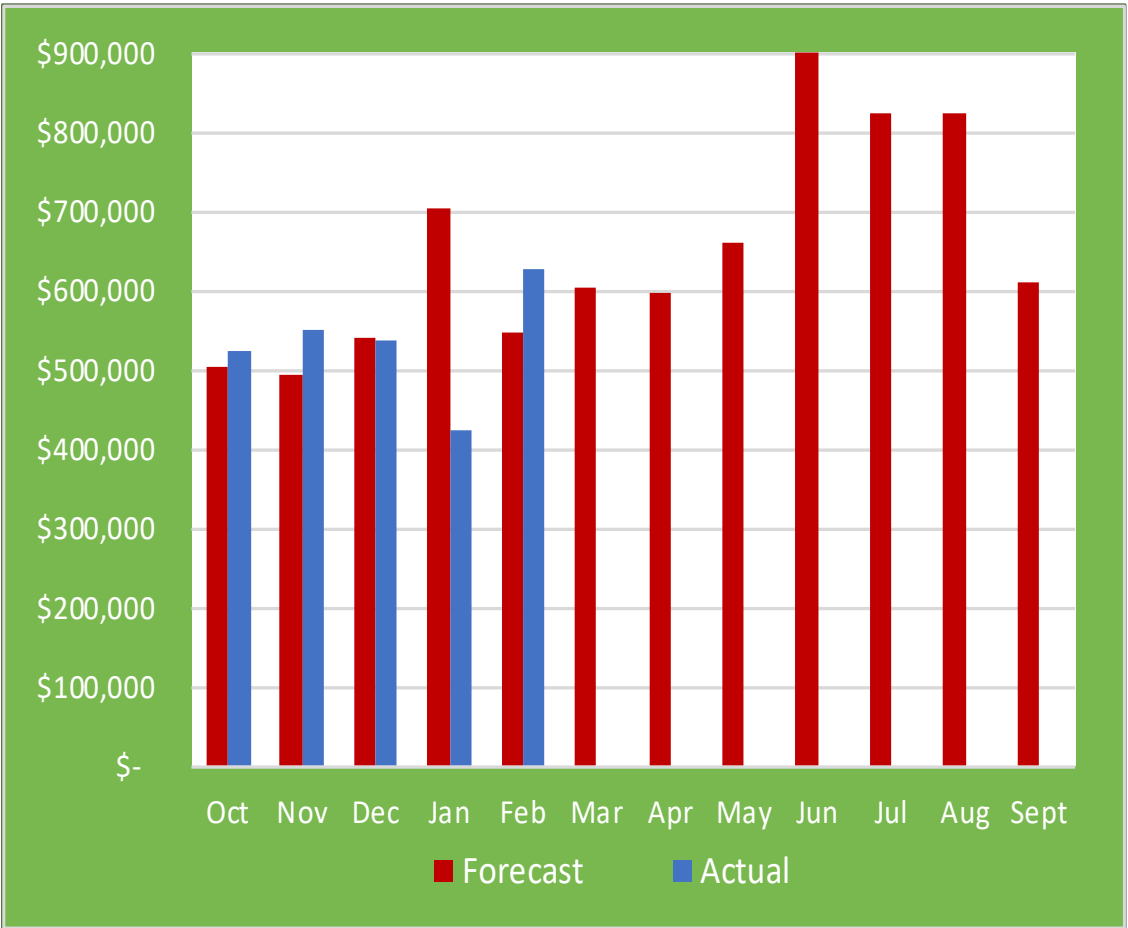
**POSITIVE**

This page compares actual to forecast by the divisions within the Water/Wastewater department. The actual is almost 95% of forecast.

REVENUE ANALYSIS

**ELECTRIC FUND REVENUE**

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 502,421	\$ 525,195	\$ 22,774
Nov	494,748	549,744	\$ 54,996
Dec	541,646	537,080	\$ (4,566)
Jan	703,592	422,138	\$ (281,454)
Feb	546,713	625,515	\$ 78,802
Mar	602,275		
Apr	596,937		
May	661,009		
Jun	900,177		
Jul	824,938		
Aug	824,553		
Sept	610,232		
<b>Total</b>	<b>\$ 7,809,241</b>	<b>\$ 2,659,672</b>	<b>\$ (129,448)</b>
Cumulative Forecast	\$ 2,789,120		
Actual to Forecast	\$ (129,448)	-4.64%	



**WARNING**

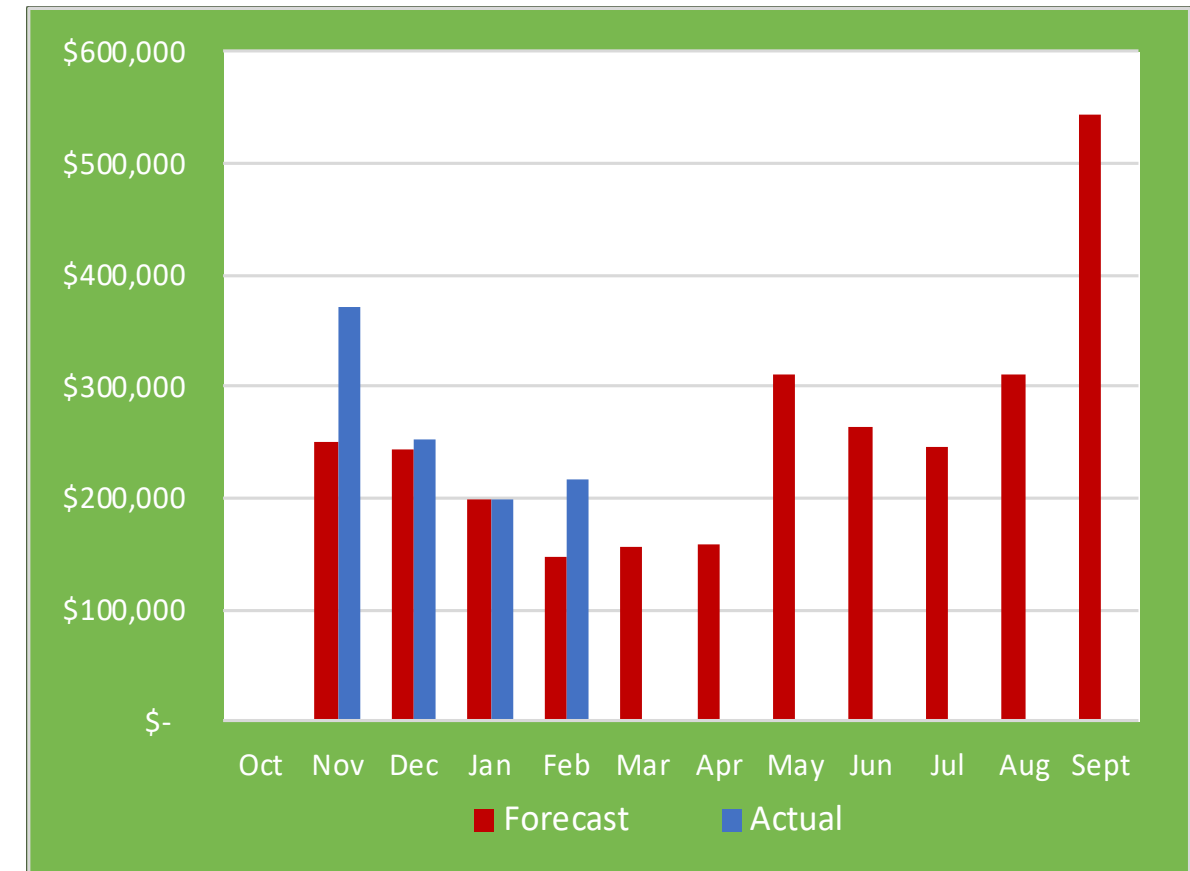
The Electric utility revenue is 4.6% below forecasted revenue. There were no new meters set this month. The large variance for January is related to lower consumption and less average billed days in the cycle.



REVENUE ANALYSIS

HOTEL OCCUPANCY TAX REVENUE

Month	FY2023 Forecast	FY2023 Actual	Monthly Variance
Oct	\$ -	\$ -	\$ -
Nov	250,157	371,527	\$ 121,370
Dec	242,550	252,705	\$ 10,155
Jan	198,824	199,512	\$ 688
Feb	148,190	216,718	\$ 68,528
Mar	156,848		
Apr	159,209		
May	311,172		
Jun	262,639		
Jul	245,059		
Aug	310,732		
Sept	544,620		
<b>Total</b>	<b>\$ 2,830,000</b>	<b>\$ 1,040,462</b>	<b>\$ 200,741</b>
Cumulative Forecast	\$ 839,721		
Actual to Forecast %	\$ 200,741	23.9%	



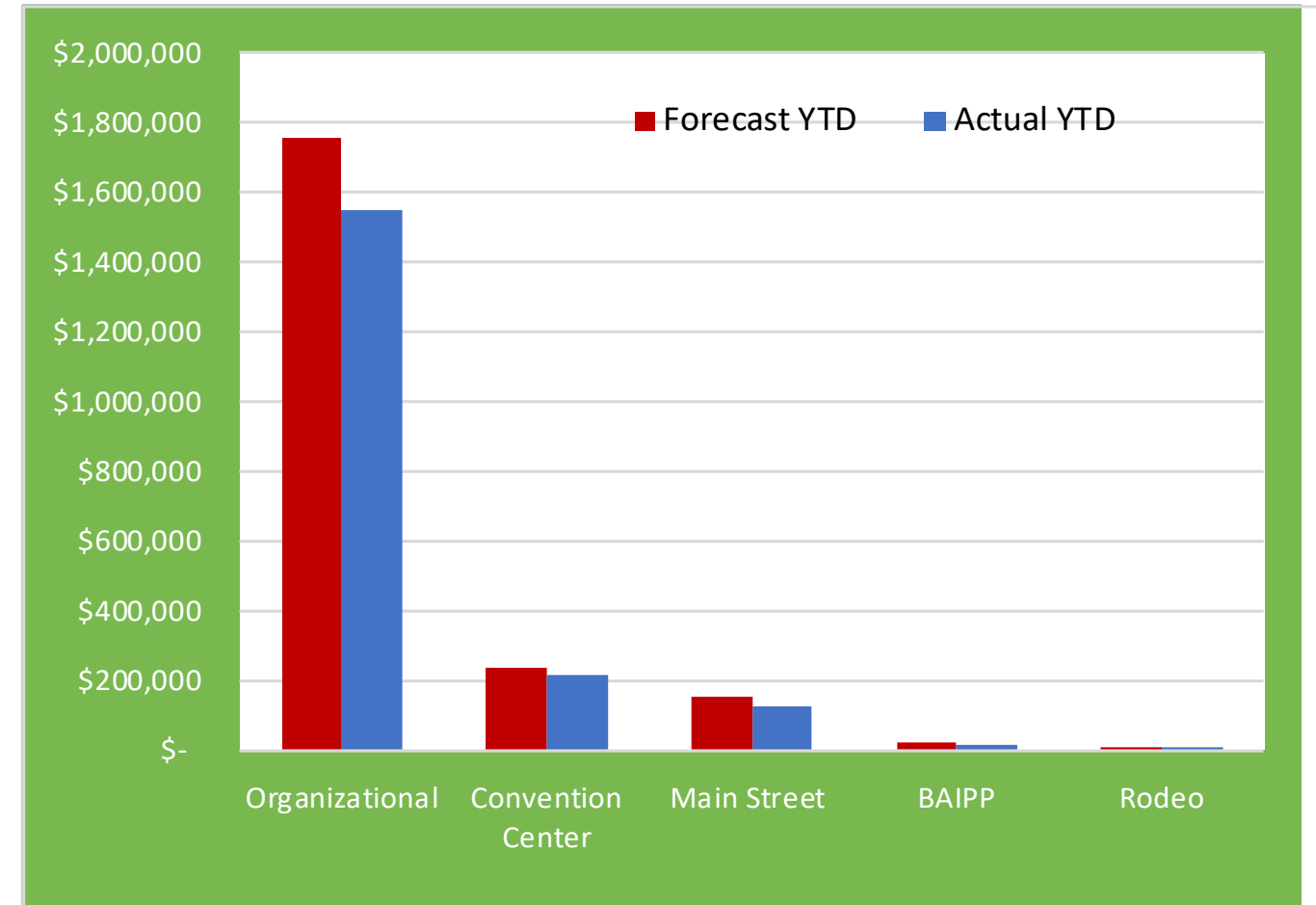
**POSITIVE**

This report is based on a cash method. The revenue is received by the City the month after collection. The September forecast represents the true-up of receipts for August and September. Actual is 24% over forecast.

EXPENSE ANALYSIS

# HOTEL OCCUPANCY TAX EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Organizational	\$ 1,757,530	\$ 1,546,804	\$ (210,726)
Convention Center	234,301	215,723	\$ (18,578)
Main Street	153,183	125,080	\$ (28,103)
BAIPP	22,917	11,287	\$ (11,630)
Rodeo	<u>1,333</u>	<u>1,303</u>	\$ (30)
<b>Total</b>	<b>\$ 2,169,264</b>	<b>\$ 1,900,197</b>	<b>\$ (269,067)</b>
Actual to Forecast		87.6%	



**POSITIVE**

This compares actual to forecast for each division located in the Hotel Occupancy Tax Fund. YTD is reporting actual at almost 87.6% of forecast.

# Legal fees by Attorney/Category

## COMPREHENSIVE MONTHLY FINANCIAL REPORT – February 2023

FIRM	CASE	FY20-21	FY21-22	FY22-23
<b>BUNDREN</b>				
	Pine Forest Interlocal	\$ 944	\$ 8,946	\$ -
<b>BOJORQUEZ</b>				
	General Legal	\$ 166,756	\$ 275,339	\$ 68,208
	NEU Review	\$ 8,493	\$ -	\$ -
	Bastrop 552	\$ 2,810	\$ 6,571	\$ -
	Crouch Suit	\$ -	\$ 12,006	\$ -
	Cox Suit	\$ -	\$ 11,122	\$ -
	COVID-19	\$ 188	\$ -	\$ -
	Pine Forest Interlocal	\$ -	\$ 3,710	\$ 256
	Prosecutor (Municipal Court)	\$ 16,331	\$ 21,783	\$ 6,897
	Water/WW	\$ 96,362	\$ 67,910	\$ 42,645
<b>RUSSEL RODRIGUEZ HYDE</b>				
	Hunter's Crossing PID	\$ 10,466	\$ 3,638	\$ 1,153
<b>MULTIPLE FIRMS</b>				
	W/WW Contract reviews	\$ 1,425	\$ 17,836	\$ 3,920
	Crouch Suit	\$ -	\$ 11,896	\$ -
	Cox Suit	\$ -	\$ 11,994	\$ -
<b>TAYLOR, OLSON, ADKINS, SRALLA &amp; ELAM</b>				
	71 Bastrop & MC Bastrop 71	\$ 7,333	\$ 18,967	\$ -
		<b>\$ 311,106</b>	<b>\$ 471,716</b>	<b>\$ 123,079</b>

### SUMMARY OF CASE/TYPE

Row Labels	Sum of FY20-21	Sum of FY21-22	Sum of FY22-23
71 Bastrop & MC Bastrop 71	\$ 7,333	\$ 18,967	\$ -
Bastrop 552	\$ 2,810	\$ 6,571	\$ -
COVID-19	\$ 186	\$ -	\$ -
General Legal	\$ 166,756	\$ 275,339	\$ 68,208
Hunter's Crossing PID	\$ 10,466	\$ 3,638	\$ 1,153
NEU Review	\$ 8,493	\$ -	\$ -
Pine Forest Interlocal	\$ 944	\$ 12,656	\$ 256
Prosecutor (Municipal Court)	\$ 16,331	\$ 21,783	\$ 6,897
W/WW Contract reviews	\$ 1,425	\$ 17,836	\$ 3,920
Water/WW	\$ 96,362	\$ 67,910	\$ 42,645
Crouch Suit	\$ -	\$ 23,901	\$ -
Cox Suit	\$ -	\$ 23,116	\$ -
<b>Grand Total</b>	<b>\$ 311,106</b>	<b>\$ 471,716</b>	<b>\$ 123,079</b>



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Receive presentation and update from the Bastrop Economic Development Corporation from the March 27, 2023, meeting.

**AGENDA ITEM SUBMITTED BY:**

Sylvia Carrillo, City Manager





# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Receive presentation and update of the Development Process from George Arimes, Intelligent Consulting.

**AGENDA ITEM SUBMITTED BY:**

Sylvia Carrillo, City Manager





# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve City Council minutes from the February 28, 2023, Regular Meeting and March 7, 2023 Special Meeting.

**AGENDA ITEM SUBMITTED BY:**

Ann Franklin, City Secretary

**BACKGROUND/HISTORY:**

N/A

**FISCAL IMPACT:**

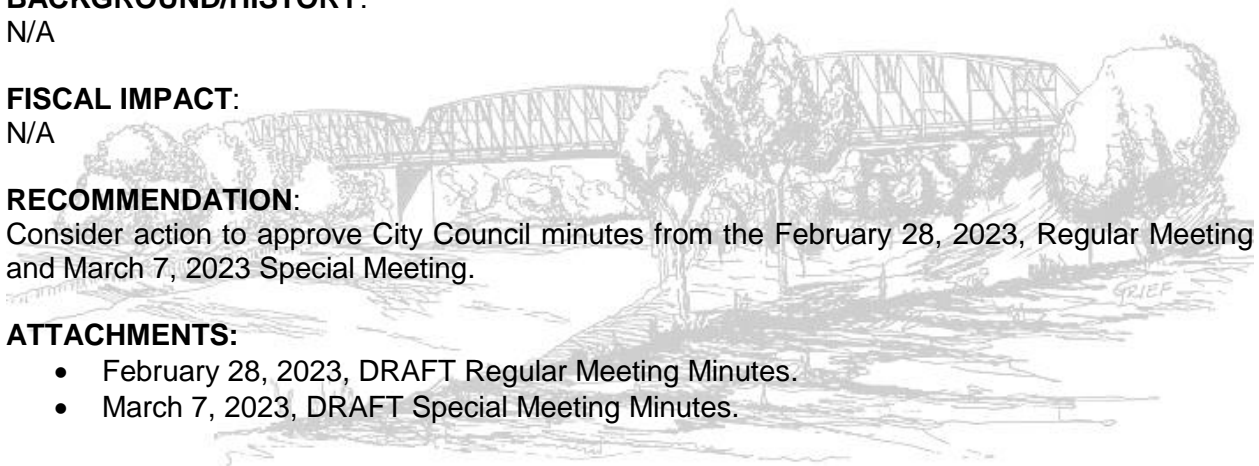
N/A

**RECOMMENDATION:**

Consider action to approve City Council minutes from the February 28, 2023, Regular Meeting and March 7, 2023 Special Meeting.

**ATTACHMENTS:**

- February 28, 2023, DRAFT Regular Meeting Minutes.
- March 7, 2023, DRAFT Special Meeting Minutes.



**FEBRUARY 28, 2023**

The Bastrop City Council met in a regular meeting on Tuesday, February 28, 2023, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Schroeder and Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch, and Kirkland. Officers present were: City Manager, Sylvia Carrillo; City Secretary, Ann Franklin; and City Attorney, Alan Bojorquez.

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

**The City Council met at 5:02 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:**

- 2A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss potential acquisition of real estate relating to the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project.
- 2B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding a Support Services Agreement, and Policy for the Bastrop Economic Development Corporation, and related matters.
- 2C. 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 potential acquisitions of real estate relating to the Agnes Street and Vista Puente Drive right of ways and related infrastructure, and another miscellaneous property.
- 2D. 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 consider amendment to an existing development agreement concerning the Colorado Bend project.
- 2E. 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 related to matters regarding an Interlocal Agreement with Bastrop County related to development review in the City's extraterritorial jurisdiction also known as the (1445 agreement)and other areas necessary to the city of Bastrop.
- 2F. 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 to discuss a proposed development located at 1408 Chestnut.
- 2G. City Council shall convene into closed executive session pursuant to Texas Government Code Section 551.071 and Section 551.072 to seek the advice of legal counsel and to discuss the extension of a lease and deliberate the related terms of a new agreement for real property located in Fisherman's Park.

Mayor Schroeder recessed the Executive Session at 6:28 p.m.

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

2A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss potential acquisition of real estate relating to the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project.

**A motion was made by Council Member Lee to approve Resolution No. R-2023-36, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.**

2C. 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 potential acquisitions of real estate relating to the Agnes Street and Vista Puente Drive right of ways and related infrastructure, and another miscellaneous property.

**A motion was made by Mayor Pro Tem Rogers to approve Resolution No. R-2023-37 and Resolution No. R-2023-38, seconded by Council Member Crouch, motion was approved on a 5-0 vote.**

**CALL TO ORDER - REGULAR MEETING - 6:30 P.M.**

Mayor Schroeder called the meeting to order at 6:30 p.m. with a quorum present. Council Member Plunkett was not present.

**PLEDGE OF ALLEGIANCE**

Hannah Knobloch and Claire Culpepper, Cedar Creek Intermediate School, Student Council, led the pledges.

**INVOCATION**

Bob Long, Police Chaplain, gave the invocation.

**PRESENTATIONS**

7A. Mayor's Report

7B. Council Members' Report

7C. City Manager's Report

**CITIZEN COMMENTS**

**SPEAKERS**

**Roger W. Henderson  
706 MLK Dr.  
Bastrop, Texas 78602  
512-303-0606**

**Susan Blume  
109 Eleanor Ln.  
Bastrop, TX 78602**



618-692-0761

**George Piazza**  
127 Eleanor Ln  
Bastrop, TX 78602  
727-293-6904

#### **STAFF AND BOARD REPORT**

- 9B. Receive the Annual Comprehensive Financial Report for the period ending September 30,2022, which includes the independent auditor's report presented by the independent audit firm of Belt Harris Pechacek, LLP.  
Submitted by: Tracy Waldron, Chief Financial Officer  
**Presentation was made by Robert Belt, Belt Harris Pechacek, LLP.**

#### **PRESENTATIONS CONTINUED**

- 7D. Quarterly Report  
Submitted by: Sylvia Carrillo, City Manager  
**Presentation was made by Sylvia Carrillo, City Manager.**

#### **WORK SESSIONS/BRIEFINGS - NONE**

#### **STAFF AND BOARD REPORTS CONTINUED**

- 9A. Receive presentation on the unaudited Monthly Financial Report for the period ending January 31, 2023.  
Submitted by: Tracy Waldron, Chief Financial Officer  
**Presentation was made by Tracy Waldron, Chief Financial Officer.**
- 9C. Receive Annual Racial Profiling Report from the Bastrop Police Department.  
Submitted by: Vicky Steffanic, Interim Chief of Police  
**Presentation was made by Vicky Steffanic, Interim Chief of Police.**

#### **CONSENT AGENDA**

**A motion was made by Council Member Lee to approve Items 11A, 11B, 11C, 11D, 11F, and 11G as listed on the Consent Agenda after being read into the record by City Secretary Ann Franklin. Seconded by Council Member Crouch, motion was approved on a 4-0 vote. Mayor Pro Tem Rogers was not present.**

- 11A. Consider action to approve City Council minutes from the February 14, 2023, Regular meeting; February 21, 2023, Joint City Council and Parks Board meeting; and February 23, 2023, Special Called meeting.  
Submitted by: Ann Franklin, City Secretary
- 11B. Consider action to approve the second reading of Ordinance No. 2023-01 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, by adding new section 1.02.005 – Termination of Inactive Campaign Treasurer Appointment; providing for repealer and severability; establishing an effective date; proper notice and meeting.

Submitted by: Ann Franklin, City Secretary

- 11C. Consider action to approve Resolution No. R-2023-28 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Isaac Merino, Place 5 of the Construction Standard Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.

Submitted by: Ann Franklin, City Secretary

- 11D. Consider action to approve the second reading of Ordinance No. 2023-03 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual verification of attendance and residency for members of boards, commissions, task forces, committees and advisory bodies; and providing for: findings of fact, adoption, repealer, severability, establishing an effective date, proper notice and meeting.

Submitted by: Sylvia Carrillo, City Manager

- 11F. Consider action to approve Resolution No. R-2023-32 of the City Council of the City of Bastrop, Texas, designating authorized signatories for contractual documents and documents for requesting funds pertaining to the Texas Community Development Block Grant Program (TxCDBG); providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

- 11G. Consider action to approve Resolution No. R-2023-31 of the City Council of the City of Bastrop, Texas authorizing the submission of a Texas Community Development Block Grant Program application to the Texas Department of Agriculture for the Community Development Fund; reaffirming various policies and procedures required in conformity with the Civil Rights Act, and the Fair Housing Act, as shown in Exhibit A; providing for a repealing clause and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

## DISCUSSION ITEM

- 11E. Consider action to approve Resolution No. R-2023-29 of the City Council of the City of Bastrop, Texas to award an engineering service contract to provide engineering services for the City's 2023-2024 Community Development Fund application and project-related engineering services if funded; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

**Presentation was made by Tracy Waldron, Chief Financial Officer.**

**A motion was made by Council Member Lee to approve Resolution No. R-2023-30 awarding an engineering service contract to Halff and Associates, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.**

## ITEMS FOR INDIVIDUAL CONSIDERATION

- 12A. Consider action to approve Resolution No. R-2023-30 of the City Council of the City of Bastrop, Texas, recommending designating Bastrop Post Office, 1106 Main Street, Bastrop, Texas as “Sergeant Major Billy D. Waugh Post Office”.  
Submitted by: Sylvia Carrillo, City Manager  
**A motion was made by Council Member Lee to approve Resolution No. R-2023-30, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**
- 12D. Consider action to approve Resolution No. R-2023-27 of the City Council of the City of Bastrop, Texas approving an agreement between the City of Bastrop and Bastrop River Company providing for a five year lease of a .52 acre portion of A11 Bastrop town tract, acres 5.100 (city park) located in Fisherman’s Park with an option to renew for three additional two-year term upon mutual agreement; authorizing the city manager to execute said lease agreement on behalf of the city; and declaring an effective date.  
Submitted by: Trey Job, Assistant City Manager  
**Presentation was made by Trey Job, Assistant City Manager**  
  
**A motion was made by Council Member Kirkland to approve a 30-day extension of existing lease and tabling the motion to approve the new lease with staff bringing it back based on direction received in Executive Session at the next most appropriate meeting, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**
- 12E. Consider action to approve Resolution No. 2023-33 revising the agreement for subdivision plat regulation in the City of Bastrop’s ETJ in Bastrop County also known as the (1445 agreement); providing for repeal; and providing an effective date.  
Submitted by: Sylvia Carrillo, City Manager  
**This item was pulled from the agenda.**
- 12F. Consider action to approve the second reading of Ordinance No. 2023-02 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual work plans for city boards, commissions, task forces, committees and advisory bodies; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.  
Submitted by: Sylvia Carrillo, City Manager  
**A motion was made by Council Member Kirkland to approve the second reading of Ordinance No. 2023-02, seconded by Council Member Lee, motion was approved on a 5-0 vote.**
- 12G. Consider action to approve amendments to the Development agreement between the City of Bastrop and Colorado Bend, LLC. Authorizing the City Manager to execute all necessary documents; providing for repeal; and providing an effective date.  
Submitted by: Sylvia Carrillo, City Manager  
**This item was pulled from the agenda.**

- 12H. Consider action to approve Resolution No. R-2023-34 of the City Council of the City of Bastrop, Texas, authorizing the ability to enter into a wholesale wastewater agreement with Corix Utilities Texas, LLC; attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Trey Job, Assistant City Manager

**Presentation was made by Trey Job, Assistant City Manager**

**A motion was made by Council Member Kirkland to approve Resolution No. R-2023-34, approving the terms and authorizing the Mayor or City Manager to execute the contract that matches the terms that are before Council, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**

### EXECUTIVE SESSION CONTINUED

**The City Council met at 8:30 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:**

- 2B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding a Support Services Agreement, and Policy for the Bastrop Economic Development Corporation, and related matters.

**Mayor Schroeder recessed the Executive Session at 10:15 p.m.**

### ITEMS FOR INDIVIDUAL CONSIDERATION CONTINUED

- 12B. Consider action to approve Resolution No. R-2023-23 approving appointment of Caroline A. McClimon, JD as Presiding Municipal Judge, Bastrop Municipal Court, City of Bastrop and approving a contract to provide services, attached as Exhibit A; providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

**Presentation was made by Sylvia Carrillo, City Manager.**

**A motion was made by Council Member Kirkland to approve Resolution No. R-2023-23, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**

- 12C. Consider action to approve Resolution No. R-2023-39, of the City Council, of the City of Bastrop, Texas, approving a Request for Qualifications be issued for one or more Associate Judges; in the Municipal Court of the City of Bastrop, providing for a repeal; and providing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer.

**Presentation was made by Sylvia Carrillo, City Manager.**

**A motion was made by Council Member Lee to approve Resolution No. R-2023-39, seconded by Council Member Crouch, motion was approved on a 5-0 vote.**

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

2B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding a Support Services Agreement, and Policy for the Bastrop Economic Development Corporation, and related matters.

**Motion was made by Council Member Lee to direct the City Attorney to draft a resolution that institutes the following: a review of BEDC Board Members; evaluation of BEDC President and CEO; a hiring freeze; and assessment of expenditures, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**

**Motion was made by Council Member Crouch to direct the City Attorney to meet with the BEDC General Counsel to finalize the draft policy for Economic Development incentives, and general operations, seconded by Council Member Kirkland, motion was approved on a 5-0 vote.**

**Adjourned at 10:18 p.m. without objection.**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Mayor Connie Schroeder

\_\_\_\_\_  
City Secretary Ann Franklin

**The Minutes were approved on March 28, 2023, by Council Member Name's motion, Council Member Name's second. The motion was approved on a 5-0 vote.**

**MARCH 7, 2023**

The Bastrop City Council met in a regular meeting on Tuesday, March 7, 2023, at 4:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Schroeder and Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch, and Kirkland. Officers present were: City Manager, Sylvia Carrillo; City Secretary, Ann Franklin; and City Attorney, Rezzin Pullum.

**CALL TO ORDER - SPECIAL MEETING - 4:30 P.M.**

Mayor Schroeder called the meeting to order at 4:30 p.m. with a quorum present.

**CITIZEN COMMENTS****SPEAKERS**

**Becky Schmitz**  
1105 Main Street  
Bastrop

**CONSENT AGENDA**

**A motion was made by Mayor Pro Tem Rogers to approve Items 3A, 3B, and 3C as listed on the Consent Agenda after being read into the record by City Secretary Ann Franklin. Seconded by Council Member Lee, motion was approved on a 4-0 vote. Council Member Plunkett was off the dais.**

- 3A. Consider action to approve Resolution No. R-2023-40 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Michael Lucas, Place 3 of the Parks Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.  
Submitted by: Ann Franklin, City Secretary
- 3B. Consider action to approve Resolution No. R-2023-42 of the City Council of the City of Bastrop, Texas, approving a Joint Agreement between the City of Bastrop (City) and Bastrop Independent School District (BISD), City of Elgin, City of Smithville, Elgin Independent School District (EISD), Lexington Independent School District, McDade Independent School District and Wildwood Municipal Utility District for the May 6, 2023 Special and General Election for Bastrop, Texas, attached as Exhibit A; authorizing the City Manager to execute all necessary documents; and providing an effective date.  
Submitted by: Ann Franklin, City Secretary
- 3C. Consider action to approve Resolution No. R-2023-43 of the City Council of the City of Bastrop, Texas, authorizing participation with the State of Texas, through the office of the Attorney General, in the latest Global Opioid Settlements and approving settlement participation form submission to Attorney General Office; authorizing the City Manager to execute all related documents; and providing for an effective date.  
Submitted by: Sylvia Carrillo, City Manager

**ITEMS FOR INDIVIDUAL CONSIDERATION**

- 4A. Consider action to approve Resolution No. R-2023-33 revising the agreement for subdivision plat regulation in the City of Bastrop's ETJ in Bastrop County also known as the (1445 agreement); providing for repeal; and providing an effective date.  
Submitted by: Sylvia Carrillo, City Manager  
**Presentation was made by Sylvia Carrillo, City Manager**

**SPEAKERS**

**Myra Gaepf**  
**610 W. 5<sup>th</sup> St.**  
**Austin, Tx 78701**  
**512-472-7455**

**Rick Neff**  
**136 Territory Drive**  
**Bastrop, Tx**

**A motion was made by Mayor Pro Tem Rogers to approve Resolution No. R-2023-33, seconded by Council Member Lee, motion was approved on a 5-0 vote.**

- 4B. Consider action to approve Resolution No. R-2023-27 of the City Council of the City of Bastrop, Texas approving an agreement between the City of Bastrop and Bastrop River Company providing for a five year lease of a .52 acre portion of A11 Bastrop town tract, acres 5.100 (city park) located in Fisherman's Park with an option to renew for three additional two-year term upon mutual agreement; authorizing the city manager to execute said lease agreement on behalf of the city; and declaring an effective date.  
Submitted by: Trey Job, Assistant City Manager

**SPEAKER**

**Lee Harle**  
**205 Perkins St.**  
**Bastrop, TX**  
**512-921-8423**

**A motion was made by Mayor Pro Tem Rogers to approve Resolution No. R-2023-27 with a 3.5% increase over the first 5 years, seconded by Council Member Kirkland, motion was approved on a 5-0 vote.**

**EXECUTIVE SESSION**

**The City Council met at 5:03 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551.071 and 551.087, to discuss the following.**

- 4C. Consider action to approve amendments to the Development agreement between the City of Bastrop and Colorado Bend, LLC. Authorizing the City Manager to execute all necessary documents; providing for repeal; and providing an effective date.  
Submitted by: Sylvia Carrillo, City Manager

**Mayor Schroeder recessed the Executive Session at 5:57 p.m.**

- 4C. Consider action to approve amendments to the Development agreement between the City of Bastrop and Colorado Bend, LLC. Authorizing the City Manager to execute all necessary documents; providing for repeal; and providing an effective date.  
Submitted by: Sylvia Carrillo, City Manager

**No action was taken.**

- 4D. Hold a public hearing and consider action to approve the first reading of Ordinance No. 2023-04 of the City Council of the City of Bastrop, Texas, amending the Bastrop Building Block (B<sup>3</sup>) Code, Chapter 6, Section 6.5.003 amending the Authentic Bastrop Pattern Book, and amending Bastrop Code of Ordinances Section 3.01.001 International Code Council (ICC); International Code Family; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting; and move to include on the March 28, 2023, consent agenda for second reading.

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

**Presentation was made by Jennifer C. Bills, Director of Planning & Development**

**Public hearing opened.**

**Public hearing closed.**

**A motion was made by Council Member Kirkland to approve the first reading of Ordinance No. 2023-04 with the following, and include on the March 28, 2023, consent agenda for second reading, seconded by Council Member Lee, motion was approved on a 5-0 vote.**

**Direction was given by the maker of the motion for staff to come back to second reading of the ordinance with the inclusion of: 50% or greater transparency; statement of allowing pet fences as long as it is not accessible to children; and removal of the reference to "pattern book".**

#### **EXECUTIVE SESSION CONTINUED**

**The City Council met at 6:15 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:**

- 5A. 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 City Council's oversight of the Bastrop Economic Development Corporation, including personnel, financial, and other related matters.

**Mayor Schroeder recessed the Executive Session at 7:20 p.m.**

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

- 5A. 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 City Council's oversight of the Bastrop Economic Development Corporation, including personnel, financial, and other related matters.

**A motion was made by Council Member Kirkland to approve Resolution No. R-2023-44, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.**



Adjourned at 7:02 p.m. without objection.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor Connie Schroeder

\_\_\_\_\_  
City Secretary Ann Franklin

The Minutes were approved on March 28, 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:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-49 of the City Council of the City of Bastrop, Texas, approving a Memorandum of Agreement with Bastrop County to use grant funds (if awarded) for the Riverwood Water Line Project; as attached in Exhibit A; providing for a repealing clause, and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

Tracy Waldron, Chief Financial Officer

**BACKGROUND/HISTORY:**

The City has applied for a grant from the 2023-2024 Community Development Block Grant Program, Community Development Fund Application to construct a water improvement project, the Riverwood Waterline Project – Phase II, that benefits residents of both the City and the unincorporated County. This grant is administered through the Texas Department of Agriculture.

Pursuant to Chapter 791 of the Texas Government Code, the County and City of Bastrop are public agencies entering into this Agreement for the purpose of providing governmental functions in which the Parties are mutually interested.

The term of the Memorandum of Agreement shall be from April 3, 2023, until the grant is administratively closed by the Texas Department of Agriculture. The Agreement allows the City to service as the authorized applicant and primary contact in all matters pertaining to the grant, as well as to provide project plans and specifications to Bastrop County for review prior to issuing bid documents for proposed work that will affect County property, roadways, or other county-maintained facilities.

The Bastrop County Commissioners' Court review of this Agreement is scheduled for their March 27, 2023, meeting, and we anticipate they will approve and execute the Agreement following this meeting. Since the commencement of the Agreement is April 3<sup>rd</sup>, it is necessary to bring it to this meeting for review and consideration.

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Tracy Waldron, CFO, recommends approval of Resolution No. R-2023-49 of the City Council of the City of Bastrop, Texas, approving a Memorandum of Agreement with Bastrop County to use grant funds (if awarded) for the Riverwood Water Line Project; as attached in Exhibit A; providing for a repealing clause, and establishing an effective date.

**ATTACHMENTS:**

- Resolution R-2023-49
- Exhibit A Memorandum of Agreement



**RESOLUTION NO. R-2023-49**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING AN MEMORANDUM OF AGREEMENT WITH BASTROP COUNTY TO USE GRANT FUNDS (IF AWARDED) FOR THE RIVERWOOD WATER LINE PROJECT; AS ATTACHED IN EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bastrop, Texas has an interest in protecting the health and safety of citizens of Bastrop and Bastrop County; and

**WHEREAS**, the City Council of the City of Bastrop, Texas, finds it to be in the public interest and necessary to cooperate with Bastrop County regarding opportunities to work together to benefit residents of both the City of Bastrop and the unincorporated County; and

**WHEREAS**, the City Council of the City of Bastrop, Texas, realizes the importance of being a good neighbor and collaborative efforts with Bastrop County is integral to serving both the citizens of Bastrop and Bastrop County; and

**WHEREAS**, Pursuant to Chapter 791 of the Texas Government Code, the County and City of Bastrop are public agencies entering into this Agreement for the purpose of providing governmental functions in which the Parties are mutually interested; and

**WHEREAS**, the City Council of the City of Bastrop, Texas, finds that a very significant public interest is served by the completion of the proposed water line project through the terms of the Memorandum of Agreement.

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

**Section 1.** The City Council authorizes the execution of the Memorandum of Agreement with Bastrop County to use grant funds (if awarded) for the Riverwood water line project.

**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 28<sup>th</sup> day of March, 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

**THE STATE OF TEXAS §**  
**MEMORANDUM OF AGREEMENT**  
**COUNTY OF BASTROP §**

This AGREEMENT is made between BASTROP COUNTY, TEXAS, hereinafter referred to as the COUNTY, acting through its Commissioners' Court, and the CITY OF BASTROP, hereinafter referred to as the CITY, acting through its City Council.

The CITY and COUNTY agree to use grant funds budgeted from its Program Year 2023-2024 Community Development Block Grant Program - Community Development Fund Application – Riverwood Waterline Project – Phase II administered through the Texas Department of Agriculture for the City of Bastrop contract to construct a water improvement project that benefits residents within the unincorporated COUNTY, if such is awarded by the Texas Department of Agriculture (TDA), hereinafter referred to as the GRANT. The term of this Agreement shall be from April 3, 2023, until the GRANT is administratively closed by TDA. Either party may terminate this Agreement with thirty (30) days written notice to the other party, but such early termination shall not relieve the parties from any recordkeeping or financial obligations addressed below.

Parties agree that the CITY shall:

1. Endeavor to execute its GRANT responsibilities in a timely and efficient manner.
2. Serve as authorized applicant and lead administrative entities to act in a representative capacity for the GRANT to ensure activities are carried out in accordance with statutory requirements.
3. Serve as the primary contact in all matters pertaining to the GRANT and the conduit for communication between itself, the COUNTY, and TDA.
4. Be the repository of all receipts and documentation pertinent to the GRANT and furnish such to TDA upon its request.
5. Provide project plans and specifications to the COUNTY for its review prior to issuing bid documents for any proposed work that will affect COUNTY property, COUNTY roadways, or other COUNTY-maintained facilities.
6. Maintain at its discretion the option to approve construction contracts or contract modifications, including change orders, to complete the activities described in the GRANT in which the cost exceeds the funds available in the GRANT budget and for which it has arranged payment from another source.
7. Ensure the COUNTY shall not be responsible for any GRANT or Construction-related costs.
8. Provide access to the improved service to all beneficiaries of this project.

Parties agree that the COUNTY shall:

1. Provide timely review and comment on project plans and specifications provided by the CITY for any proposed work that will affect COUNTY property, COUNTY roadways, or other COUNTY-maintained facilities.
2. COUNTY allows CITY to perform construction improvements within the COUNTY.

The parties further agree that any GRANT funds provided are without warranty of any kind to any third party, and the CITY hereby agrees, to the extent allowable by law, to defend, hold harmless, and indemnify the COUNTY, its officers, agents, and employees for any claims for injury or death of any person or any property damage arising out of the COUNTY'S participation in this Agreement. Nothing herein shall be construed to create any rights in third parties.

BASTROP COUNTY, TEXAS

CITY OF BASTROP, TEXAS

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Gregory Klaus  
COUNTY JUDGE

---

Connie Schroeder  
MAYOR

ATTEST:

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Krista Bartsch  
COUNTY CLERK

---

Ann Franklin  
CITY SECRETARY



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-51 of the City Council of the City of Bastrop, Texas, approving an additional professional services contract with Carollo Engineers, Inc. to continue to provide the services of project management, construction management and inspection for capital and non-capital improvement projects in the amount of four hundred thousand seven hundred fifty dollars (\$400,750) for approximately 12 months; attached in Exhibit B; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

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

**BACKGROUND/HISTORY:**

The City of Bastrop hired Carollo Engineers in July of 2021 to assist the City by providing construction management and inspection services to capital improvement projects. A renewal contract was also authorized by council and executed in December 2021 to provide the same services. This contract is now up for extension.

Various capital improvement projects have started since then, and are still in progress/active, and more will start between F23 and FY24. Timely and quality review of the project documents during design and construction will reduce long term costs. In addition, quality project management, construction management and inspection will ensure projects are constructed according to plans and specifications.

Traditionally, the City's consulting design engineer serves as the Owner's representative in different capacities, to include construction management and inspection services.

By outsourcing this oversight role, the Engineering and Capital Project Management Department can be scalable, and has the ability to act quickly, when needed. The City will only pay for services when we need them. In addition, funding for this role will be covered by specific capital improvement projects, to include, the Wastewater Treatment Plant #3 Phase I (in construction); Wastewater Treatment Plant #3 Phase II (study in progress), Westside Collection System Phase II (in construction); Transfer Lift Station and Force Main (in design), Wastewater Master Plan (study will start soon), Agnes Street Extension (in design); Blakey Lane Extension (will start soon), South Street to Lovers Lane Improvements (will start soon), Riverwood Water Main Replacement Phase II (City is applying for a grant), and Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities (in construction).

In the past, an in-house construction manager provided oversight on those construction management and inspection activities.



The attached renewal contract also provides a list of tasks for the Project Manager, Construction Manager/Inspector including assisting with civil engineering, plan review, project management, construction management and inspection.

**FISCAL IMPACT:**

FY23 Annual Budget:

- Wastewater Treatment Plant #3 Phase I: funded by Certificate of Obligations, Series 2021
- Wastewater Treatment Plant #3 Phase II: funded CO Series 2023
- Westside Collection System Phase II: funded by Certificate of Obligations, Series 2021
- Transfer Lift Station and Force Main: funded by Certificate of Obligations, Series 2021
- Wastewater Master Plan: funded by Water/Wastewater CIP Fund
- Agnes Street Extension: funded by BEDC
- Blakey Lane Extension: funded by BEDC
- South Street to Lovers Lane Improvements: funded by BEDC
- Riverwood Water Main Replacement Phase II: will be funded in FY24, if grant is awarded
- Simsboro Aquifer Water Treatment Plant: funded by Certificate of Obligations (CO), Series 2021, CO Bond Series 2022A, and CO Bond Series 2023
- Additional Services: funded by Engineering and Capital Project Management Department's budget for professional services, or by appropriate project (not identified at the time of this Contract)

**RECOMMENDATION:**

Consider action to approve Resolution No. R-2023-51 of the City Council of the City of Bastrop, Texas, approving an additional professional services contract with Carollo Engineers, Inc. to continue to provide the services of project management, construction management and inspection for capital and non-capital improvement projects in the amount of four hundred thousand seven hundred fifty dollars (\$400,750) for approximately 12 months; attached in Exhibit B; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**ATTACHMENTS:**

- Exhibit A: Resolution No. R-2023-51
- Exhibit B: Professional Services Contract between City and Carollo (renewal contract)

**RESOLUTION NO. R-2023-51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING AN ADDITIONAL PROFESSIONAL SERVICES CONTRACT WITH CAROLLO ENGINEER, INC TO CONTINUE TO PROVIDE THE SERVICES OF PROJECT MANAGEMENT, CONSTRUCTION MANAGEMENT AND INSPECTION FOR CAPITAL AND NON-CAPITAL IMPROVEMENT PROJECTS IN THE AMOUNT OF FOUR HUNDRED THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$400,750) FOR APPROXIMATELY 12 MONTHS; ATTACHED IN EXHIBIT B; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bastrop City Council understands the value in managing growth for future generations; and

**WHEREAS**, the City of Bastrop understands the importance of focusing on providing timely and quality project management, construction management and inspection services for capital improvement projects to ensure the approved plans and specifications are followed; and

**WHEREAS**, the City of Bastrop chooses to approve the attached contract to extend the professional services as shown as Exhibit B; and

**WHEREAS**, the City of Bastrop City Council has unequivocally committed to fiscal sustainability, responsibly managing growth, and taking definitive action towards lasting solutions.

**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 the Professional Services Contract attached as Exhibit B, in the amount not to exceed four hundred thousand seven hundred fifty dollars (\$400,750).

**Section 2.** 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, Texas this 28<sup>th</sup> day of March 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

**CITY OF BASTROP**  
**STANDARD CONTRACT FOR GENERAL SERVICES**  
Over \$50K  
(8-16-2021)

This General Services Contract (“Contract”) is entered by and between the **City of Bastrop**, a Texas Home-Rule Municipal Corporation (the “City”), and **Carollo Engineer, Inc.**, acting by **Carollo** (the “Engineer/Contractor”), and together with the City jointly referred to as the “Parties,” for the following work described on the Scope of Services, Exhibit A-2, attached and incorporated herein to this Contract (the “Work” or “Project”).

**I. General Information and Terms.**

Engineer’s/Contractor’s Name and Address:	CAROLLO ENGINEER, INC. 8911 N. CAPITAL OF TX HWY BUILDING 2, STE 2200 AUSTIN, TEXAS 78759 Attn: RENE AGUILAR, P.E.
General Description of Services:	PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT
Maximum Contract Amount:	\$400,750.00
Effective Date:	On the latest of the dates signed by both parties.
Termination Date:	See II.D.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Standard Contractual Provisions
- III. Additional Terms or Conditions
- IV. Additional Contract Documents
- V. Signatures

**II. Standard Contractual Provisions.**

A. Contractor’s Services. The Contractor will provide to the City the professional engineering services (“Services”) described in the Scope of Services, Exhibit A-2 attached and incorporated herein to this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The Contractor will bill the City for the Services provided at intervals of at least 30 days of receipt of Contractor’s invoices, except for the final billing. The City will pay the Contractor within 30 days of receipt of Contractor’s invoices for the Services provided for

in this Contract with current revenues available to the City, but all of the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City shall have the right to withhold payment, or any part thereof, of any of invoice presented by Contractor until resolution providing reasonable verification of the correctness thereof of is reached. The City shall notify the Contractor, in writing, of the disputed amount within thirty (30) days. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Executed Contract. The "Notice to Proceed" will not be given nor shall any Services commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to this Contract.

D. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

- (a) On the termination date, if any, specified in the General Information in Part I, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
- (b) If there is no termination date specified in the General Information in Part I, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City Manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five (5) business days prior to the termination date, but the City will pay the Contractor for all Services rendered in compliance with this Contract up to the date of termination. The City may terminate the Contract anytime if the City does not have available funds pursuant to Texas Government Code Chapter 2251.

(3) If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution).

E. Delays. Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of Contractor, an extension of time shall be the Contractor's sole remedy.

F. Independent Contractor. It is understood and agreed by the Parties that the Contractor is an independent contractor retained for the Services described in the Scope of Services, Exhibit A-2, attached and incorporated herein. The City will not control the manner or the means of the Contractor's performance but shall be entitled to work product as detailed in the Exhibit A-2. The

City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture. Services performed by the Contractor under this Contract are solely for the benefit of the City. Nothing contained in this Contract creates any duties on the part of the Contractor toward any person not a party to this Contract. No person or entity not a signatory to this Contract shall be entitled to rely on the Contractor's performance of its Services hereunder, and no right to assert a claim against the Contractor by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Contractor's Services hereunder.

G. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

H. Assignment. The Contractor may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Bastrop County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

L. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

M. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS AGENTS,

CITY OF BASTROP, GENERAL SERVICES CONTRACT/Page 3

REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE CONTRACTOR IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED, TREBLE (OR STATUTORY EQUIVALENT), OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK OR SERVICES PERFORMED OR TO BE PERFORMED HEREUNDER.

N. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, OR ALLEGED TO BE CAUSED BY, THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS..

O. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

P. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Documents and Data, Licensing of Intellectual Property, and Copyright. All Work progress and final documents and data produced by Contractor during the term of the Contract shall be and remain the property of the City. For purposes of this Contract, the term "Documents and Data" include any original work (the Work), reports, analyses, plans, drawings, designs, renderings, specifications, notes, summaries, charts, schedules, spreadsheets, calculations, lists, data compilations, documents, or any other material developed and assembled by or on behalf of the City in the performance of this Contract. It also includes any medium in which the Documents and Data are kept, including digitally, magnetically, or electronically. This Contract creates at no cost to the City, a perpetual license for the City to use any picture, video, music, brochure, writing, trademark, logo, or other work created by the Contractor for the use of the City, as a "work made for hire" as defined by federal copyright law. The City, as the author and owner of the copyright to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate.

R. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission), attached and incorporated herein as Exhibit A-1, that includes:

- (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
- (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

T. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

U. Prohibition on Contracts with Companies Boycotting Israel. Certain contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89, as amended by H.B. 793). Specifically, contracts for good and services that:

- (1) are between the City and a company with ten (10) or more full-time employees; and
- (2) have a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the City.

Under the provisions of this statute, if the above conditions apply the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and



(2) will not boycott Israel during the term of the contract.

If this is a contract to which the verification requirement applies, the City has approved a verification form which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

### **III. Additional Terms or Conditions.**

#### **Insurance**

At all times this Agreement is in effect, Contractor shall maintain insurance of the types and amounts as those required in Exhibit B-1. All of Contractor's insurance policies in any way relating to the Work, whether or not required by this Agreement and regardless of the enforceability or validity of any of the indemnities or other assumptions of liability by Contractor, shall, to the full coverage limits of all such policies without any limitations based on the minimum requirements set forth above: (a) other than the worker's compensation insurance, name City Group as additional insureds on a broad form basis with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent; (b) provide for waiver of all rights of subrogation against City and the other members of City Group; and (c) be primary and noncontributory as to all other policies (including any deductibles or self-insured retentions) and self-insurance that may provide coverage to any member of City Group, and shall be fully applied and exhausted before application of any applicable indemnity obligations of City or of any applicable insurance coverage provided by City or any other member of City Group.

#### **A. Audit**

Contractor shall, and shall ensure that its affiliates, subsidiaries, contractors, subcontractors, consultants, agents, and any other person associated with Contractor including those in Contractor Group, keep full and accurate books and records with respect to all Work performed, and all payments and expenditures in connection with this Agreement. The records to be maintained and retained by Contractor Group shall include, without limitation, (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the Project, as well as canceled payroll checks or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items; (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other Third Parties' charges, including, but not limited to, Equipment rental; (d) travel and entertainment documentation, including, but not limited to, employee expense reports and Contractor facility usage reports; and (e) all field tickets or similar documentation evidencing the Work. The City shall have the right at all reasonable times, for a period of five (5) years from the completion of the Work, to audit and inspect such books and records (excluding trade secrets, formulas, confidential data, proprietary information, or processes).

#### **B. Reports of Incidents**

Within twenty-four (24) hours upon occurrence, Contractor shall provide in writing to the City notice and details of any accidents or occurrences resulting in injuries to persons, property, or pollution arising in any way arising out of or related to the Work whether done by Contractor or any subcontractor of Contractor or any other member of Contractor Group performing Work pursuant to this Contract. Contractor shall in writing within twenty-four (24) hours of any claim, demand, or suit that may be presented to or served upon it arising out of or as a result of Work.

**IV. Additional Contract Documents.** The following documents attached to this Contract are part of this Contract:

- EXHIBIT A-1: Certificate of Interested Parties (1295 Form)
- EXHIBIT A-2 Scope of Work
- EXHIBIT A-3 House Bill 89 Verification
- EXHIBIT B-1 Requirements for General Services Contract

**V. Signatures.**

**CAROLLO ENGINEERS, INC.**

**CITY OF BASTROP**

By: Hani S. Michel

By: \_\_\_\_\_

Printed Name: Hani Michel, PE

Printed Name: \_\_\_\_\_

Title: Vice President

Title: \_\_\_\_\_

Date: March 20, 2023

Date: \_\_\_\_\_

By: Rene Aguilar

Printed Name: Rene Aguilar, PE

Title: Associate Vice President

Date: March 20, 2023

**EXHIBIT A-1**

Certificate of Interested Persons with Certification of Filing  
(Form 1295)

*(See Attached)*

**EXHIBIT A-2**

Scope of Services **dated MARCH 17, 2023**

*(See Attached)*

**Consulting Services Agreement  
Between City of Bastrop (City) and  
Carollo Engineers (Consultant)**

**PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT  
SCOPE OF WORK (3/17/2023)**

1) GENERAL

The purpose of this proposal is to procure Project Management Construction Management and Inspection support services, as an extension of existing City staff, on the following capital improvement projects for CM and Inspection Support:

- Project 1: Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities Project- Construction
- Project 2: Wastewater Treatment Plant No. 3 Project Phase 1- Construction
- Project 3: Wastewater Treatment Plant No. 3 Project Phase 2- Study and Design
- Project 4: Westside Collection System Improvements Phase II Project- Construction
- Project 5: Transfer Lift Station and Force Main Project- Design and Construction
- Project 6: Wastewater Master Plan Project- Study
- Project 7: Agnes Street Extension Project- Design and Construction
- Project 8: Blakey Lane Extension Project- Design
- Project 9: Riverwood Water Main Replacement Phase II Project- Construction
- Project 10: South Street and Lovers Lane Improvements Project- Design and Construction
- Allowance: Additional Professional Services

Projects will generally consist of the study, design and construction of, and improvements to, treated water transmission mains, wastewater collection lines, treated water storage reservoirs, drainage improvements, street improvements, pump stations, lift stations, water wells and water/wastewater treatment facilities.

2) SCOPE OF WORK

The scope of work will be divided into the following tasks:

- Project Management, Construction Management and Construction Inspection Services.
- Additional Professional Services.

a) Project Management, Construction Management and Construction Inspection Services:

The purpose of this scope of work is to provide augmentation of City Staff, Project Management (PM), Construction Management (CM) and Inspection services for various projects as identified by the Director of Engineering and Capital Project Management. The actual projects and duration of each may vary. PM, CM and Inspection services may consist of, but not limited to: project engineering support,

review of engineering design and/or construction plans and contracts, administration of the contract terms and conditions, negotiation of change orders, review pay applications, shop drawing and submittal review, construction progress meetings, coordinating and attending shutdowns, periodic inspection, witness testing, startup support and troubleshooting, administration of the contract terms and conditions, inspections services, additional specialty inspection services, and quality assurance reviews as authorized. Carollo's professional staff working on either of these functions will be required to be familiar with and follow City's standards, including the Project Management Manual.

i) Assumptions:

- City will furnish Carollo Engineers with available office desk space and office support (monitors, keyboard, desk phone) as necessary.
- Contractual responsibilities for Inspection may vary and may be done by Carollo or by others, depending on the specific project.
- Contractual responsibilities for testing services by others.
- Manage project in accordance with City’s Standards and Project Management Manual.

ii) Deliverables:

- Appropriate document review and processing as defined by the Director of Engineering and Capital Project Management for each project and as defined by City’s Project Management Manual.
- Review inspection and materials testing reports as appropriate for each project.
- Provide Daily Construction Observation for each construction project as directed by the Director of Engineering and Capital Project Management.

b) Additional Professional Services:

The purpose of this scope of work is to provide additional project management, construction management and Inspection services and quality assurance reviews that may be or may not be associated to a specific project(s) as defined by the Director of Engineering and Capital Project Management, which are not fully known or defined at this time, or related to other projects, not identified at this time. Use of this Allowance will require written direction from the City prior to proceeding with any of the additional services or other services not included under PM, CM and Inspection Services. The City may at its sole discretion decline to authorize any services described in this task, and the City shall have no obligation to pay for services not so authorized.

3) CONTRACT SCHEDULE AND TIME OF COMPLETION

This contract will commence immediately upon execution and will continue until the not to exceed value for this contract has been reached, with the City having the option of extending the contract at any time, or until written notification is given by the City that the contract is complete.

## 4) KEY PROJECT STAFF

Carollo Engineers designates the following as key project staff. No changes will be made in these positions without written concurrence of the City.

- Hani Michel, PE – Project Principal
- Rene Aguilar, PE– Project Manager/Construction Manager/Inspector
- Travis Rhoads, PE, CFM –Engineer/Inspector

## 5) COMPENSATION

The total amount payable by the City for Consultant’s services pursuant to the Agreement shall not exceed a total of **\$400,750.00** for the following Tasks:

- Project 1: Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities Project- Construction **\$92,400.00**
- Project 2: Wastewater Treatment Plant No. 3 Project Phase 1- Construction **\$38,500.00**
- Project 3: Wastewater Treatment Plant No. 3 Project Phase 2- Study and Design **\$26,400.00**
- Project 4: Westside Collection System Improvements Phase II Project- Construction **\$22,000.00**
- Project 5: Transfer Lift Station and Force Main Project- Design and Construction **\$46,200.00**
- Project 6: Wastewater Master Plan Project- Study **\$11,550.00**
- Project 7: Agnes Street Extension Project- Design **\$67,650.00**
- Project 8: Blakey Lane Extension Project- Design **\$9,900.00**
- Project 9: Riverwood Water Main Replacement Phase II Project- Construction **\$31,350.00**
- Project 10: South Street and Lovers Lane Improvements Project- Design and Construction **\$19,800.00**
- Allowance: Additional Professional Services- **\$35,000.00**

The respective amount set forth above represent the maximum amounts that the City will pay for the services described in Attachment A - Scope of Work, both for the Total Not-to-Exceed Cost and for each Task, subject only to the City’s right to move budgeted amounts within or among the Tasks by so directing in writing. All Task shall be billed per Table A Consultant’s Fee Schedule below.

The respective amounts set forth above or the Total Not-to-Exceed Cost and for each Task are based upon the project schedules and durations set forth by the City and assumes that the City will furnish available office space and limited office support equipment (as defined herein), such as a monitor, copier, office phone, internet access, file cabinets, etc., for employees of consultant as necessary.

## 6) NOTIFICATION AND SECURITY REQUIREMENTS

## a) Minimum Safety Requirements

In addition, Consultant is required to comply with the minimum safety requirements:

Consultant shall take all measures required to comply with all applicable Federal, State, County, and Local laws, ordinances, codes and regulations.

Consultant shall not be responsible for construction means, methods or techniques, or for safety measures, precautions, or other programs at the project site(s).



**TABLE A: CONSULTANT'S FEE SCHEDULE  
CAROLLO ENGINEERS, INC.**

Item 8C.

<b>Category:</b>	<b>FY 2023</b>
<b>Professional Hourly Rate</b>	
Project Principal	\$295
QA/QC Design Review	\$295
Sr. Project Manager/Sr. Construction Manager	\$290
Project Manager/Construction Manager	\$275
Senior Engineer	\$250
Engineer/Resident Engineer	\$220
Resident Project Representative	\$215
Inspector	\$185
<b>Technicians</b>	
Senior CADD Technician	\$205
CADD Technician	\$155
<b>Support Staff</b>	
Administrative Support	\$110
<b>Other Direct Expenses</b>	
Travel and Subsistence	at cost
Mileage at IRS Reimbursement Rate	\$0.655 per mile
Subconsultant (If needed)	cost + 5%
Other Direct Cost	cost + 5%

**EXHIBIT A-3**

House Bill 89 Verification

*(See Attached)*

**EXHIBIT B-1**  
**REQUIREMENTS FOR GENERAL SERVICES CONTRACT**

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City, including any delay periods. If the Project is not finalized and the insurance expires, Contractor is obligated to extend the insurance coverage. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

**INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT**

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A.** The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**
- B.** A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
- C.** All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D.** All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E.** **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F.** All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G.** All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- H.** Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I.** Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J.** Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K.** All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2016/03) Coverage must be written on an occurrence form.
- L.** Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M.** Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N.** A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

**City of Bastrop**  
**Engineering and Capital Project Management Department**  
**P. O. Box 427**  
**1311 Chestnut Street**  
**Bastrop, TX 78602**

**INSURANCE REQUIREMENTS**

Items marked "X" are required to be provided if award is made to your firm.

**Coverages Required & Limits (Figures Denote Minimums)**

- Workers' Compensation      Statutory limits, State of TX.
- Employers' Liability      \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

Commercial General Liability:

	<input type="checkbox"/> Very High/High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

- Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)
 

<input type="checkbox"/> Very High/ High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Combined Single Limits	Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily	\$500,000 Bodily	\$300,000 Bodily

- Garage Liability for BI & PD
  - \$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto
  - \$2,000,000 General Aggregate

- Garage Keepers Coverage (for Auto Body & Repair Shops)
  - \$500,000 any one unit/any loss and \$200,000 for contents

Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

- Contract value less than \$1,000,000: **not required**
- Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**
- Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**
- Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**
- Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

- Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

- Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Bastrop) Limit is 100% of insurable value, replacement cost basis
- Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Bastrop)
  - \$1,000,000 each occurrence
  - \$2,000,000 aggregate
- Other Insurance Required: \_\_\_\_\_

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve the second reading of Ordinance No. 2023-04 of the City Council of the City of Bastrop, Texas, amending the Bastrop Building Block (B<sup>3</sup>) Code, Chapter 6, Section 6.5.003 and amending Bastrop Code of Ordinances Section 3.01.001 International Code Council (ICC); International Code Family; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

**AGENDA ITEM SUBMITTED BY:**

Keehren Baah, Assistant Director of Planning & Development

**BACKGROUND/HISTORY:**

Staff and the Development Review Committee (DRC) are charged with review of the B<sup>3</sup> Code for amendments. There are inconsistencies between the International Building Code related to fences. Within the Authentic Bastrop Pattern Book, fences are required to be no more than 3 feet in height in the first layer and part of the second layer (depending on lot frontage) with 20% transparency (typically a picket fence). Outside of this area, the fence can transition to a 6-foot-tall privacy fence/wall. In the IBC, any fence 7 feet and under is exempt from a permit.

The proposed amendment would change the Authentic Bastrop Pattern Book to be an optional set of standards and not mandatory. The fence standards below would be included in the Code of Ordinance, Chapter 3 as an amendment to work exempt from permits.

Sec. 3.01.001 International Code Council (ICC); International Code Family.

(2) [Amend] [A] 105.2 Work exempt from permit.

(a) Fences not over 7 feet (2134 mm) high:

(1) Replacement of an existing fence, in the same location, with like for like material and design, does not require a permit.

(2) Within the first layer, fences cannot exceed 4 feet in height and must have 50% transparency.

(3) Prohibited fence types/materials:

(a) Electric fences (not including pet fences)

(b) Barbed or razor wire material

(c) Broken glass or any protruding sharp or dangerous object cannot be incorporated into fences or walls.

(d) Fences blocking the sight triangle (requirements in B<sup>3</sup> Technical Manual)

(4) The provisions of this article shall not apply to a fence or wall necessary for the public safety as determined by the Public Works Director, Fire Chief or Building Official, or as required by any law or regulation of the State or an agency thereof.

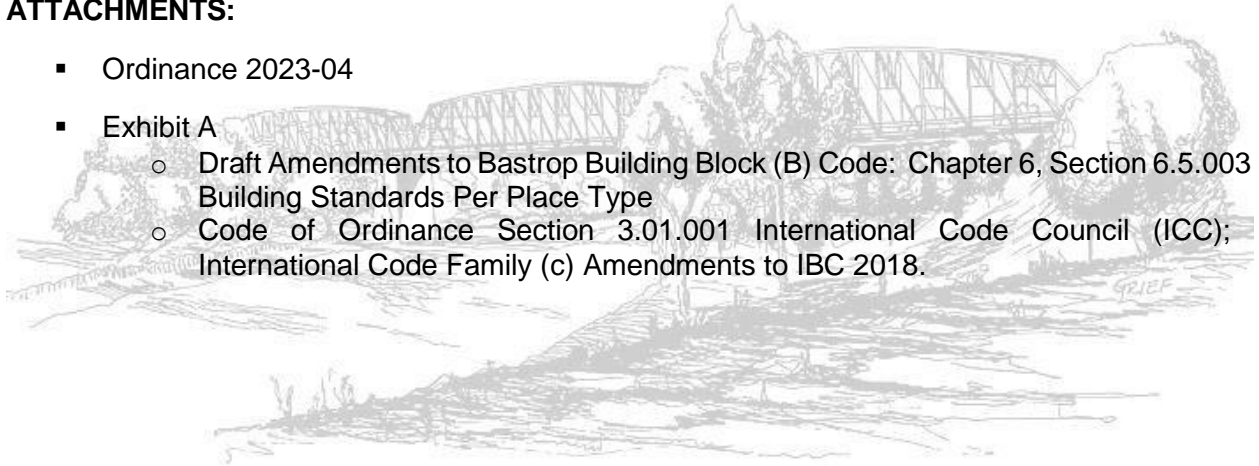
(5) In accordance with Subsection (3)(a) above, a pet fence shall be allowed as long as the fence is not accessible to children.

Any requested variances would be heard before the Construction Standards Board, in accordance with the process in Chapter 3.

**RECOMMENDATION:**

Consider action to approve the second reading of Ordinance No. 2023-04 of the City Council of the City of Bastrop, Texas, amending the Bastrop Building Block (B<sup>3</sup>) Code, Chapter 6, Section 6.5.003 and amending Bastrop Code of Ordinances Section 3.01.001 International Code Council (ICC); International Code Family; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

**ATTACHMENTS:**

- Ordinance 2023-04
  - Exhibit A
    - Draft Amendments to Bastrop Building Block (B) Code: Chapter 6, Section 6.5.003 Building Standards Per Place Type
    - Code of Ordinance Section 3.01.001 International Code Council (ICC); International Code Family (c) Amendments to IBC 2018.
- 

**CITY OF BASTROP, TX  
ORDINANCE NO. 2023-04**

**AMENDING BASTROP CODES**

**AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE BASTROP BUILDING BLOCK (B<sup>3</sup>) CODE CHAPTER 6, SECTION 6.5.003, AND AMENDING BASTROP CODE OF ORDINANCES SECTION 3.01.001 INTERNATIONAL CODE COUNCIL (ICC); INTERNATIONAL CODE FAMILY; AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.**

**WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City Council of the City of Bastrop has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS,** on February 23, 2023 the Planning and Zoning Commission voted to recommend an ordinance amending provisions of the Bastrop Building Block(B3) Code, the Authentic Bastrop Pattern Book, and the Bastrop Code of Ordinances.

**WHEREAS,** on March 7, 2023 the City Council held a public hearing to consider an ordinance amending provisions of the Bastrop Building Block(B3) Code, the Authentic Bastrop Pattern Book, and the Bastrop Code of Ordinances.

**WHEREAS,** the City Council finds certain amendments to the aforementioned codes are necessary to meet changing conditions and are in the best interest of the City;

**WHEREAS,** the City Council finds the attached amendments reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:**

**1. FINDINGS OF FACT**

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

## 2. AMENDMENT

Chapter 6, Article 6.5, Section 6.5.003 of the Bastrop Building Block (B3) Code is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Chapter 3, Article 3.01, Section 3.01.001 of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment "B"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as shown in each of the attachments.

## 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, herein.

## 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.

## 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.

## 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.

## 7. PROPER NOTICE AND 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 & ACKNOWLEDGED** on First Reading on this, the 7<sup>th</sup> day of March 2023.

**READ & APPROVED** on the Second Reading on this, the 28<sup>th</sup> day of March 2023.

**APPROVED:**

by: \_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

**ATTACHMENT A**

**SEC. 6.5.003 BUILDING STANDARDS PER PLACE TYPE**

Place Types	P1	P2	P3	P4	P5
<b>A. LOT OCCUPATION</b>					
Lot Coverage		40% max	60% max	70% max	80% max
Facade Buildout at Build-to-Line		40% min	40% min	60% min	80% min
Build-to-Line		10 ft - no max	10 ft - 25 ft*	5 ft - 15 ft	2 ft - 15 ft

\* Lots exceeding 1/2 acre may extend the 1 Layer of the Lot up to 60 ft from the Frontage Line.

<b>B. BUILDING HEIGHT (STORIES)</b>					
Principal Building		2 max	2 max	3 max**	5 max / 3 max*
Accessory Dwelling Unit		2 max	2 max	2 max	2 max

\* CD Downtown/ Old Town

\*\* 2 1/2 Max in Overlay

<b>C. ENCROACHMENTS</b>					
<b>First Layer Encroachments</b>					
Open Porch		50% max	50% max	80% max	n/a
Balcony and/or Bay Window		25% max	25% max	50% max	100% max
Stoop, Lightwell, Terrace or Dooryard		NP	NP	100% max	100% max

**R.O.W. Encroachments \*\*\***

Place Types	P1	P2	P3	P4	P5
Awning, Gallery, or Arcade		NP	NP	to within 2 ft. of the Curb	to within 2 ft. of the Curb

**First Layer Encroachment Depths**

Porch		5 ft min	8 ft min	8 ft min	n/a
Gallery		NP		10 ft min	10 ft. min.
Arcade		NP			12 ft. min.

**D. PARKING LOCATION**

Second Layer		P	P	NP	NP
Third Layer		P	P	P	P
*** Required to go through an Encroachment process					

**E. FENCE LOCATION**

Fences allowed within the Layers as defined in the Bastrop Code of Ordinances, Chapter 3.

**ATTACHMENT B**

### Sec. 3.01.001 International Code Council (ICC); International Code Family.

- (a) The International Building Code (IBC) 2018 edition, with all appendices as published by the International Code Council, Inc., is adopted by reference as though copied herein fully, except such portions as are deleted, modified or amended in this chapter.
- (b) All portions of the existing code shall remain in effect unless specifically amended in this chapter.
- (c) The following amendments are being made to the International Building Code (IBC) 2018:
  - (1) [Amend] Table 1004.5 Maximum Floor Area Allowances Per Occupant.
    - (a) Function of Space: Business Areas, Occupant Load Factor: One hundred (100) Gross.
  - (2) [Amend] [A] 105.2 Work exempt from permit.
    - (a) Fences not over 7 feet (2134 mm) high:
      - (1) Replacement of an existing fence, in the same location, with like for like material and design, does not require a permit.
      - (2) Within the first layer, fences cannot exceed 4 feet in height and must have 50% or greater transparency.
      - (3) Prohibited fence types/materials:
        - (a) Electric fences (not including pet fences)
        - (b) Barbed or razor wire material
        - (c) Broken glass or any protruding sharp or dangerous object cannot be incorporated into fences or walls.
        - (d) Fences blocking the sight triangle (requirements in B<sup>3</sup> Technical Manual)
    - (4) The provisions of this article shall not apply to a fence or wall necessary for the public safety as determined by the public works director, fire chief or building official, or as required by any law or regulation of the State or an agency thereof.
    - (5) In accordance with Subsection (3) (a) above, a pet fence shall be allowed as long as the fence is not accessible to children.

(Ord. No. 2014-28, 12-9-14; Ord. No. 2019-61 , § 3, 11-26-19)



# STAFF REPORT

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**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-52 by the City Council of the City of Bastrop, Texas responding to the application of CenterPoint Energy Resources Corp., D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division (CenterPoint), to increase rates under the Gas Reliability Infrastructure Program; suspending the effective date of this rate application for forty-five days; authorizing the city's participation in a coalition of cities known as the "Alliance Of CenterPoint Municipalities (ACM); requiring the reimbursement of costs; determining that the meeting at which the resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date.

**AGENDA ITEM SUBMITTED BY:**

Submitted by: Ann Franklin, City Secretary

**RECOMMENDATION**

Ann Franklin, City Secretary, recommends approving Resolution No. R-2023-52 by the City Council of the City of Bastrop, Texas responding to the application of CenterPoint Energy Resources Corp., D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division (CenterPoint), to increase rates under the Gas Reliability Infrastructure Program; suspending the effective date of this rate application for forty-five days; authorizing the city's participation in a coalition of cities known as the "Alliance Of CenterPoint Municipalities (ACM); requiring the reimbursement of costs; determining that the meeting at which the resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date.

**ATTACHMENT**

- Resolution
- Information Sheet

**RESOLUTION NO. R-2023-52**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS RESPONDING TO THE APPLICATION OF CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS – SOUTH TEXAS DIVISION (CENTERPOINT), TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM; SUSPENDING THE EFFECTIVE DATE OF THIS RATE APPLICATION FOR FORTY-FIVE DAYS; AUTHORIZING THE CITY’S PARTICIPATION IN A COALITION OF CITIES KNOWN AS THE "ALLIANCE OF CENTERPOINT MUNICIPALITIES (ACM); REQUIRING THE REIMBURSEMENT OF COSTS; DETERMINING THAT THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, on or about March 2, 2023, CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division (CenterPoint or Company) filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program (“GRIP”), resulting in a requested increase in the monthly customer charges as shown in the table below:

<b>Rate Schedule</b>	<b>Current Customer Charge</b>	<b>Proposed 2023 Interim Rate Adjustment</b>	<b>Adjusted Charge</b>	<b>Increase Per Bill</b>
R-2097-I-GRIP 2023; R-2097-U-GRIP 2023 Residential	\$27.03 per customer per month	\$3.72 per customer per month	\$30.75 per customer per month	\$3.72 per customer per month
GSS-2097-I-GRIP 2023; GSS-2097-U-GRIP 2023 General Service Small	\$41.42 per customer per month	\$7.51 per customer per month	\$48.93 per customer per month	\$7.51 per customer per month
GSLV-628-I-GRIP 2023; GSLV-628-U-GRIP 2023 General Service Large Volume	\$210.33 per customer per month	\$59.85 per customer per month	\$270.18 per customer per month	\$59.85 per customer per month

and

**WHEREAS**, the City has a special responsibility to exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries; and

**WHEREAS**, the application to increase rates by CenterPoint is complex; and

**WHEREAS**, it is necessary to suspend the effective date for the increase in rates for forty-five days, so that the City can assure itself that the data and calculations in CenterPoint’s rate application are correctly done, and whether CenterPoint’s application otherwise conforms to the requirements of Texas Utilities Code § 104.301, commonly referred to as the GRIP statute; and

**WHEREAS:** the effective date proposed by CenterPoint is May 1, 2023, but a suspension by the City will mean that the rate increase cannot go into effect prior to June 15, 2023.



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

**Section 1.** That the statements and findings set out in the preamble to this resolution are hereby in all things approved and adopted.

**Section 2.** The City suspends the requested effective date by CenterPoint for forty-five days pursuant to the authority granted the City under Section 104.301 of the Texas Utilities Code. The City finds that additional time is needed in order to review the data and calculations that provide the basis for the rate increase application, and to determine whether CenterPoint’s application otherwise conforms to the requirements of the GRIP statute.

**Section 3.** The City shall continue to act jointly with other cities that are part of a coalition of cities known as the Alliance of CenterPoint Municipalities (ACM).

**Section 4.** The City authorizes the law firm of Herrera Law & Associates, PLLC, to act on its behalf in connection with CenterPoint’s application to increase rates.

**Section 5.** CenterPoint is ordered to reimburse the City's reasonable rate case expenses incurred in response to CenterPoint’s rate increase application within 30 days of receipt of invoices for such expenses to the extent allowed by law.

**Section 6.** The meeting at which this resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 7.** This resolution shall be effective immediately upon passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 28<sup>th</sup> day of March, 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

## AGENDA INFORMATION SHEET

AGENDA ITEM NO. \_\_\_\_\_

**ACTION TO SUSPEND THE EFFECTIVE DATE PROPOSED BY CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS – SOUTH TEXAS DIVISION (CENTERPOINT) TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM FOR 45 DAYS, AND AUTHORIZE THE CITY’S CONTINUED PARTICIPATION IN A COALITION OF CITIES KNOWN AS THE "ALLIANCE OF CENTERPOINT MUNICIPALITIES" (ACM)**

### **ALLIANCE OF CENTERPOINT MUNICIPALITIES (“ACM”)**

The City is a member of the Alliance of CenterPoint Municipalities (ACM). The ACM group was organized by a number of municipalities served by CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas – South Texas Division (CenterPoint or Company) and has been represented by the law firm of Herrera Law & Associates, PLLC (through Mr. Alfred R. Herrera) to assist in reviewing applications to change rates submitted by CenterPoint.

### **“GRIP” RATE APPLICATIONS**

Under section 104.301 of the Gas Utility Regulatory Act (GURA), a gas utility is allowed to request increases in its rates to recover a return on investments it makes between rate cases. This section of GURA is commonly referred to as the “GRIP” statute (the “Gas Reliability Infrastructure Program”).

Under a decision by the Supreme Court of Texas, the Court concluded that a filing made under the GRIP statute permitted gas utilities the opportunity to recover a return on capital expenditures made during the interim period between rate cases by applying for interim rate adjustment and that proceedings under the GRIP statute did not contemplate either adjudicative hearings or substantive review of utilities' filings for interim rate adjustments. Instead, the Court concluded, the GRIP statute provides for a *ministerial* review of the utility’s filings to ensure compliance with the GRIP statute and the Railroad Commission’s rules, and that it is within the Railroad Commission’s authority to preclude cities from intervening and obtaining a hearing before the Railroad Commission.

### **CENTERPOINT’S “GRIP” APPLICATION**

On or about March 2, 2023, CenterPoint filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program (“GRIP”). CenterPoint’s application when approved by the Railroad Commission will result in an increase in the monthly customer charges as shown below:

<b>Rate Schedule</b>	<b>Current Customer Charge</b>	<b>Proposed 2023 Interim Rate Adjustment</b>	<b>Adjusted Charge</b>	<b>Increase Per Bill</b>
R-2097-I-GRIP 2023; R-2097-U-GRIP 2023 Residential	\$27.03 per customer per month	\$3.72 per customer per month	\$30.75 per customer per month	\$3.72 per customer per month
GSS-2097-I-GRIP 2023; GSS-2097-U-GRIP 2023 General Service Small	\$41.42 per customer per month	\$7.51 per customer per month	\$48.93 per customer per month	\$7.51 per customer per month
GSLV-628-I-GRIP 2023; GSLV-628-U-GRIP 2023 General Service Large Volume	\$210.33 per customer per month	\$59.85 per customer per month	\$270.18 per customer per month	\$59.85 per customer per month

CenterPoint refers to its application as its “2023” interim adjustment. The increase in rates CenterPoint presents in its application is based on capital expenditures it made from January 1, 2022 through December 31, 2022.

**REVIEW AND ACTION RECOMMENDED**

Although the City’s ability to review and effectuate a change in CenterPoint’s requested increase is limited, the City should exercise due diligence with regard to rate increases by monopoly utilities who operate within its boundaries, including increases requested under the GRIP statute to ensure compliance with the requirements of that law.

To exercise its due diligence, it is necessary to suspend CenterPoint’s proposed effective date of May 1, 2023, for forty-five days, so that the City can evaluate whether the data and calculations in CenterPoint’s rate application are correctly done, and whether CenterPoint’s application otherwise conforms to the requirements of the GRIP statute.

Therefore, ACM’s Special Counsel, the law firm of Herrera Law & Associates, PLLC (through Alfred R. Herrera) recommends that the City adopt a resolution suspending CenterPoint’s proposed effective date for 45 days. Assuming a proposed effective date of May 1, 2023, CenterPoint’s proposed effective date is suspended until June 15, 2023.

**The City must take action to suspend by no later than May 1, 2023.**



# City Council STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve a workplan for the Diversity, Equity, and Inclusion Board.

**AGENDA ITEM SUBMITTED BY:**

Submitted by: Sylvia Carrillo, City Manager

**BACKGROUND/HISTORY:**

At the onset of its creation, the Diversity, Equity, and Inclusion (DEI) was tasked with creating a workplan to address among other issues, the need for inclusion in all areas of city operations.

To date, the Board has developed the following activities it will undertake as part of their 2023 workplan:

1. Goal: Engagement in activities forums, community gatherings, and events that promote mutual understanding, as well as encourage residents to connect with one another.

Tasks:

- A. Focus on engagement at the boards and commission fair
- B. Work with the City to conduct resident surveys on various topics addressing the needs of the community in all areas, and specifically underserved areas.
- C. Work with the Parks Board, St. David's Foundation, and the City Council to create a mural in Delgado Park and Kerr Community Park.

2. Goal: Create strategies to distribute information to people of different cultures in culturally appropriate ways.

Tasks:

- A. Create an easily accessible informational piece regarding area available services to residents such as a magnet
- B. Create location map of where services are located
- C. Assist in the creation of informational segments that can be aired when City Council or other televised meetings are in executive session.
- D. Create an improved "Welcome Packet" to new residents in partnership with Visit Bastrop.

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Approve the DEI workplan as submitted.

**ATTACHMENTS:** None



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-48 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars (\$24,049,935); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

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

**BACKGROUND/HISTORY:**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 14 proposals for the various pieces of Water Treatment Plant Equipment (package 3)
- 1 proposal for the Water Treatment Plant Construction (package 4)
- 1 proposal for the Electrical and Instrumentation (package 5)
- 1 proposal for the Filter and Chemical Buildings (package 10)

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

- For the Treatment Plant Equipment (package 3): Various vendors

- For the Electrical and Instrumentation (package 5): T. Morales
- Filter and Chemical Buildings (package 10): HMC

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

In advance of the GMP2 packages advertisement, Archer Western notified the City that it would be submitting a proposal for the construction of the treatment plant (package 4) and in accordance with the contract, Archer Western did not participate in the review process of this package. A selection committee comprised of City and FNI's reviewed the proposal submitted and selected Archer Western for the Treatment Plant construction (package 4).

The City of Bastrop City Council approved the construction phase contract with Archer Western, described as Guaranteed Maximum Price (GMP2), in the amount of \$35,796,217, on October 11, 2022, which included CM@Risk's contingency, the Cost of Work, Construction Fee, General Conditions, and City's contingency for the purchase of water treatment plant equipment, the water treatment plant construction services, the electrical and instrumentation services, and the building construction services for the filter and chemical buildings packages. Archer Western and Freese and Nichols are currently reviewing submittals from the contractors associated with the packages included in the GMP2 and mobilization has begun.

On January 25, 2023 the CM@Risk advertised request for proposals for construction services for the following packages: wellfield distribution line, lift station, transmission facilities and the sanitary sewer forcemain, the wellfield access roads and sitework, and the WTP pavement, fencing and site restoration (included in the Guaranteed Maximum Price, GMP3). And held a bid opening on March 9, 2023. Archer Western received:

- 3 proposals for the Wellfield Distribution Line (package 6)
- 3 proposals for the Lift Station, Transmission Facilities and the Sanitary Sewer Forcemain (package 7)
- 2 proposals for the Wellfield Access Roads and Sitework (package 8)
- 3 proposals for the WTP Pavement, Fencing, and Site Restoration (package 9)

A selection committee comprised of Archer Western staff (the City and FNI participated as being present during the selection process, but did not assist on scoring the firms, as recommended by the City Attorney) reviewed proposals submitted to packages 6, 7, and 8, and selected the following:

- For the Wellfield Distribution Line (package 6): C.C. Carlton with a proposal in the amount of \$2,197,066 for PVC piping
- For the Lift Station, Transmission Facilities and the Sanitary Sewer Forcemain (package 7): C.C. Carlton with a proposal in the amount of \$13,834,017 for PVC piping
- For the Wellfield Access Roads and Sitework (package 8): C.C. Carlton with a proposal in the amount of \$1,661,125

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

<b>Wellfield Distribution Piping (Package 6)</b>	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
D. Guerra	35	0	0	\$2,450,320	71
CC Carlton	37.5	5	5	\$2,197,066	88
Capital Exc	42	5	4	\$2,663,333	88

<b>Lift Station, Transmission Line and SS Forcemain (Package 7)</b>	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
D. Guerra	35	0	0	\$14,065,050	74
CC Carlton	37.5	5	5	\$13,834,017	88
Capital Exc	42	5	4	\$16,162,921	86

<b>Wellfield Access Roads and Site Work (Package 8)</b>	Qualifications	Scope/Spec Exceptions	Subcontract Exceptions	Price	Total Score
Jerdon Ent.	41	5	5	\$2,108,180	83
C.C. Carlton	37.5	5	5	\$1,661,125	88

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

Archer Western notified the City that it would be submitting a proposal for the WTP Pavement and Site Restoration (package 9) and in accordance with the contract, Archer Western did not participate in the review process of this package.

A selection committee comprised of City and FNI's reviewed proposal submitted to the package 9 and selected the following:

- For the WTP Pavement and Site Restoration (package 9): Jerdon Enterprises with a proposal of \$1,292,185.56

Below is a summary of FNI's and City's proposals evaluation results for package 9:



<b>WTP Pavement &amp; Site Restoration (Package 9)</b>	<b>Qualifications</b>	<b>Scope/Spec Exceptions</b>	<b>Subcontract Exceptions</b>	<b>Price</b>	<b>Total Score</b>
Jerdon Ent.	41	5	5	\$1,292,186	91
C. C. Carlton	37.5	5	5	\$1,345,950	86
Archer Western	47	5	5	\$1,587,320	90

After selecting the awardees, Archer Western presented the City with their Guaranteed Maximum Price (GMP3), in the amount of \$24,049,935, which includes CM@Risk’s contingency, the Cost of Work, Construction Fee, General Conditions, and City’s contingency for the wellfield distribution line, lift station, transmission facilities and the sanitary sewer forcemain, the wellfield access roads and sitework, and the WTP pavement, fencing and site restoration packages.

Because the project was split into different bid packages, the agenda item subject of this Staff Report relates to construction services for the following packages: wellfield distribution line, the lift station, transmission facilities and the sanitary sewer forcemain, the wellfield access roads and sitework, and the WTP pavement, fencing and site restoration, which are part to and necessary for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project, and which we are referring to as GMP3. FNI finalized all design packages, and the packages associated with the GMP3 are the last packages. FNI does not anticipate additional packages.

With your authorization of this GMP3 and Total Contract Price, Archer Western will move forward in awarding a construction contract with the selected contractors.

**FISCAL IMPACT:**

FY23 Annual Budget

- CO Bond Series 2023

**RECOMMENDATION:**

Consider action to approve Resolution No. R-2023-48 of the City Council of the City of Bastrop, Texas, approving a construction contract with Archer Western Construction, LLC to provide Construction Manager at Risk services for a not to exceed amount of Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars (\$24,049,935); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**ATTACHMENTS:**

- Exhibit A: Resolution No. R-2023-48
- Exhibit B: Draft Agreement for CM@Risk Construction Phase Services – GMP3 with Archer Western
- Exhibit C: WTP– location map

**RESOLUTION NO. R-2022-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC. TO PROVIDE CONSTRUCTION MANAGER AT RISK SERVICES FOR A NOT TO EXCEED AMOUNT OF TWENTY-FOUR MILLION, FORTY-NINE THOUSAND, NINE HUNDRED THIRTY-FIVE DOLLARS (\$24,049,935); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

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

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

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

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

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

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

**Section 1.** The City Council of the City of Bastrop, Texas has determined Archer Western Construction, LLC to be a subject matter expert in the construction manager at risk delivery method and agree to a Guaranteed Maximum Price – GMP 3 of Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars (\$24,049,935);

**Section 2.** The City Manager is hereby authorized to execute a contract with Archer Western Construction, LLC in an amount not to exceed of Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars (\$24,049,935); as well as all other necessary documents.

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

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 28<sup>th</sup> day of March 2023.

**APPROVED:**

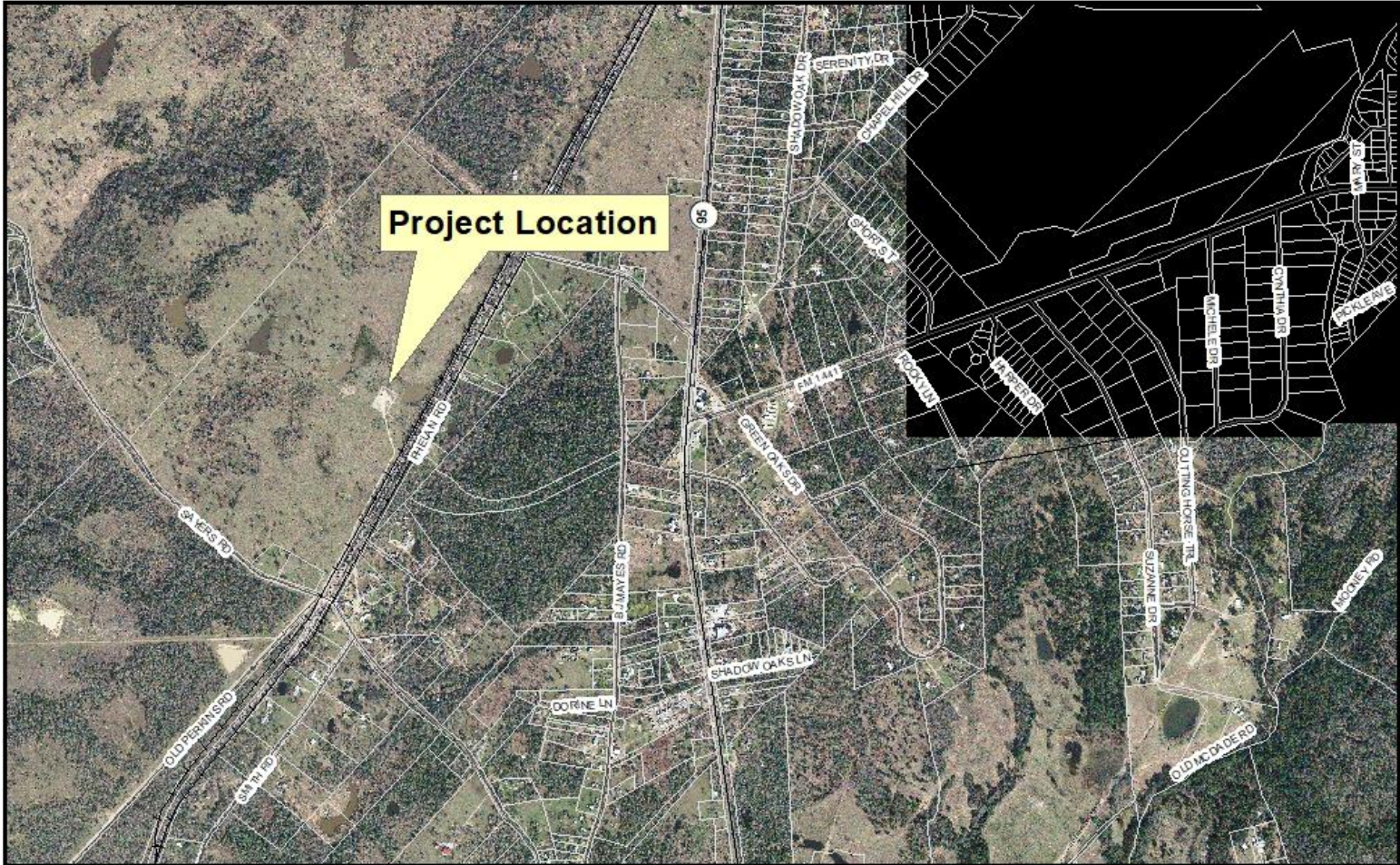
\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

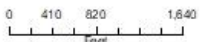
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney



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



Date: 7/29/2022

The accuracy and precision of this cartographic data is limited and should be used for information planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use, classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability, and fitness for particular purpose, or assume any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.





**CITY OF BASTROP, TEXAS**

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

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

**(Clean Version 2022.24.6)**

**GMP #3**

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

**THIS AGREEMENT** made and entered by and between City of Bastrop, a Texas municipal corporation, hereinafter designated the "CITY" or "OWNER", and Archer Western Construction, LLC, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk", collectively referred to herein as, "the parties". This Agreement is hereby authorized to be entered into by the City of Bastrop by and through Resolution No. \_\_\_\_\_, approved and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**RECITALS**

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

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

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

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

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

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

## **Article 1 - Definitions**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 2 - CM@Risk's Services and Responsibilities**

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

### **2.3. Government Approvals and Permits**

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

### **2.4. Pre-construction Conference**

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

### **2.5. Control of the Work**

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

completion of the Work consistent with the Contract Documents.

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

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

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

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

## 2.7. Shop Drawings, Product Data and Samples

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



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

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

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

## **2.9. Trade Names and Substitutions**

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

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

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

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

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

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

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

## **2.10. Project Record Documents**

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

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

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

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

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

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

## **2.11. Project Safety**

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

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

## **2.12. Warranty**

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

## **2.13 Correction of Defective Work**

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

## **Article 3 - City's Services and Responsibilities**

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### **3.1 Duty to Cooperate.**

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

### **3.2 City's Representative**

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

**3.3 Permit Review and Inspections.**

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

## **Article 4 - Contract Time**

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### **4.1. Contract Time.**

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

### **4.2. Substantial Completion**

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

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



shall be updated and maintained throughout the Work.

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

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

- 4.4.8.3.** CM@Risk understands and acknowledges that the CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.
- 4.4.8.4.** CM@Risk understands and acknowledges that the CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.4.8.5.** CM@Risk understands and acknowledges that the Project Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.
- 4.4.8.6.** CM@Risk understands and acknowledges that the Project Schedule shall include a Critical Path activity that reflects anticipated rain delay during the performance of this Agreement and/or the Contract Documents. CM@Risk further acknowledges that the duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. CM@Risk agrees that weather data shall be based on information provided by the National Weather Services or other approved source.
- 4.4.8.7.** CM@Risk understands and acknowledges that the Project Schedule shall consider the Contract Times in accordance with Article 6 hereunder.
  
- 4.4.9.** Float time shall be as prescribed below.
- 4.4.9.1.** CM@Risk understands and acknowledges that the total Float within the overall Project Schedule is not for the exclusive use of either the City or the CM@Risk but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project Contract Time.
- 4.4.9.2.** CM@Risk understands and agrees that it shall not sequester shared Float through such tactics as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. CM@Risk further agrees that since Float time within the Project Schedule is jointly owned, no time extensions shall be granted nor delay damages paid until a delay occurs that extends the Work beyond the Substantial Completion date.
- 4.4.9.3.** CM@Risk understands and agrees that since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes that result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk agrees it shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## Article 5- Contract Price

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

**5.6. Contract Price**

**Guaranteed Maximum Price**

Cost of Work	\$ 19,041,394
Construction Fee	\$ 1,523,312
General Conditions	\$ 1,485,229
CM@Risk's Contingency	\$ 1,000,000
Total GMP Price	\$ 23,049,935
Owner's Contingency	\$ 1,000,000
Total Contract Price	\$ 24,049,935

(Contract Price - Written Amount)

Twenty-Four Million, Forty-Nine Thousand, Nine Hundred Thirty-Five Dollars and no/00\_\_\_\_\_

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

- 5.7.9.** CM@Risk understands and acknowledges that when City authorizes use of Owner's Contingency funds, it shall make the appropriate changes to the Schedule of Values with the next regular progress payment request. CM@Risk agrees that it shall deduct the amount of Owner's Contingency funds used from the Owner's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. CM@Risk agrees that if Owner's Contingency funds are used for a new line item that was not given with the original Schedule of Values, that it will be so indicated. CM@Risk further acknowledges that markups for Construction Fee and taxes shall be applied by the CM@Risk at the time that Owner's Contingency is used.
- 5.7.10.** CM@Risk understands and acknowledges that the GMP is subject to adjustments made in accordance with Article 6 herein below, and by GMP amendments to this Agreement.
- 5.7.11.** CM@Risk understands and acknowledges that GMP amendments are accumulative except for Contingency. CM@Risk further acknowledges that the amount of Contingency for each GMP amendment shall be negotiated separately.
- 5.7.12.** CM@Risk understands and acknowledges that if the GMP requires an adjustment due to changes in the Work or other causes as allowed in the Contract Documents, the cost of such changes is determined in accordance with Article 6 herein below. CM@Risk further acknowledges that the markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

## **Article 6 - Changes to the Contract Price and Time**

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### **6.1. Delays to the Work**

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

### **6.2. Errors, Discrepancies and Omissions**

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

### **6.3. City Requested Change in Work**

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

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

#### **6.4. Legal Requirements**

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

#### **6.5. Change Directives and Change Orders**

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

#### **6.6. Minor Changes in the Work**

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

#### **6.7. Contract Price Adjustments**

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

methods:

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

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

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



## **Article 7- Procedure for Payment**

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

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

## **7.2. Payment of GMP**

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

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

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

## **7.3. Retention on GMP**

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

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

## **7.4. Final Payment**

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

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

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

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

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

**7.5. Payments to Subcontractors or Suppliers**

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

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

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

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

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

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

**7.5.3.** Intentionally omitted.

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

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

**7.6. Record Keeping and Finance Controls**

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

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

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

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

## **Article 8- Claims and Disputes**

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### **8.1. Requests for Contract Adjustments and Relief**

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

### **8.2. Dispute Avoidance and Resolution**

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

### **8.3. Duty to Continue Performance**

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

### **8.4. Representatives of the Parties**

#### **8.4.1. City's Representatives**

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

Representative ("City's Senior Representative"):

**CITY'S SR. REPRESENTATIVE**

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

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

**CITY'S REPRESENTATIVE**

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

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

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

**CM@Risk's SR. REPRESENTATIVE**

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

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

**CM@Risk's REPRESENTATIVE**

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

## **Article 9 – Suspension and Termination**

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### **9.1. City's Right to Stop Work**

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

### **9.2. Termination for Convenience**

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

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

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

**9.2.3.1.** Stop Work as specified in the notice.

**9.2.3.2.** Place no further subcontracts or orders.

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

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

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

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

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

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

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

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

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

### **9.3. City's Right to Perform and Terminate for Cause**

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

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

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



**Article 10 - Insurance and Bonds**

**10.1. Insurance Requirements**

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

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

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

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

**10.2.1 Commercial General Liability – Occurrence Form**

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

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

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

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

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

**10.2.3 Worker's Compensation and Employers' Liability**

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

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

**10.2.4 Builders' Risk Insurance or Installation Floater**

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

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

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

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

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

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

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

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

**10.3 Additional Insurance Requirements**

**10.3.1** The policies shall include, or be endorsed to include the following provisions:

**10.3.1.1** on insurance policies where the City of Bastrop is named as an additional insured, the City of Bastrop shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.

**10.3.1.2** the CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**10.3.1.3** coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**10.4 Notice of Cancellation**

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

**10.5 Acceptability of Insurers**

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

**10.6 Verification of Coverage**

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

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

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

## **Article 11 - Indemnification**

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### **11.1. Indemnification**

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

## Article 12 – General Provisions

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### 12.1 Contract Documents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12.19 Equal Opportunity/AffirmativeAction**

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



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

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

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

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

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

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

## **12.20 Confidentiality of Plans & Specifications**

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

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

## **12.21 CM@Risk and Subcontractor Employee Security Inquiries**

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

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

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

**12.24.2 Prohibition on Contracts with Certain Companies that Boycott Israel**

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

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

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

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

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

ARCHER WESTERN CONSTRUCTION, LLC

By: \_\_\_\_\_

Title: BUSINESS GROUP LEADER

(Corporate Seal)

[Signature]  
ATTEST: (Signature and Title)

Approved by City Council:  
Date:

CITY OF BASTROP \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Recommended:

By: \_\_\_\_\_  
(Department)

ATTEST:  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

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

## EXHIBIT A - PROJECT DESCRIPTION

### Scope of Work

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

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

## EXHIBIT B – APPROVED GMP PROPOSAL

GMP 3 Proposal is made part of this agreement by reference and on file with the:

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

## EXHIBIT C – TECHNICAL SPECIFICATIONS

Technical Specifications as specified in EXHIBIT B – APPROVED GMP PROPOSAL are set forth herein in full OR made part of this agreement by reference OR made part of this agreement as a separate attachment.

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

## **EXHIBIT D – CONSTRUCTION DRAWINGS**

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

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



### EXHIBIT E – SAMPLE CHANGE DIRECTIVE FORM

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

**EXHIBIT F – SAMPLE CHANGE ORDER FORM**

<b>Project</b>	<u>Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities</u>	<b>Project Number</b>
<b>Owner</b>	<u>City of Bastrop, TX</u>	<u>BAS18568</u>
<b>Contractor</b>	<u>Archer Western Construction</u>	_____
<b>Const. Manager</b>	<u>Freese and Nichols, Inc.</u>	_____
<b>Design Professional</b>	<u>Freese and Nichols, Inc.</u>	_____

**Change Order**  
**No.** \_\_\_\_\_ **Date** \_\_\_\_\_

**Make the following modifications to the Contract Documents:**

<b>Item</b>	<b>Description</b>	<b>Change Amount</b>
1		\$ _____
2		\$ _____
3		\$ _____
4		\$ _____
5		\$ _____
<b>Net Change in Contract Price this Change Order</b>		\$ _____
<b>Net Change in Contract Times this Change Order</b>		_____ days

*The compensation in this Change Order is the full, complete, and final compensation for all costs Contractor may incur because of or relating to this change whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any cost for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged Work because of this Change Order. The changes in Contract Times are the complete and final adjustments for impacts from this change to the ability of Contractor to complete the Work within the Contract Times and are the only adjustments to which Contractor is entitled. All terms and provisions of the Contract Documents remain in effect except as specifically modified by this Change Order.*

<b>a. Original Contract Price</b>	\$ _____
<b>b. Previously Approved Change Order/Contract Amendment Amounts</b>	\$ _____
<b>c. Adjusted Contract Price ( a + b )</b>	\$ _____
<b>d. Contract Amendment Amount</b>	\$ _____
<b>e. Revised Contract Price ( c + d )</b>	\$ _____
<b>f. Percent Change in Contract Price to Date</b>	_____ %

	<b>Original</b>	<b>Previous</b>	<b>Current</b>
<b>Substantial Completion Date</b>	_____	_____	_____
<b>Final Completion Date</b>	_____	_____	_____

<b>Recommended by Design Professional</b>		<b>Recommended by Resident Project Representative</b>	
_____	_____	_____	_____
<i>Name</i>	<i>Date</i>	<i>Name</i>	<i>Date</i>
<b>Approved by Contractor</b>		<b>Approved by Owner</b>	
_____	_____	_____	_____
<i>Name</i>	<i>Date</i>	<i>Name</i>	<i>Date</i>

**EXHIBIT G – SAMPLE PAY REQUEST FORM**

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

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

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

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

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

By \_\_\_\_\_  
*(signature)*

Date \_\_\_\_\_  
*(date signed)*

Name \_\_\_\_\_  
*(typed or printed)*

Title \_\_\_\_\_  
*(typed or printed)*

Representing \_\_\_\_\_  
*(typed or printed)*

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

Personally Known       Produced Identification, Type and No. of ID \_\_\_\_\_

By \_\_\_\_\_  
*(notary's signature)*

Name \_\_\_\_\_  
*(typed or printed)*

Notary Public - State of \_\_\_\_\_  
*(typed or printed)*

My commission expires \_\_\_\_\_  
*(expiration date)*

*(Notary Seal)*





# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-47 of the City Council of the City of Bastrop, Texas, approving a professional engineering services contract with Freese and Nichols, Inc. (FNI) for the Wastewater Master Plan (WWMP) for a not to exceed amount of One Hundred Sixty-Five Thousand Dollars (\$165,000.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

Fabiola de Carvalho, AMP MIAM, Director of Engineering and Capital Project Management.

**BACKGROUND/HISTORY:**

The Wastewater Master Plan is one of City's master plans and a component of the Comprehensive Plan. Master Plans identify particular future needs by type and connect needs to growth projections and underlying basic assumptions related to anticipated trends. The Wastewater Master Plan will provide a Capital Improvement Plan (CIP) and will serve as a guide to the infrastructure and policies necessary to accomplish the wastewater related goals of City's Comprehensive Plan.

The City of Bastrop has been experiencing steady growth in population and development. In order to serve growth, meet regulations, deliver adequate services, and protect public health and the environment, substantial infrastructure reinvestment is needed. Increased development leads to an increase in various services, including wastewater.

The City developed a 20-year wastewater study for areas west of Colorado River within the City's existing wastewater certificate of convenience and necessity (CCN), which resulted in the West Side Wastewater Study report finalized in May of 2016.

This WWMP will look at the capacity of the City's current wastewater system and provide recommendations for short (5-year), medium (10-year), and long-term (25-year) planning.

The plan will accomplish the following objectives:

- Evaluate and make recommendation on future of wastewater treatment capacity
- Evaluate existing wastewater infrastructure within City's wastewater CCN
- Develop draft Capital Improvement Plan Costs, Schedule, and Mapping

The City published a Request for Qualification for Professional Engineering Services on November 4<sup>th</sup> and 11<sup>th</sup> of 2022. The City received three Statement of Qualifications. After evaluating the qualifications, the City selected Freese & Nichols, Inc. (FNI) as the most qualified firm for this project. City started negotiations with FNI shortly after selection and were finalized in February of 2023.

The Notice to Proceed will be provided in April 2023, and the study is expected to be completed in July 2024.

**FISCAL IMPACT:**

FY23 Annual Budget

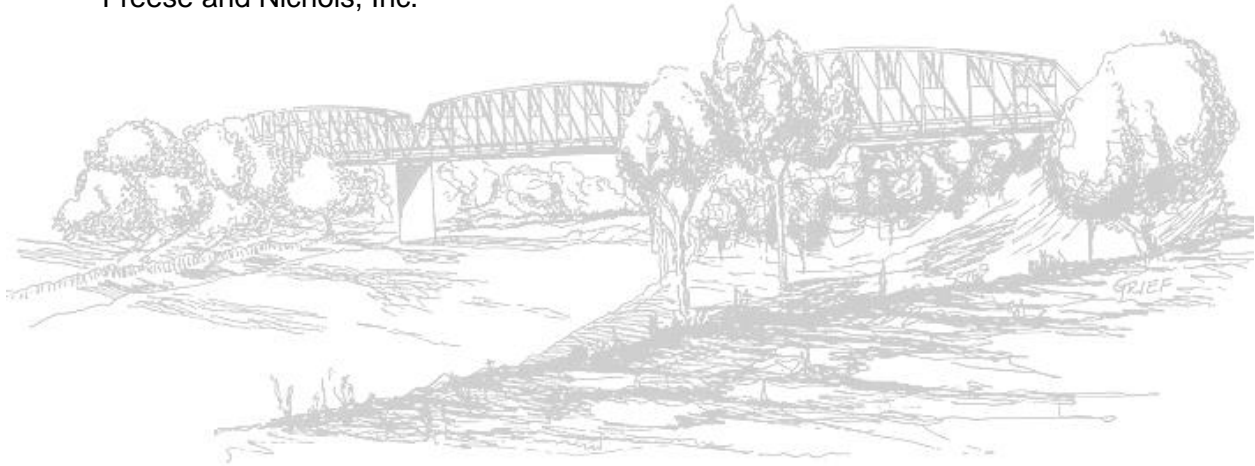
- Water/Wastewater CIP Fund

**RECOMMENDATION:**

Consider action to approve Resolution No. R-2023-47 of the City Council of the City of Bastrop, Texas, approving a professional engineering services contract with Freese and Nichols, Inc. (FNI) for the Wastewater Master Plan (WWMP) for a not to exceed amount of One Hundred Sixty-Five Thousand Dollars (\$165,000.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**ATTACHMENTS:**

- Exhibit A: Resolution No. R-2023-47
- Exhibit B: Professional Services Contract between the City of Bastrop and Freese and Nichols, Inc.



**RESOLUTION NO. R-2023-47**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A PROFESSIONAL ENGINEERING SERVICES CONTRACT WITH FREESE AND NICHOLS, INC. FOR A NOT-TO-EXCEED AMOUNT OF ONE HUNDRED SIXTY-FIVE THOUSAND, (\$165,000.00) FOR THE WASTEWATER MASTER PLAN (WWMP); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPALING 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 is interested in developing a Wastewater Master Plan, which is a component of the Comprehensive Plan; and

**WHEREAS**, The City Council understands the need to evaluate City’s existing wastewater infrastructure to serve growth, meet regulations, deliver adequate services and protect health and the environment; and

**WHEREAS**, The City of Bastrop has chosen Freese and Nichols, Inc. (FNI) from a selection of qualified consulting firms identified during the Request for Qualifications process published in November 2022.

**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 the professional engineering services contract with FNI for the WWMP for a not to exceed amount of \$165,000.00.

**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 28<sup>th</sup> day of March 2023.

**APPROVED**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

**CITY OF BASTROP**  
**STANDARD CONTRACT FOR GENERAL SERVICES**  
Over \$50K  
(8-16-2021)

This General Services Contract (“Contract”) is entered by and between the **City of Bastrop**, a Texas Home-Rule Municipal Corporation (the “City”), and **Freese and Nichols, Inc.** (the “Engineer/Contractor”), and together with the City jointly referred to as the “Parties,” for the following work described on the Scope of Services, Exhibit A-2, attached and incorporated herein to this Contract (the “Work” or “Project” or “Wastewater Master Plan”).

**I. General Information and Terms.**

Engineer’s/Contractor’s Name and Address:	Jessica Vassar 10431 Morado Circle, Building 5, Suite 300 Austin, Texas 78759 512-617-3167 jbv@freese.com
General Description of Services:	Wastewater Master Plan
Maximum Contract Amount:	\$165,000
Effective Date:	On the latest of the dates signed by both parties.
Termination Date:	See II.D.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Standard Contractual Provisions
- III. Additional Terms or Conditions
- IV. Additional Contract Documents
- V. Signatures

**II. Standard Contractual Provisions.**

A. Contractor’s Services. The Contractor will provide to the City the professional engineering services (“Services”) described in the Scope of Services, Exhibit A-2 attached and incorporated herein to this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The Contractor will bill the City for the Services provided at intervals of at least 30 days of receipt of Contractor’s invoices, except for the final billing. The City will pay the Contractor within 30 days of receipt of Contractor’s invoices for the Services provided for

CITY OF BASTROP, GENERAL SERVICES CONTRACT/Page 1

in this Contract with current revenues available to the City, but all of the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City shall have the right to withhold payment, or any part thereof, of any of invoice presented by Contractor until resolution providing reasonable verification of the correctness thereof is reached. The City shall notify the Contractor, in writing, of the disputed amount within thirty (30) days. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Executed Contract. The "Notice to Proceed" will not be given nor shall any Services commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to this Contract.

D. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

- (a) On the termination date, if any, specified in the General Information in Part I, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
- (b) If there is no termination date specified in the General Information in Part I, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City Manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five (5) business days prior to the termination date, but the City will pay the Contractor for all Services rendered in compliance with this Contract up to the date of termination. The City may terminate the Contract anytime if the City does not have available funds pursuant to Texas Government Code Chapter 2251.

(3) If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution).

E. Delays. Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of Contractor, an extension of time shall be the Contractor's sole remedy.

F. Independent Contractor. It is understood and agreed by the Parties that the Contractor is an independent contractor retained for the Services described in the Scope of Services, Exhibit A-2, attached and incorporated herein. The City will not control the manner or the means of the

Contractor's performance but shall be entitled to work product as detailed in the Exhibit A-2. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture. Services performed by the Contractor under this Contract are solely for the benefit of the City. Nothing contained in this Contract creates any duties on the part of the Contractor toward any person not a party to this Contract. No person or entity not a signatory to this Contract shall be entitled to rely on the Contractor's performance of its Services hereunder, and no right to assert a claim against the Contractor by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Contractor's Services hereunder.

G. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

H. Assignment. The Contractor may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Bastrop County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

L. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

M. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR

DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE CONTRACTOR IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED, TREBLE (OR STATUTORY EQUIVALENT), OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK OR SERVICES PERFORMED OR TO BE PERFORMED HEREUNDER.

N. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, OR ALLEGED TO BE CAUSED BY, THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS..

O. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

P. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Documents and Data, Licensing of Intellectual Property, and Copyright. All Work progress and final documents and data produced by Contractor during the term of the Contract shall be and remain the property of the City. For purposes of this Contract, the term "Documents and Data" include any original work (the Work), reports, analyses, plans, drawings, designs, renderings, specifications, notes, summaries, charts, schedules, spreadsheets, calculations, lists, data compilations, documents, or any other material developed and assembled by or on behalf of the City in the performance of this Contract. It also includes any medium in which the Documents and Data are kept, including digitally, magnetically, or electronically. This Contract creates at no cost to the City, a perpetual license for the City to use any picture, video, music, brochure, writing, trademark, logo, or other work created by the Contractor for the use of the City, as a "work made for hire" as defined by federal copyright law. The City, as the author and owner of the copyright

to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate.

R. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission), attached and incorporated herein as Exhibit A-1, that includes:

- (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
- (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

T. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

U. Prohibition on Contracts with Companies Boycotting Israel. Certain contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89, as amended by H.B. 793). Specifically, contracts for good and services that:

- (1) are between the City and a company with ten (10) or more full-time employees; and
- (2) have a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the City.

Under the provisions of this statute, if the above conditions apply the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

If this is a contract to which the verification requirement applies, the City has approved a verification form which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

### **III. Additional Terms or Conditions.**

#### **Insurance**

At all times this Agreement is in effect, Contractor shall maintain insurance of the types and amounts as those required in Exhibit B-1. All of Contractor's insurance policies in any way relating to the Work, whether or not required by this Agreement and regardless of the enforceability or validity of any of the indemnities or other assumptions of liability by Contractor, shall, to the full coverage limits of all such policies without any limitations based on the minimum requirements set forth above: (a) other than the worker's compensation insurance, name City Group as additional insureds on a broad form basis with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent; (b) provide for waiver of all rights of subrogation against City and the other members of City Group; and (c) be primary and noncontributory as to all other policies (including any deductibles or self-insured retentions) and self-insurance that may provide coverage to any member of City Group, and shall be fully applied and exhausted before application of any applicable indemnity obligations of City or of any applicable insurance coverage provided by City or any other member of City Group.

#### **A. Audit**

Contractor shall, and shall ensure that its affiliates, subsidiaries, contractors, subcontractors, consultants, agents, and any other person associated with Contractor including those in Contractor Group, keep full and accurate books and records with respect to all Work performed, and all payments and expenditures in connection with this Agreement. The records to be maintained and retained by Contractor Group shall include, without limitation, (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the Project, as well as canceled payroll checks or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items; (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other Third Parties' charges, including, but not limited to, Equipment rental; (d) travel and entertainment documentation, including, but not limited to, employee expense

reports and Contractor facility usage reports; and (e) all field tickets or similar documentation evidencing the Work. The City shall have the right at all reasonable times, for a period of five (5) years from the completion of the Work, to audit and inspect such books and records (excluding trade secrets, formulas, confidential data, proprietary information, or processes).

**B. Reports of Incidents**

Within twenty-four (24) hours upon occurrence, Contractor shall provide in writing to the City notice and details of any accidents or occurrences resulting in injuries to persons, property, or pollution arising in any way arising out of or related to the Work whether done by Contractor or any subcontractor of Contractor or any other member of Contractor Group performing Work pursuant to this Contract. Contractor shall in writing within twenty-four (24) hours of any claim, demand, or suit that may be presented to or served upon it arising out of or as a result of Work.

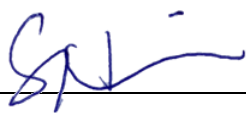
**IV. Additional Contract Documents.** The following documents attached to this Contract are part of this Contract:

- EXHIBIT A-1: Certificate of Interested Parties (1295 Form)
- EXHIBIT A-2 Scope of Work
- EXHIBIT A-3 House Bill 89 Verification
- EXHIBIT B-1 Requirements for General Services Contract

**V. Signatures.**

**FREESE AND NICHOLS, INC.**

**CITY OF BASTROP**

By: 

By: \_\_\_\_\_

Printed Name: Stephanie Neises

Printed Name: \_\_\_\_\_

Title: Principal

Title: \_\_\_\_\_

Date: 03/03/23

Date: \_\_\_\_\_



**EXHIBIT A-1**

Certificate of Interested Persons with Certification of Filing  
(Form 1295)

*(See Attached)*

# CERTIFICATE OF INTERESTED PARTIES

FORM 11

Item 9C.

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2023-990224

Date Filed:  
03/02/2023

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
Freese and Nichols, Inc.  
Houston, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**  
City of Bastrop

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
Contract  
Professional Engineering Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Pence, Bob	Fort Worth, TX United States	X	
	Coltharp, Brian	Fort Worth, TX United States	X	
	Payne, Jeff	Fort Worth, TX United States	X	
	Johnson, Kevin	Fort Worth, TX United States	X	
	Archer, Charles	Raleigh, NC United States	X	
	Reedy, Mike	Houston, TX United States	X	
	Greer, Alan	Fort Worth, TX United States	X	
	Hatley, Tricia	Oklahoma City, OK United States	X	
	Wolfhope, John	Austin, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is Maria Aguilar, and my date of birth is August 10, 1989.

My address is 10497 Town and Country Way, Suite 600, Houston, TX, 77024, US.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 2 day of March, 2023.  
(month) (year)

Maria Aguilar  
Signature of authorized agent of contracting business entity  
(Declarant)

**EXHIBIT A-2**

Scope of Services **dated February 1, 2023**

*(See Attached)*

**Exhibit A-2**  
**City of Bastrop**  
**Wastewater Master Plan**  
**Scope of Work**

**Project Understanding**

Freese and Nichols, Inc. (FNI) understands that the City of Bastrop (City) is seeking professional engineering assistance to prepare a Wastewater Master Plan. The intent of the study is to develop a capital improvements plan for the wastewater collection system. FNI will define the service area and develop land use assumptions with the assistance of City staff and use that information for wastewater flow projections. A hydraulic model of the collection system will be developed using a combination of GIS data, as-built data, and measure down information. FNI will utilize the hydraulic model to evaluate lift stations, collection system capacity, and future system improvements. FNI will develop a comprehensive Wastewater Capital Improvements Plan. The results of the study will be summarized in the Wastewater Master Plan Report.

**Scope of Work**

**A. Project Kickoff and Flow Projections**

- A1. Project Kickoff Meeting: Freese and Nichols, Inc. (FNI) will meet with the City staff to review scope, project team, schedule of the project, and discuss the data request memorandum.
- A2. Data Collection: FNI will compile information from the City including GIS files, as-built drawings, lift station layouts, pump curves, recently completed system improvements, and wastewater flow data.
- A3. Review Historical Wastewater Flows: FNI will obtain and evaluate historical wastewater flows for the City to develop trends and calculate peaking factors. This data will be used to determine expected per-capita loads for future projections.
- A4. Develop and Distribute Wastewater Flow Projections: FNI will develop wastewater flow projections for existing, 5-year, 10-year, and 25-Year conditions using the future land use assumptions developed as part of the Water Master Plan, previous studies, and selected design criteria. Flows will be calculated by sub-basin. FNI will distribute wastewater flows throughout the service area based on the existing and future population distribution.
- A5. Progress Meeting: Land Use and Flow Projections: FNI will meet with the City to discuss population, land use assumptions, and wastewater flow projections. FNI will address comments from City staff and make revisions as necessary.

## **B. Wastewater Model Development and Validation**

- B1. Evaluate GIS Connectivity in Wastewater Line GIS Files and Build the Wastewater Model: FNI will evaluate the GIS files of the City's wastewater lines for connectivity. FNI will address any connectivity issues required for the model and request as-built drawings needed for major trunk lines for invert data. FNI will import 8-inch and larger lines and critical 6-inch lines into the InfoSewer wastewater modeling software from GIS. City staff will provide manhole measure down data for major interceptors where as-built drawings are not available. FNI will provide the revised shapefile to the City.
- B2. Update Manhole Data in GIS: FNI will update GIS with the results of the survey data including rim elevation and depth. FNI will provide the revised shapefile to the City.
- B3. Add Facilities Data in Model: FNI will verify the configuration of lift stations and control structures in the model with as-built drawings and add them to the wastewater model.
- B4. Obtain and Evaluate Lift Station & WWTP Data: Obtain lift station and WWTP flow data to be used for model development and to assist in model validation.
- B5. Conduct Wastewater Model Validation: FNI will utilize lift station and WWTP influent flow data for steady state wet weather model validation. FNI will conduct model validation by adjusting Manning's roughness factors, force main C-factors, peaking factors, and load distribution.
- B6. Perform Modeling of Existing Wastewater System: FNI will conduct modeling of the existing wastewater system for peak flow operating conditions to determine capacity and deficiencies within the existing wastewater system. FNI will evaluate maximum pipe flows versus full flow capacity (q/Q) in interceptors and level of surcharging in manholes.
- B7. Progress Meeting: Wastewater Model Validation and Existing System Analysis: FNI will prepare mapping showing q/Q for interceptors and level of surcharging in manholes. FNI will meet with the City on validation and existing system analysis results and discuss adjustments needed to the modeling before future system modeling commences.

## **C. Wastewater System Analysis and Develop Improvements**

- C1. Evaluate Basin Delineation: FNI will utilize and analyze the existing basin and sub-basin delineation based on modeling results and lift station locations. FNI will provide updated basin boundaries to the City for review.
- C2. Identify Requirements for System Improvements: FNI will develop target design criteria for interceptors, force mains and lift stations, including allowable surcharging and minimum/maximum velocities.

- C3. Evaluate WWTP Capacity Needs to Meet Projected Flows: FNI will evaluate required WWTP capacity needed for projected wastewater flows, including the need for additional treatment facilities outside of the current WWTP.
- C4. Perform Future Wastewater System Modeling: Determine sizing of wastewater interceptors, force mains and lift stations needed to serve 25-year flows using the model. FNI will also evaluate which lift stations can be decommissioned as new interceptors are built. FNI will use interim 5-year and 10-year model runs to determine the phasing of improvements.
- C5. Progress Meeting: Wastewater System Improvement Alternatives: FNI will meet with the City to discuss future wastewater system improvement options for 25-year conditions.

#### **D. Wastewater CIP and Master Plan Report**

- D1. Develop Draft Capital Improvement Plan (CIP) Costs, Schedule, and Mapping: FNI will develop costs and phasing for each proposed project. Costs will be in Year 2023 dollars and will include engineering and contingencies. Develop draft CIP scheduling of projects based upon modeling results, future land use, annexation plans, and reliability needs. FNI will develop mapping showing project locations.
- D2. Progress Meeting: Draft Capital Improvement Plan: FNI will meet with the City to discuss future wastewater system improvements for 5-year, 10-year and 25-year planning periods.
- D3. Revise CIP and Prepare Draft Wastewater Master Plan Report: FNI will revise the CIP based upon City's comments and modifications and prepare a master plan report discussing model development, validation, wastewater flow projections, and recommended capital improvement plan including costs of improvements. The report will include colored maps showing proposed system improvements as well as GIS digital copies. FNI submit one (1) electronic copy in PDF format of the draft report to the City.
- D4. Revise and Finalize Wastewater Master Plan Report: FNI will revise the report based on City comments and submit one (1) final hard copies and one (1) electronic copy in PDF format of the Wastewater Master Plan Report to the City. FNI will provide electronic files of the wastewater model. Purchasing the modeling software is not included.
- D5. Council Presentation: FNI Project Manager will present the Wastewater Master Plan report to City Council. FNI will be available to answer questions and discuss content.

#### **E. Additional Services/Allowance**

- E1. Additional Services/Allowance: This Allowance is to provide additional services as defined by the Director of Engineering and Capital Project Management, which are not fully known or defined at this time. Use of this Allowance will require written direction and authorization from the Director of Engineering and Capital Project Management prior to any additional services or other services not

included under this Wastewater Master Plan Scope of Services. The City may at its sole discretion decline to authorize any services described in this task, and the City shall have no obligation to pay for services not authorized.

### Cost of Service

The City will pay for services rendered by FNI a cost not to exceed of \$165,000, according to the Detailed Cost Breakdown table, attached herein. Rate increases will not affect the cost of the project.

### Summary of Meetings

1. Project Kickoff Meeting (virtual)
2. Progress Meeting: Land Use and Flow Projections (virtual)
3. Progress Meeting: Wastewater Model Validation and Existing System Analysis
4. Progress Meeting: Wastewater System Improvement Alternatives
5. Progress Meeting: Draft Capital Improvement Plan
6. Council Presentation

### Project Schedule

- FNI will submit draft land use assumptions and Task D3 within 3 months of notice to proceed.
- FNI will submit a draft CIP within 12 months of notice to proceed.
- FNI will provide a draft report within 14 months of notice to proceed.
- FNI will provide the final report within 3 weeks of receiving City comments.

### Fee Summary

Task	Description	Hours	Total Labor Effort	Total Expense Effort	Total Effort
A	Project Kickoff and Flow Projections	92	\$17,747	\$782	\$18,529
B	Wastewater Model Development and Validation	268	\$49,271	\$2,340	\$51,611
C	Wastewater System Analysis and Develop Improvements	151	\$29,986	\$1,346	\$31,332
D	Wastewater CIP and Master Plan Report	236	\$45,881	\$2,131	\$48,011
E	Additional Services/Allowance	77	\$14,861	\$655	\$15,516
<b>Total Wastewater Master Plan</b>		<b>747</b>	<b>\$157,746</b>	<b>\$7,254</b>	<b>\$165,000</b>

City of Bastrop Wastewater Master Plan 3/2/2023 Detailed Cost Breakdown		Project Fee Summary	
Basic Services	\$	165,000	
Special Services	\$	-	
<b>Total Project</b>	<b>\$</b>	<b>165,000</b>	

Project Fee Summary	
Basic Services	\$
Special Services	\$
<b>Total Project</b>	<b>\$</b>

Project Fee Summary	
Basic Services	\$
Special Services	\$
<b>Total Project</b>	<b>\$</b>

Item 9C.

Tasks				Labor								Expenses				Subconsultants		Total					
Phase	Task	Activity	Basic or Special	Task Description	Stephane Nieves	Jessica Vissar	Dave Christensen	Max Dupes	Cooper Boast	Kira Iles	Michael Lefferty	Robert Hamann	Total Hours	Total Labor Effort	Tech Charge	Miles	Color (sheet)	Total Expense Effort	Sub Name 1	Total Sub Effort	Total Effort		
					QA/QC Professional 6	PM Professional 5	SRM Professional 4	Project Engineer Professional 2	GIS Professional 1	Client Rep Professional 4	Site Visits Professional 4	Electrical Professional 4											
					\$281	\$246	\$210	\$160	\$134	\$210	\$210	\$246											
A	1			Project Kickoff and Flow Projections		2	2						4	\$ 948				\$ -			\$ -	\$ -	
A	2			Project Kickoff Meeting		4	4	12	2				22	\$ 4,172				\$ 34			\$ -	\$ 882	
A	3			Data Collection		2	4	8					14	\$ 2,716				\$ 119			\$ -	\$ 4,359	
A	4			Review Historical Wastewater Flows		4	16	20					48	\$ 8,981				\$ 408			\$ -	\$ 9,389	
A	5			Develop and Distribute Wastewater Flow Projections		2	2		8				4	\$ 948				\$ 34			\$ -	\$ 982	
A				Progress Meeting: Land Use and Flow Projections										\$ -				\$ -			\$ -	\$ -	
B				Wastewater Model Development and Calibration										\$ -				\$ -			\$ -	\$ -	
B	1			Evaluate GIS Connectivity in Wastewater Line GIS Files and Build the Wastewater Model		8	12	40	20				80	\$ 14,111		80		\$ 680			\$ -	\$ 14,791	
B	2			Update Manhole Data in GIS			12		24				36	\$ 5,965				\$ 306			\$ -	\$ 6,271	
B	3			Add Facilities Data in Model		4	8	12	4				28	\$ 5,325				\$ 238			\$ -	\$ 5,563	
B	4			Obtain and Evaluate Lift Station & WWTP Data		4	8	16					28	\$ 5,433				\$ 238			\$ -	\$ 5,671	
B	5			Conduct Wastewater Model Validation		2	4	12	24	4			46	\$ 8,780				\$ 391			\$ -	\$ 9,171	
B	6			Perform Modeling of Existing Wastewater System		2	2	12	30				46	\$ 8,704				\$ 391			\$ -	\$ 9,100	
B	7			Progress Meeting: Wastewater Model Validation		2	2						4	\$ 948	4	76	50	\$ 96			\$ -	\$ 1,045	
B				Wastewater System Analysis and Develop Improvements										\$ -				\$ -			\$ -	\$ -	
C	1			Evaluate Basin Delineation		2	4	8	12	2			28	\$ 5,631		28		\$ 238			\$ -	\$ 5,869	
C	2			Identify Requirements for System Improvements		2	2	4	6				12	\$ 2,384		12		\$ 102			\$ -	\$ 2,486	
C	3			Evaluate WWTP Capacity Needs to Meet Buildout Flow		1	2	4	8				15	\$ 3,009				\$ 128			\$ -	\$ 3,136	
C	4			Perform Future Wastewater System Modeling		2	8	28	50				88	\$ 17,061				\$ 748			\$ -	\$ 17,814	
C	5			Progress Meeting: Wastewater System Improvement Alternatives		4	4						8	\$ 1,897		8	76	50	\$ 130			\$ -	\$ 2,027
D				Wastewater CIP and Master Plan Report										\$ -				\$ -			\$ -	\$ -	
D	1			Develop Draft Capital Improvement Plan (CIP) Costs, Schedule, and Mapping		1	8	24	50	4	12		99	\$ 19,079		99		\$ 842			\$ -	\$ 19,920	
D	2			Progress Meeting: Draft Capital Improvement Plan			4	4					8	\$ 1,897		8	76	50	\$ 130			\$ -	\$ 2,027
D	3			Revise CIP and Prepare Draft Wastewater Master Plan Report		2	12	20	50	2			86	\$ 16,621		86		\$ 731			\$ -	\$ 17,352	
D	4			Revise and Finalize Wastewater Master Plan Report		1	2	10	20	2			35	\$ 6,951		35		\$ 298			\$ -	\$ 7,249	
D	5			Council Presentation			4		4				8	\$ 1,669		8	76	50	\$ 130			\$ -	\$ 1,819
E				Additional Services/Allowance										\$ -				\$ -			\$ -	\$ -	
E	1			Additional Services/Allowance		10	24	39	4				77	\$ 14,861		77		\$ 655			\$ -	\$ 15,516	
														\$ -				\$ -			\$ -	\$ -	
														\$ -				\$ -			\$ -	\$ -	
Total Hours / Quantity					13	96	224	491	76	-	12	-	824		524	304	260	\$ -			\$ -	\$ -	
Total Effort					\$ 3,798	\$ 25,072	\$ 48,922	\$ 66,726	\$ 10,605	\$ -	\$ 2,821	\$ -	\$ 157,746	\$ 7,095	\$ 199	\$ 50	\$ 7,254	\$ -	\$ -	\$ -	\$ -	\$ 165,000	



**EXHIBIT A-3**

House Bill 89 Verification

*(See Attached)*

## House Bill 89 Verification Form

### Prohibition on Contracts with Companies Boycotting Israel

The 85<sup>th</sup> Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract

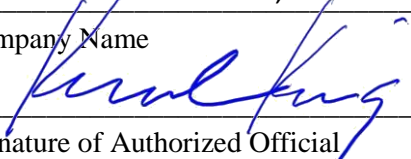
Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

I, (authorized official) Kendall King, do hereby depose and verify the truthfulness and accuracy of the contents of the statements submitted on this certification under the provisions of Subtitle F, Title 10, Government Code Chapter 2270 and that the company named below:

- 1) does not boycott Israel currently; and
- 2) will not boycott Israel during the term of the contract; and
- 3) is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Freese and Nichols, Inc.  
 Company Name

  
 Signature of Authorized Official

Vice President  
 Title of Authorized Official

January 30, 2023  
 Date

**EXHIBIT B-1**  
**REQUIREMENTS FOR GENERAL SERVICES CONTRACT**

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City, including any delay periods. If the Project is not finalized and the insurance expires, Contractor is obligated to extend the insurance coverage. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

**INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT**

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A. The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**
- B. A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
- C. All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2016/03) Coverage must be written on an occurrence form.
- L. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

**City of Bastrop  
Engineering and Capital Project Management Department  
P. O. Box 427  
1311 Chestnut Street  
Bastrop, TX 78602**

**INSURANCE REQUIREMENTS**

Items marked "X" are required to be provided if award is made to your firm.

**Coverages Required & Limits (Figures Denote Minimums)**

- Workers' Compensation      Statutory limits, State of TX.
- Employers' Liability      \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

Commercial General Liability:

	<input type="checkbox"/> Very High/High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

- Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)
 

<input type="checkbox"/> Very High/ High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Combined Single Limits	Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily	\$500,000 Bodily	\$300,000 Bodily

- Garage Liability for BI & PD
  - \$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto
  - \$2,000,000 General Aggregate

- Garage Keepers Coverage (for Auto Body & Repair Shops)
  - \$500,000 any one unit/any loss and \$200,000 for contents

Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

- Contract value less than \$1,000,000: **not required**
- Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**
- Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**
- Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**
- Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

- Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

- Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Bastrop) Limit is 100% of insurable value, replacement cost basis

- Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Bastrop)

- \$1,000,000 each occurrence
- \$2,000,000 aggregate

- Other Insurance Required: \_\_\_\_\_

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.





### ADDITIONAL REMARKS SCHEDULE

AGENCY <b>Ames &amp; Gough</b>		NAMED INSURED <b>Freese and Nichols, Inc.</b> 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Description of Operations/Locations/Vehicles:**  
policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions. The General Liability policy contains a Separation of Insured Clause per form HG 00 01 09 16.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - OPTION I

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) Or Location(s) Of Covered Operations:
ANY PERSON OR ORGANIZATION THAT YOU HAVE AGREED TO NAME AS AN ADDITIONAL INSURED IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT PROVIDED THAT THE INJURY OR DAMAGE OCCURS SUBSEQUENT TO THE EXECUTION OF THE CONTRACT OR AGREEMENT. A PERSON OR ORGANIZATION	IS INLCUDED AS AN ADDITIONAL INSURED UNDER THIS ENDORSEMENT ONLY FOR THAT TIME PERIOD REQUIRED BY THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A.** With respect to those person(s) or organization(s) shown in the Schedule above when you have agreed in a written contract or written agreement to provide insurance such as is afforded under this policy to them, Subparagraph **f.**, **Any Other Party**, under the **Additional Insureds When Required By Written Contract, Written Agreement Or Permit Paragraph of Section II – Who Is An Insured** is replaced with the following:

**f. Any Other Party**

Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for such additional insured at the project(s) or location(s) designated in the Schedule;
- (2) In connection with your premises owned by or rented to you and shown in the Schedule; or

**(3)** In connection with "your work" for the additional insured at the project(s) or location(s) designated in the Schedule and included within the "products-completed operations hazard", but only if:

- (a) The written contract or written agreement requires you to provide such coverage to such additional insured at the project(s) or location(s) designated in the Schedule; and
- (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

The insurance afforded to the additional insured shown in the Schedule applies:

- (1) Only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:
  - (a) During the policy period; and
  - (b) Subsequent to the execution of such written contract or written agreement; and

- (c) Prior to the expiration of the period of time that the written contract or written agreement requires such insurance be provided to the additional insured.
- (2) Only to the extent permitted by law; and
- (3) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

With respect to the insurance afforded to the person(s) or organization(s) that are additional insureds under this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to the additional insured shown in the Schedule are described in the Limits Of Insurance section.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in **Section IV – Commercial General Liability Conditions**, except as otherwise amended below.

**B.** With respect to insurance provided to the person(s) or organization(s) that are additional insureds under this endorsement, the **When You Add Others As An Additional Insured To This Insurance** subparagraph, under the **Other Insurance** Condition of **Section IV – Commercial General Liability Conditions** is replaced with the following:

#### **When You Add Others As An Additional Insured To This Insurance**

##### **(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph (c) below. This insurance does not apply to other insurance to which the additional insured in the Schedule has been added as an additional insured.

##### **(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (i) The additional insured in the Schedule is a Named Insured under such other insurance; and
- (ii) You have agreed in a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured in the Schedule.

##### **(c) Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

All other terms and conditions in the policy remain unchanged.



# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**  
ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT  
OR WRITTEN AGREEMENT TO OBTAIN THIS WAIVER OF RIGHTS FROM US.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

	SCHEDULE	
<b>Number of Days Notice:</b>		<b>Name of Governmental Entity:</b>
Part A: <u>030</u>		City of Bastrop
Part B: <u>010</u>		<b>Mailing Address:</b>
Part C: <u>030</u>		Attn: Engineering and Capital Project Management
Part D: <u>030</u>		Department
		P.O. Box 427
		1311 Chestnut Street
		Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B.** If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C.** If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D.** If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

##### **A. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **B. Employees as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **C. Lessors as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor and
  - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **D. Additional Insured if Required by Contract**

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
  - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

### 3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

### 4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

### 5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE Item 9C.

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

### 6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

### 7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

### 8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

#### **9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

#### **10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

#### **11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group Item 9C. Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

#### **13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

#### **15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

#### 16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

#### 17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

#### 18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000. Item 9C.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

#### 19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

	SCHEDULE
<b>Number of Days Notice:</b>  Part A: <u>30</u>  Part B: <u>10</u>  Part C: <u>30</u>  Part D: <u>30</u>	<b>Name of Governmental Entity:</b> City of Bastrop  <b>Mailing Address:</b> Attn: Engineering and Capital Project Management Department P.O. Box 427 1311 Chestnut Street Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B.** If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C.** If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D.** If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

**Policy Number:** 42 WB OL6H3F

**Endorsement Number:**

**Effective Date:** 10/23/22 Effective hour is the same as stated on the Information Page of the policy.

**Named Insured and Address:** FREESE AND NICHOLS, INC.  
801 CHERRY STREET, SUITE 2800  
FORT WORTH TX 76102

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

### **Schedule**

1.        Special Waiver  
                    Name of person or organization  
  
          Blanket Waiver  
                    Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
2.    Operations:  
      All Texas Operations
3.    Premium:  
      The premium charge for this endorsement shall be   2   percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4.    Advance Premium:



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**TEXAS NOTICE OF  
MATERIAL CHANGE ENDORSEMENT**

**Policy Number:** 42 WB OL6H3F

**Endorsement Number:** 4

**Effective Date:** 01/30/23

Effective hour is the same as stated on the Information Page of the policy.

**Named Insured and Address:** FREESE AND NICHOLS, INC.  
801 CHERRY ST STE 2800  
FORT WORTH TX 76102

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

- 1. Number of days advance notice: 30
- 2. Notice will be mailed to:

City of Bastrop

Attn: Engineering and Capital Project Management Department P. O. Box 427 1311 Chestnut Street Bastrop, TX 78602

Countersigned by \_\_\_\_\_ Authorized Representative



## UMBRELLA LIABILITY POLICY PROVISIONS

In this policy the words "you" and "your" refer to the Named Insured first shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. "We", "us" and "our" refer to the stock insurance company member of The Hartford Financial Services Group Inc. shown in the Declarations.

Other words and phrases that appear in quotation marks also have special meaning. Refer to DEFINITIONS (Section VII).

IN RETURN FOR THE PAYMENT OF THE PREMIUM, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this policy, we agree with you as follows:

### SECTION I - COVERAGES

#### INSURING AGREEMENTS

##### A. Umbrella Liability Insurance

1. We will pay those sums that the "insured" becomes legally obligated to pay as "damages" in excess of the "underlying insurance" or of the "self-insured retention" when no "underlying insurance" applies, because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies caused by an "occurrence". But, the amount we will pay as "damages" is limited as described in **Section IV - LIMITS OF INSURANCE.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II - INVESTIGATION, DEFENSE, SETTLEMENT.**

2. This insurance applies to "bodily injury", "property damage" or "personal and advertising injury" only if:
  - a. The "bodily injury", "property damage" or "personal and advertising injury" occurs during the "policy period"; and
  - b. Prior to the "policy period", no insured listed under Paragraph **A.** of Section **III - Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the "policy period", that

the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".

3. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under paragraph **A.** of Section **III - Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

##### B. Exclusions

This policy does not apply to:

###### 1. Pollution

Any obligation:

- a. To pay for the cost of investigation, defense or settlement of any claim or suit against any "insured" alleging actual or threatened injury or damage of any nature or kind to persons or property which arises out of or would not have occurred but for the pollution hazard; or
- b. To pay any "damages", judgments, settlements, loss, costs or expenses that may be awarded or incurred:
  - i. By reason of any such claim or suit or any such injury or damage; or
  - ii. In complying with any action authorized by law and relating to such injury or damage.

As used in this exclusion, pollution hazard means an actual exposure or threat of exposure to the corrosive, toxic or other harmful properties of any solid, liquid, gaseous or thermal:

- a. Pollutants;
- b. Contaminants;

- c. Irritants; or
- d. Toxic substances;

Including:

Smoke;

Vapors;

Soot;

Fumes;

Acids;

Alkalis;

Chemicals, and

Waste materials consisting of or containing any of the foregoing. Waste includes materials to be recycled, reconditioned or reclaimed.

#### EXCEPTION

This exclusion does not apply:

- a. To "bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- b. To injury or damage as to which valid and collectible "underlying insurance" with at least the minimum limits shown in the Schedule of Underlying Insurance Policies is in force and applicable to the "occurrence". In such event, any coverage afforded by this policy for the "occurrence" will be subject to the pollution exclusions of the "underlying insurance" and to the conditions, limits and other provisions of this policy. In the event that "underlying insurance" is not maintained with limits of liability as set forth in the Schedule of Underlying Insurance Policies, coverage under any of the provisions of this exception does not apply.

Exception **b.** does not apply to:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is :
  - (a) Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";

(b) Otherwise in the course of transit by or on behalf of the "insured"; or

(c) Being stored, disposed of, treated or processed in or upon any "auto";

(2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or

(3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph (1) above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- a. The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- b. The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any following equipment:
  - i. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment; and
  - ii. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers.

Paragraphs (2) and (3) above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto"

covered by the "underlying insurance" if:

- a. The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto", and
- b. The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

## 2. Workers Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

## 3. Contractual Liability

Liability assumed by the "insured" under any contract or agreement with respect to an "occurrence" taking place before the contract or agreement is executed.

## 4. Personal And Advertising Injury

This policy does not apply to "personal and advertising injury".

### EXCEPTION

This exclusion does not apply to the extent that coverage for such "personal and advertising injury" is provided by "underlying insurance", but in no event shall any "personal and advertising injury" coverage provided under this policy apply to any claim or "suit" to which "underlying insurance" does not apply.

Any coverage restored by this **EXCEPTION** applies only to the extent that such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

## 5. Underlying Insurance

Any injury or damage:

- a. Covered by "underlying insurance" but for any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
- b. For which "damages" would have been payable by "underlying insurance" but for the actual or alleged insolvency or financial impairment of an underlying insurer.

## 6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, operation,

maintenance, use, entrustment to others, loading or unloading of any aircraft:

- a. Owned by any "insured"; or
- b. Chartered or loaned to any "insured".

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to aircraft that is:

- a. Hired, chartered or loaned with a paid crew; but
- b. Not owned by any "insured".

This exclusion does not apply to "bodily injury" to any of your "employees" arising out of and in the course of their employment by you.

## 7. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, loading or unloading of any watercraft.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- a. Watercraft you do not own that is:
  - (1) Less than 51 feet long, and
  - (2) Not being used to carry persons or property for a charge;
- b. "Bodily injury" to any of your "employees" arising out of and in the course of their employment by you; or
- c. Any watercraft while ashore on premises owned by, rented to or controlled by you.

## 8. War

Any injury or damage, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war; or

- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### 9. Damage To Property

"Property damage" to property you own.

#### 10. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

#### 11. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### 12. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

#### 13. Recall Of Products, Work Or Impaired Property

"Damages" claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired Property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect,

deficiency, inadequacy or dangerous condition in it.

#### 14. Expected Or Intended

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### 15. Employer Liability

Coverage afforded any of your "employees" for "bodily injury" or "personal and advertising injury":

- a. To other "employees" arising out of and in the course of their employment;
- b. To the spouse, child, parent, brother or sister of that "employee" as a consequence of such "bodily injury" to that "employee".
- c. To you or, any of your partners or members, (if you are a partnership, joint venture), or your members (if you are a limited liability company); or
- d. Arising out of the providing or failing to provide professional health care services.

Subparagraphs a. and b. of this exclusion apply:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

#### EXCEPTION

Subparagraphs a. and b. of this exclusion do not apply if "underlying insurance" is maintained providing coverage for such liability with minimum underlying limits, as described in the Schedule of Underlying Insurance Policies.

#### 16. Property Damage To Employee's Property

Coverage afforded any of your "employees" for "property damage" to property owned or occupied by or rented or loaned to:

- a. That "employee";
- b. Any of your other "employees";
- c. Any of your partners or members (if you are a partnership or joint venture); or
- d. Any of your members (if you are a limited liability company).

**17. Uninsured Or Underinsured Motorists**

Any claim for:

- a. Uninsured or Underinsured Motorists Coverage;
- b. Personal injury protection;
- c. Property protection; or
- d. Any similar no-fault coverage by whatever name called;

Unless this policy is endorsed to provide such coverage.

**18. Employment Practices Liability**

- a. Any injury or damage to:
  - (1) A person arising out of any:
    - (a) Refusal to employ that person;
    - (b) Termination of that person's employment; or
    - (c) Employment-related practices, policies, acts or omissions, such as but not limited to: coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
  - (2) The spouse, child, parent, brother or sister of that person, as a consequence of any injury or damage to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- i. Whether the injury-causing event described in part (1) above occurs before employment, during employment or after employment of that person;
- ii. Whether the "insured" may be liable as an employer or in any other capacity; and
- iii. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the injury.

**19. Employee Retirement Income Security Act**

Any liability arising out of intentional or unintentional violation of any provision of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (commonly referred to as the Revision Act of 1974), or any amendments to them.

**20. Asbestos**

Any injury, damages, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" arising out of, or relating to, in whole or in part, the "asbestos hazard" that:

- a. May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard"; or
- b. Arise out of any request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of any "asbestos hazard"; or
- c. Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**21. Racing And Stunting Activities**

"Bodily injury" or "property damage" arising out of the ownership, operation, maintenance, use, entrustment to others, or loading or unloading of any "auto" or "mobile equipment" while being used in any:

- a. Prearranged or organized racing, speed or demolition contest;
- b. Stunting activity; or
- c. Preparation for any such contest or activity.

**22. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit

monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

### 23. Limited Underlying Coverage

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage" or "personal and advertising injury" for which:

- a. an "underlying insurance" policy or policies specifically provides coverage; but
- b. because of a provision within the "underlying insurance" such coverage is provided at a limit or limits of insurance that are less than the limit(s) for the "underlying insurance" policy or policies shown on the Schedule of Underlying Insurance Policies.

### 24. Recording And Distribution Of Material Or Information In Violation Of Law

Any injury, damage, loss, cost or expense, including but not limited to "bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or

limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

## SECTION II - INVESTIGATION, DEFENSE, SETTLEMENT

A. With respect to "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies (whether or not the "self-insured retention" applies) and

1. For which no coverage is provided under any "underlying insurance"; or
2. For which the underlying limits of any "underlying insurance" policy have been exhausted solely by payments of "damages" because of "occurrences" during the "policy period",

We:

1. Will have the right and the duty to defend any "suit" against the "insured" seeking "damages" on account thereof, even if such "suit" is groundless, false or fraudulent; but our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under coverages afforded by this policy;
2. May make such investigation and settlement of any claim or "suit" as we deem expedient;
3. Will pay all expenses incurred by us, all court costs taxed against the "insured" in any "suit" defended by us and all interest on the entire amount of any judgment therein which accrues after the entry of the judgment and before we have paid or tendered or deposited in court that part of the judgment which does not exceed the applicable limit of insurance. However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed to the insured;
4. Will pay all premiums on appeal bonds required in any such "suit", premiums on bonds to release attachments in any such "suit" for an amount not in excess of the applicable limit of insurance, and the cost of bail bonds required of the "insured" because of an accident or traffic law violation arising out of the operation of any vehicle to which this policy applies, but we will have no obligation to apply for or furnish any such bonds;
5. Will pay all reasonable expenses incurred by the "insured" at our request in assisting us in the investigation or defense of any claim or "suit", including actual loss of earnings not to exceed \$500 per day per "insured";



and the amounts so incurred, except settlement of claims and "suits," are not subject to the "self-insured retention" and are payable in addition to any applicable limit of insurance.

The "Insured" agrees to reimburse us promptly for amounts paid in settlement of claims or "suits" to the extent that such amounts are within the "self-insured retention".

- B.** You agree to arrange for the investigation, defense or settlement of any claim or "suit" in any country where we may be prevented by law from carrying out this agreement. We will pay defense expenses incurred with our written consent in connection with any such claim or "suit" in addition to any applicable limit of insurance. We will also promptly reimburse you for our proper share, but subject to the applicable limit of insurance, of any settlement above the "self-insured retention" made with our written consent.
- C.** We will have the right to associate at our expense with the "insured" or any underlying insurer in the investigation, defense or settlement of any claim or "suit" which in our opinion may require payment hereunder. In no event, however, will we contribute to the cost and expenses incurred by any underlying insurer.

### SECTION III - WHO IS AN INSURED

**A.** If you are doing business as:

1. An individual, you and your spouse are "insureds", but only with respect to the conduct of a business of which you are the sole owner.
2. A partnership or joint venture, you are an "insured". Your members, your partners, and their spouses are also "insureds", but only with respect to the conduct of your business.
3. A limited liability company, you are an "insured". Your members are also "insureds", but only with respect to the conduct of your business. Your managers are "insureds", but only with respect to their duties as your managers.
4. An organization other than a partnership, joint venture or limited liability company, you are an "insured". Your "executive officers" and directors are "insureds", but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.
5. A trust, you are an "insured". Your trustees are also "insureds", but only with respect to their duties as trustees.

**B.** Each of the following is also an "insured":

1. Your "volunteer workers" only while performing duties related to the conduct of

your business, or your "employees," other than your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts:

- a. Within the scope of their employment by you or while performing duties related to the conduct of your business; and
  - b. Only if such "volunteer workers" or "employees" are insureds under "underlying insurance" with limits of liability no less than stated in the Schedule of Underlying Insurance Policies, subject to all the coverage, terms, conditions and limitations of such "underlying insurance".
2. Any person or organization with whom you agreed, because of a written contract, written agreement or because of a permit issued by a state or political subdivision, to provide insurance such as is afforded under this policy, but only with respect to your operations, "your work" or facilities owned or used by you.

This provision does not apply:

- a. Unless the written contract or written agreement has been executed, or the permit has been issued prior to the "bodily injury," "property damage," or "personal and advertising injury"; and
  - b. Unless limits of liability specified in such written contract, written agreement or permit is greater than the limits shown for "underlying insurance"; or
  - c. Beyond the period of time required by the written contract or written agreement.
3. Any person or organization having proper temporary custody of your property if you die, but only:
- a. With respect to liability arising out of the maintenance or use of that property; and
  - b. Until your legal representative has been appointed.
4. Your legal representative if you die, but only with respect to his or her duties as such. That representative will have all your rights and duties under this policy.
- C.** With respect to "auto", any "insured" in the "underlying insurance" is an "insured" under this insurance policy, subject to all the limitations of such "underlying insurance".
- D.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain

financial interest of more than 50% of the voting stock, will qualify as an "insured" if there is no other similar insurance available to that organization.

However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the "policy period", whichever is earlier;
  2. This insurance does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  3. This insurance does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- E.** Each person or organization, not included as an "insured" in Paragraphs A., B., C., or D., who is an "insured" in the "underlying insurance" is an "insured" under this insurance subject to all the terms, conditions and limitations of such "underlying insurance".

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

With respect to any person or organization who is not an "insured" under "underlying insurance", coverage under this policy shall apply only to loss in excess of the amount of the "underlying insurance" or "self-insured retention" applicable to you.

However, coverage afforded by reason of the provisions set forth above applies only to the extent:

- (i) Of the scope of coverage provided by the "underlying insurance" but in no event shall coverage be broader than the scope of coverage provided by this policy and any endorsements attached hereto; and
- (ii) That such coverage provided by the "underlying insurance" is maintained having limits as set forth in the Schedule of Underlying Insurance Policies.

#### **SECTION IV - LIMITS OF INSURANCE**

- A.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. "Insureds";
  2. Claims made or "suits" brought;
  3. Persons or organizations making claims or bringing "suits"; or
  4. Coverages under which damages are covered under this policy.

- B.** The Limit of Insurance stated as the General Aggregate Limit is the most we will pay for the sum of "damages", other than "damages":
1. Because of injury or damage included within the "products-completed operations hazard";
  2. Because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you; and
  3. Because of "bodily injury" and "property damage" arising out of the ownership, operations, maintenance, use, entrustment to others, loading or unloading of any "auto".
- C.** The Limit of Insurance stated as the Products Completed Operations Aggregate Limit is the most we will pay for "damages" because of injury or damage included within the "products-completed operations hazard".
- D.** The Limit of Insurance stated as the Bodily Injury By Disease Aggregate Limit is the most we will pay for "damages" because of "bodily injury" by disease to your "employees" arising out of and in the course of their employment by you.
- E.** Subject to **B.**, **C.**, or **D** above, whichever applies, the Each Occurrence Limit is the most we will pay for "damages" because of all "bodily injury", "property damage", and "personal and advertising injury" arising out of any one "occurrence".
- F.** Our obligations under this insurance end when the applicable Limit of Insurance available is used up. If we pay any amounts for "damages" in excess of that Limit of Insurance, you agree to reimburse us for such amounts.
- G.** The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Declarations. However, if the "policy period" is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for the purpose of determining the Limits of Insurance.

#### **SECTION V - NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)**

- A.** The insurance does not apply:
1. To "bodily injury" or "property damage":
    - a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured

under any such policy but for its termination upon exhaustion of its limit of liability; or

- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. To "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material" if:

- a. The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
- c. The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

- B. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or

concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (1) Any "nuclear reactor";
- (2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel," or (c) handling, processing or packaging "waste";
- (3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

## SECTION VI - CONDITIONS

### A. Premium

All premiums for this policy shall be computed in accordance with Item 5 of the Declarations. The premium stated as such in the Declarations is a deposit premium only which shall be credited to the amount of any earned premium. At the close of each "policy period", the earned premium shall be computed for such period, and upon notice thereof to the Named Insured first shown in the Declarations shall become due and payable by such Named Insured.

If the total earned premium for the "policy period" is less than the premium previously paid and more than the minimum premium, we shall return to such Named Insured the unearned portion paid by such Named Insured.

The Named insured first shown in the Declarations shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to us at the end of the "policy period" and at such times during the "policy period" as we may direct.

**B. Inspection And Audit**

We shall be permitted but not obligated to inspect your property and operations at any time. Neither our right to make inspections, nor the making thereof, nor any report thereon, shall constitute an undertaking on your behalf or for your benefit or that of others to determine or warrant that such property or operations are:

1. Safe;
2. Healthful; or
3. In compliance with any law, rule or regulation.

We may examine and audit your books and records at any time during the "policy period" and extensions thereof and within three years after the final termination of this policy, insofar as they relate to the subject matter of this policy.

**C. Duties In The Event Of Occurrence, Claim Or Suit**

1. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim under this policy. This requirement applies only when such "occurrence" is known to any of the following:
  - a. You or any additional insured that is an individual;
  - b. Any partner, if you or an additional insured are a partnership;
  - c. Any manager, if you or an additional insured are a limited liability company;
  - d. Any "executive officer" or insurance manager, if you or an additional insured are a corporation;
  - e. Any trustee, if you or an additional insured is a trust; or
  - f. Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

To the extent possible, notice should include:

- a. How, when and where the "occurrence" took place;
  - b. The names and addresses of any injured persons and witnesses; and
  - c. The nature and location of any injury or damage arising out of the "occurrence" or "offense".
2. If a claim is made or "suit" is brought against any insured, you must:
    - a. Immediately record the specifics of the claim or "suit" and the date received; and

- b. Notify us in writing as soon as practicable if the claim is likely to exceed the amount of the "self-insured retention" or "underlying insurance", whichever applies.

3. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit" involving or likely to involve a sum in excess of any "self-insured retention" or "underlying insurance", whichever applies;
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - d. Assist us, upon our request in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this policy or any "underlying insurance" or "self-insured retention" may apply.
4. No insured will, except at that insured's own cost, make or agree to any settlement for a sum in excess of:
  - a. The total limits of "underlying insurance"; or
  - b. The "self-insured retention" if no "underlying insurance" applies without our consent.
5. No insureds will, except at that insured's own cost, make a payment, assume any obligation, or incur any expenses, other than first aid, without our consent.

**D. Assistance And Cooperation Of The Insured**

The "insured" shall:

1. Cooperate with us and comply with all the terms and conditions of this policy; and
2. Cooperate with any of the underlying insurers as required by the terms of the "underlying insurance" and comply with all the terms and conditions thereof.

The "insured" shall enforce any right of contribution or indemnity against any person or organization who may be liable to the "insured" because of "bodily injury", "property damage" or "personal and advertising injury" with respect to this policy or any "underlying insurance".

**E. Legal Action Against Us**

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this policy unless all of its terms and those of the "underlying insurance" have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but, we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the limit of liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### F. Appeals

In the event the "insured" or the "insured's" underlying insurer elects not to appeal a judgment in excess of the "underlying insurance" or the "self-insured retention," we may elect to make such appeal, at our cost and expense.

If we so elect, we shall be liable in addition to the applicable Limit of Insurance, for the:

1. Taxable costs;
  2. Disbursements; and
  3. Additional interest incidental to such appeal;
- But in no event will we be liable for "damages" in excess of the applicable aggregate Limit of Insurance.

If a judgment is rendered in excess of the limits of "underlying insurance" and we offer to pay our full share of such judgment, but you or your underlying insurers elect to appeal it, you, your underlying insurers or both will bear:

- a. The cost and duty of obtaining any appeal bond;
- b. The taxable costs, disbursements and additional interest incidental to such appeal; and
- c. Any increase in damages over the amount the matter could have been settled for after the verdict was entered and before the appeal was filed.

#### G. Other Insurance

This policy shall apply in excess of all "underlying insurance" whether or not valid and collectible. It shall also apply in excess of other valid and collectible insurance (except other insurance purchased specifically to apply in excess of this insurance) which also applies to any loss for which insurance is provided by this policy.

These excess provisions apply, whether such other insurance is stated to be:

1. Primary;
2. Contributing;
3. Excess; or
4. Contingent.

#### H. Transfer Of Rights Of Recovery Against Others To Us

##### 1. Transfer Of Rights Of Recovery

If the insured has rights to recover all or a part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after a loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

- a. Recoveries shall be applied to reimburse:

- (1) First, any interest (including the Named Insured) that paid any amount in excess of our limit of liability;
- (2) Second, us, along with any other insurers having a quota share interest at the same level;
- (3) Third, such interests (including the Named Insured) of whom this insurance is excess.

However, a different apportionment may be made to effect settlement of a claim by agreement signed by all interests.

- b. Reasonable expenses incurred in the exercise of rights of recovery shall be apportioned among all interests in the ratio of their respective losses for which recovery is sought.

##### 2. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the "insured" has waived any rights of recovery against any person or organization for all or part of any payment we have made under this policy, we also waive that right, provided the "insured" waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

#### I. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. Notice to any agent, or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this policy, or stop us from asserting any rights under the terms of this policy.

The Named Insured first shown in the Declarations is authorized on behalf of all "insureds" to agree with us on changes in the terms of this policy.

If the terms are changed, the changes will be shown in an endorsement issued by us and made a part of this policy.

**J. Separation Of Insureds**

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this policy to the Named Insured first shown in the declarations, this insurance applies:

- a. As if each Named Insured were the only Named Insured: and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**K. Maintenance Of Underlying Insurance**

Policies affording in total the coverage and limits stated in the Schedule of Underlying Insurance Policies shall be maintained in full effect during the currency of this policy. Your failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, we shall be liable only to the extent that we would have been liable had you complied herewith.

The Named Insured first shown in the Declarations shall give us written notice as soon as practicable of any of the following:

1. Any change in the coverage or in the limits of any "underlying insurance", including but not limited to a change from occurrence coverage to claims made coverage;
2. Termination of part or all of one or more of the policies of "underlying insurance";
3. Reduction or exhaustion of an aggregate limit of liability of any "underlying insurance".

The "self-insured retention" shall not apply should the "underlying insurance" be exhausted by the payment of claims or "suits" which are also covered by this policy.

**L. Cancellation**

1. The Named Insured first shown in the Declarations may cancel this policy by mailing or delivering to us or to any of our authorized agents advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the Named Insured first shown in the Declarations at the address shown in this policy, written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if such Named Insured fails to pay the premium or any installment when due; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice will state the effective date of cancellation. The "policy period" will end on that date.

Delivery of such notice by the Named Insured first shown in the Declarations or by us will be equivalent to mailing.

4. If the Named Insured first shown in the Declarations cancels, the refund may be less than pro rata, but we will retain any minimum premium stated as such in the Declarations. If we cancel, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

**M. Non-Renewal**

1. If we decide not to renew, we will mail or deliver to the Named Insured first shown in the Declarations, at the address shown in this policy, written notice of non-renewal at least 30 days before the end of the "policy period".
2. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. If we offer to renew but such Named Insured does not accept, this policy will not be renewed at the end of the current "policy period".

**N. Workers' Compensation Agreement**

With respect to "bodily injury" to any officer or other employee arising out of and in the course of employment by you, you represent and agree that you have not abrogated and will not abrogate your common-law defenses under any Workers' Compensation Law by rejection of such law or otherwise. If at any time during the "policy period" you abrogate such defenses, the insurance for "bodily injury" to such officer or other employee automatically terminates at the same time.

**O. Bankruptcy Or Insolvency**

In the event of the bankruptcy or insolvency of the "insured" or any entity comprising the "insured", we shall not be relieved of any of our obligations under this policy.

**P. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. The statements in the Schedule Of Underlying Insurance Policies are accurate and complete;
- c. The statements in a. and b. are based upon representations you made to us;
- d. We have issued this policy in reliance upon your representations; and
- e. If unintentionally you should fail to disclose all hazards at the inception of this policy, we shall not deny coverage under this policy because of such failure.

**SECTION VII - DEFINITIONS**

**Except as otherwise provided in this section or amended by endorsement, the words or phrases that appear in quotation marks within this policy shall follow the definitions of the applicable "underlying insurance" policy.**

**"Accident"** includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

**"Asbestos hazard"** means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

**"Auto"** means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

**"Covered pollution cost or expense"** means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement; or
2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) That are, or that are contained in any property that is:
  - a. Being transported or towed by, handled, or handled for movement into, onto or from, any "auto";
  - b. Otherwise in the course of transit by or on behalf of the "insured"; or
  - c. Being stored, disposed of, treated or processed in or upon any "auto"; or
- (2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto any "auto"; or
- (3) After the "pollutants" or any property in which the "pollutants" are contained are moved from any "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto", covered by the "underlying insurance" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury," "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in paragraphs **6.b** and **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon an "auto" covered by the "underlying insurance" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of the "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**"Damages"** include prejudgment interest awarded against the "insured" on that part of the judgment we pay.

"Damages" do not include:

1. Fines;
2. Penalties; or
3. Damages for which insurance is prohibited by the law applicable to the construction of this policy.

Subject to the foregoing, "damages" include damages for any of the following which result at any time from "bodily injury" to which this policy applies:

1. Death;
2. Mental anguish;
3. Shock;
4. Disability; or
5. Care and loss of services or consortium.

**"Insured"** means any person or organization qualifying as an insured in the applicable WHO IS AN INSURED provision of this policy. The insurance afforded applies separately to each "insured" against whom claim is made or "suit" is brought, except with respect to the limit of our liability under LIMITS OF INSURANCE (SECTION IV).

**"Occurrence"** means

1. With respect to "bodily injury" or "property damage": an accident, including continuous or

repeated exposure to substantially the same general harmful conditions, and

2. With respect to "personal and advertising injury": an offense described in one of the numbered subdivisions of that definition in the "underlying insurance".

**"Policy period"** means the period beginning with the inception date stated as such in the Declarations and ending with the earlier of:

1. The date of cancellation of this policy; or
2. The expiration date stated as such in the Declarations.

**"Self-insured retention"** means the amount stated as such in the Declarations which is retained and payable by the "insured" with respect to each "occurrence".

**"Underlying insurance"** means the insurance policies listed in the Schedule of Underlying Insurance Policies, including any renewals or replacements thereof, which provide the underlying coverages and limits stated in the Schedule of Underlying Insurance Policies. The limit of "underlying insurance" includes:

1. Any deductible amount;
2. Any participation of any "insured"; and
3. Any "self-insured retention" above or beneath any such policy;

Less the amount, if any, by which the aggregate limit of such insurance has been reduced by any payment relating to any act, error, omission, injury, damage or offense for which insurance is provided by this policy, including Medical Payments Coverage as described in the "underlying insurance." The coverages and limits of such policies and any such deductible amount, participation or "self-insured retention" shall be deemed to be applicable regardless of:

1. Any defense which any underlying insurer may assert because of the "insured's" failure to comply with any condition of its policy; or
2. The actual or alleged insolvency or financial impairment of any underlying insurer or any "insured".

The risk of insolvency or financial impairment of any underlying insurer or any "insured" is borne by you and not by us.





**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## NOTICE OF CANCELLATION OR NONRENEWAL TO DESIGNATED GOVERNMENTAL ENTITY

	SCHEDULE	
<b>Number of Days Notice:</b>		<b>Name of Governmental Entity:</b>
Part A: <u>30</u>		City of Bastrop
Part B: <u>10</u>		<b>Mailing Address:</b>
Part C: <u>30</u>		Attn:Engineering and Capital
Part D: <u>30</u>		Project Management Department
		P.O. Box 427
		1311 Chestnut Street
		Bastrop, TX 78602

This policy is subject to the following additional Conditions when a number of days are shown in the Schedule for any of the above Parts.

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, or if coverages or limits are reduced below the minimum level contractually required by the governmental entity, notice of such cancellation or reduction in coverage will be provided to the governmental entity in the Schedule, at least the number of days in advance of the cancellation effective date, as shown in Part A.
- B.** If this policy is cancelled by the Company for nonpayment of premium, notice of such cancellation will be provided to the governmental entity in the Schedule within the number of days notice of the cancellation effective date, as shown in Part B.
- C.** If this policy is cancelled by the insured, notice of such cancellation will be provided to the governmental entity in the Schedule, within the number of days notice of the cancellation effective date, as shown in Part C.

- D.** If this policy is nonrenewed by the Company, notice of such nonrenewal will be provided to the governmental entity in the Schedule, at least the number of days in advance of the nonrenewal effective date, as shown in Part D.

If notice is mailed, proof of mailing notice to the governmental entity's mailing address as shown in the Schedule will be sufficient proof of notice. If the number of days notice in the Schedule for any Part is left blank or is shown as zero, no notice will be provided to the Scheduled governmental entity under that Part.

Any notification rights provided by this endorsement apply to the governmental entity in the Schedule so long as it was issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the governmental entity in the Schedule will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

After the **Insured** reports a **circumstance** or a **claim** is made and the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** shall only do so with the Insurer's prior written consent.

**C. The Insured's Rights and Duties in the Event of a Circumstance**

If the **Insured** reports a **circumstance** for which there may be coverage under this Policy, and the **Insured** gives the Insurer written notice containing as much detail as the **Insured** can reasonably provide regarding:

1. what happened and the **professional services** or activities the **Insured** performed;
2. the nature of any possible injury or damages; and
3. how and when the **Insured** first became aware of such **circumstance**,

then any **claim** or **related claims** that subsequently may be made against the **Insured** arising out of such **circumstance** shall be deemed to have been made on the date the Insurer received written notice of the **circumstance**.

The **Insured** will cooperate with the Insurer in addressing the **circumstance**, and refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

**D. Subrogation**

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. The Insurer hereby waives subrogation rights against any person or organization to the extent that the **Named Insured** has, prior to a **wrongful act** or **circumstance**, entered into a written agreement to waive such rights.

**E. Premium**

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy term**.

**F. Examination and Audit**

The **Insured** agrees to allow the Insurer to examine and audit the **Insured's** financial books and records that relate to this insurance. The Insurer may do this at any time during the **policy term** or any extensions, and up to three years after the end of the **policy term**.

**G. Legal Action Limitation**

1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a **claim**, there is any dispute concerning tort allegations against the Insurer regarding the handling or settlement of any **claim**, the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

**H. Changes to Policy**

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement to this Policy.

**I. Transfer of Interest**



NOTICE ENDORSEMENT - NOTICE OF CANCELLATION, NON-RENEWAL OR REDUCTION IN LIMITS WHERE REQUIRED BY WRITTEN CONTRACT

It is understood and agreed that if the **Named Insured** has agreed in a written contract with its client to provide such client with notice of cancellation or non-renewal of this Policy, or notice of a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide such notice of cancellation, non-renewal or reduction in Limits to the client as set forth herein.

Within ten (10) business days of the Insurer's request, the **Named Insured** will deliver to the Insurer, or cause to be delivered by the broker or agent of record, a list acceptable to the Insurer containing the names and addresses of all entities entitled to receive notice. If the list is not provided to the Insurer within such time period, the Insurer will not provide notification. The Insurer will assume that the list provided to the Insurer by the **Named Insured** or the broker is a complete and accurate list of certificate holders. Only those persons or entities listed on the schedule will receive notification. The Insurer will keep no other record of any certificate holders in the Insurer's file. Such notice will be delivered to such client at the address recorded by certificate on file with the broker or agent of record and provided to the Insurer.

With respect to cancellation or non-renewal of this Policy, the Insurer will provide the **Named Insured's** client with the greater of:

- (1) thirty (30) days' notice; or
- (2) the number of days' notice set forth in the applicable State Provisions endorsement attached to this Policy in accordance with the Cancellation/Non-Renewal condition of the Policy.

With respect to a reduction in the Limits of Liability of this Policy by endorsement during the **policy term**, the Insurer will provide the **Named Insured's** client with the lesser of:

- (1) sixty (60) days' notice; or
- (2) the number of days' notice required in the **Named Insured's** contract with such client.

The Insurer's failure to provide such notification will not extend the Policy cancellation date, negate cancellation or non-renewal of the Policy, invalidate any endorsement to the Policy or be cause for legal action against the Insurer.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-45 of the City Council of the City of Bastrop, Texas, approving a construction contract with Texas Materials Group Inc., dba Gulf Coast a CRH Company (Gulf Coast) for the Old Austin Highway Pavement Rehabilitation to a not-to-exceed amount of One Million Four Hundred Ninety Thousand One Hundred and Seven Dollars (\$1,490,107.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

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

**BACKGROUND/HISTORY:**

The City of Bastrop City Council approved the Old Austin Highway project as part of the City's street rehabilitation program 5-year Capital Improvement Program (CIP).

The City of Bastrop performed a pavement condition index (PCI) study in 2018 and another in 2022. Both pavement evaluation scores indicated that Old Austin HWY needs rehabilitation. City of Bastrop, like many other municipalities use the PCI to measure the condition of their roads. The information collected from the PCI study is used to create a multi-year street maintenance and/or rehabilitation program to maintain and extend the useful life of the streets.

Walker Partners, the Engineer, recommended a roadway rehabilitation strategy which will improve the structural integrity of the roadway, improve the surface condition and the ride quality. A Full Depth Reclamation (FDR) project with a Hot Mix Overlay was proposed by Walker Partners.

A Design package was initially prepared by the Engineer approximately 4 years ago, advertised and only two bids were received on June 4, 2019, from Angel Brothers Construction (\$1,012,719.70) and from Aaron Concrete Contractors, LP (\$1,275,811.75). On June 11, 2019, City Council voted to not award the construction contract for this project as bids exceeded Engineer's Estimate.

On April 12, 2022, City Council approved a professional services contract for a not-to-exceed amount of \$66,840.00 to provide revisions to the original 2019 design and specifications (as various TxDOT standards provided in 2019 have been revised since then, as required by TxDOT permit), as well as updated quantities, specifications and new bid documents based on present roadway conditions. The professional services contract with Walker Partners covers plan and construction documents revision, bidding and contract administration phases.

Walker Partners completed the contract documents in February 2023. The City published an Invitation to Submit Proposals on February 23 and March 3. A pre-bid meeting was held on February 28, 2023 and the bid proposals were received and opened on March 9, 2023. The City received two bid proposals. After Walker Partner's evaluation of the proposals, Walker Partners provided a Recommendation to Award the construction contract for this project to Gulf Coast, the highest ranking proposal which was also the best proposal price.

A bid proposal summary table is provided below:

Rank	Contractor	Total Project Cost
1	Texas Materials Group, dba Gulf Coast	\$1,490,107.00
2	Patin Construction, LLC	\$2,367,419.75

The Engineer's opinion of probable construction cost was \$1,734,786.09.

The Notice to Proceed is anticipated to be issued in April 2023 for work to commence in May 2023, immediately after school is out, as per Council's request. Project shall be substantially complete within 55 calendar days from commencement, and final completion, within 10 calendar days from Substantial Completion, for a total project duration of 65 days.

The City understands the Old Austin Highway has high traffic and the impacts this construction can cause, so there is a provision in the construction contract that the major items of construction will be performed at night. To assist with the construction at night, Walker Partners will have a Resident Project Representative full-time during the night work. Two-way traffic will be maintained at all times.

**FISCAL IMPACT:**

FY22 Annual Budget

- CO Series 2022

**RECOMMENDATION:**

Consider action to approve Resolution No. R-2023-45 of the City Council of the City of Bastrop, Texas, approving a construction contract with Texas Materials Group Inc., dba Gulf Coast a CRH Company (Gulf Coast) for the Old Austin Highway Pavement Rehabilitation to a not-to-exceed amount of One Million Four Hundred Ninety Thousand One Hundred and Seven Dollars (\$1,490,107.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

**ATTACHMENTS:**

- Exhibit A: Resolution No. R-2023-45
- Exhibit B: Recommendation to Award from Walker Partners
- Exhibit C: Project Location



**RESOLUTION NO. R-2023-45**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A CONSTRUCTION CONTRACT WITH TEXAS MATERIALS GROUP, DBA GULF COAST A CRH COMPANY (GULF COAST) TO A NOT-TO-EXCEED AMOUNT OF ONE MILLION FOUR HUNDRED NINETY THOUSAND ONE HUNDRED AND SEVEN DOLLARS (\$1,490,107.00) FOR THE OLD AUSTIN HIGHWAY PAVEMENT REHABILITATION; AUTHORIZING CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Bastrop, Texas recognizes that the Old Austin Highway is in need of rehabilitation to extend its useful life; and

**WHEREAS**, the City Council of the City of Bastrop recognizes the importance of maintaining streets and the value added to the community by proper maintenance; and

**WHEREAS**, the City Council of the City of Bastrop, Texas recognizes that tax dollars should be spent responsibly; and

**WHEREAS**, the City Council understands that re-bidding this project was necessary; and

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

**Section 1:** That the bids received for the 2019 Streets Program Maintenance and Preventative Maintenance Project were formally rejected.

**Section 2:** That the City Manager is hereby authorized to execute the Construction Contract, to a not-to-exceed amount of One Million Four Hundred Ninety Thousand One Hundred and Seven Dollars (\$1,490,107.00);

**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, Texas  
this 28<sup>th</sup> day of March, 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

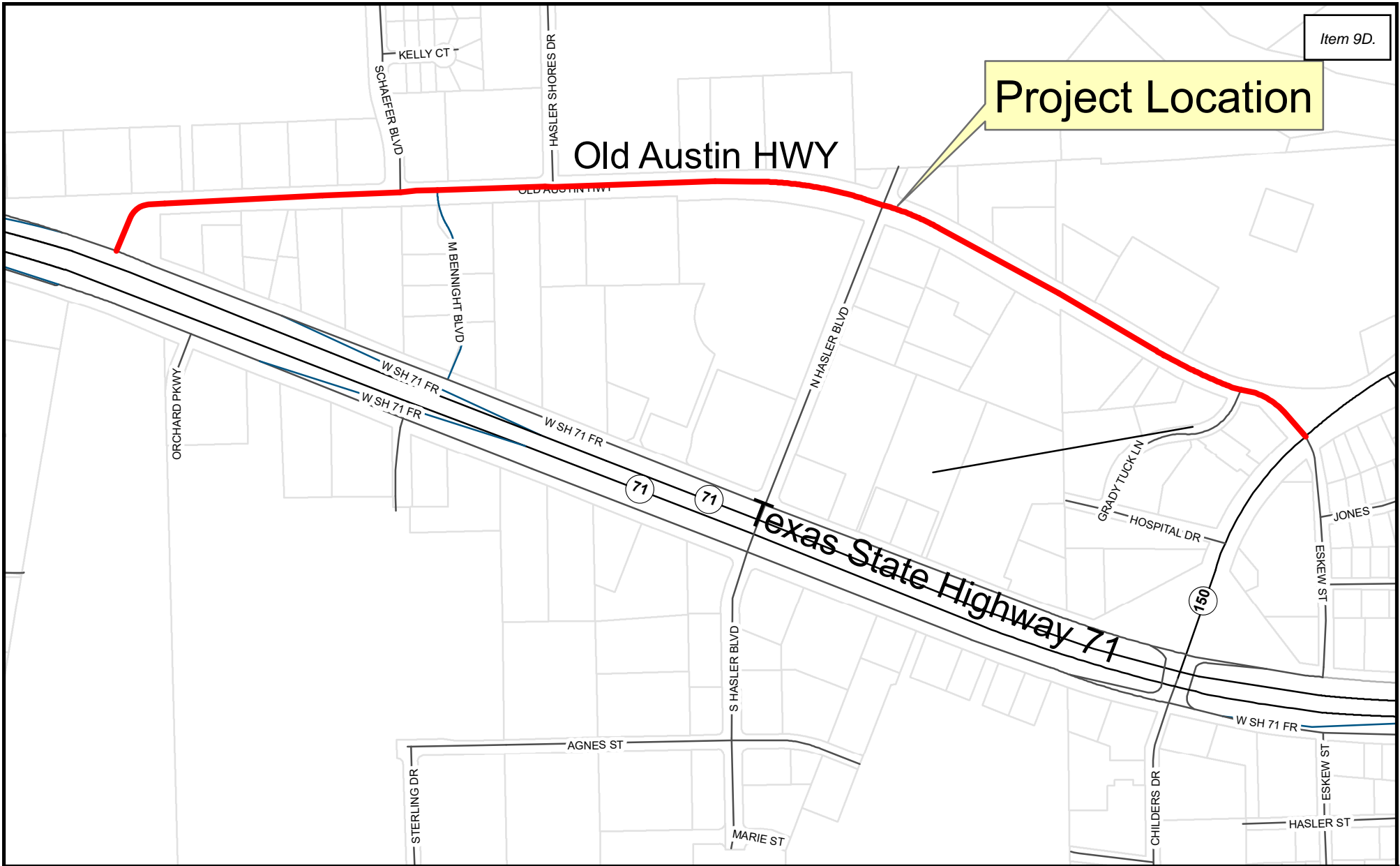
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

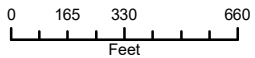
\_\_\_\_\_  
Alan Bojorquez, City Attorney



Project Location



**OLD AUSTIN HIGHWAY PAVEMENT REHABILITATION  
PROJECT LOCATION  
CITY OF BASTROP, TX**



Date: 3/11/2022

The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of this information, nor does it represent that its use will not infringe upon privately owned rights.

2700 Earl Rudder Frwy, Suite 1600  
College Station, Texas 77845

March 10, 2023

City of Bastrop  
1311 Chestnut Street  
Bastrop, TX 78602

Attn: Ms.Fabiola M. DeCarvalho, AMP-MIAM

Re: Old Austin Highway Pavement Rehabilitation (from LP 150 to SH 71)  
City of Bastrop Proposal RFP# ENG 2023-01  
Walker Partners Project No.: 4-01127.01

Dear Ms. DeCarvalho:

On March 9, 2023, two proposals were received for the Old Austin Highway Pavement Rehabilitation Project. The lowest responsible bidder and the most qualified proposal was received from Texas Materials Group, Inc. dba Gulf Coast a CRH Company (Gulf Coast) with a total proposal amount of \$1,490,107.00 and a total 98 points of a possible 100 using the scoring criteria matrix provided in the Request for Proposals. The Engineer's Opinion of Probable Cost (EOPC) was \$1,734,876.09. Gulf Coast's proposal was 85.89% of the EOPC.

Walker Partners recommends award of the proposal for this project to Gulf Coast for a total construction amount not to exceed \$1,490,107.00, which includes a construction contingency allowance of \$50,000.

Please contact me if you have any questions or require additional information.

Sincerely,



R. Alan Munger, P.E.  
Manager

RAM:ram

Attachment



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve the first reading of Ordinance No. 2023-05 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2023 in accordance with existing statutory requirements; appropriating the various amounts herein as attached in Exhibit A; repealing all prior ordinances and actions in conflict herewith; establishing an effective date, and move to include on the April 11, 2023, City Council agenda for a second reading.

**AGENDA ITEM SUBMITTED BY:**

Tracy Waldron, Chief Financial Officer

**BACKGROUND/HISTORY:**

The FY2023 budget was approved by City Council on September 20, 2022. Since that approval, there has been one ordinance (Ordinance 2022-27) approved. The City continues to have additional factors that require some adjustments to the revenue and expenditures of multiple funds.

The Exhibit A to the ordinance explains in detail the nature of each of the budget amendments being requested.

The Financial Management Policy states that the level of budgetary control is at the department level in all Funds over \$25,000. If transfers are required over \$25,000 between departments, this must be approved by City Council.

The City Charter requires that when the budget is amended, that the amendment be made by Ordinance.

**FUNDING SOURCE:**

Various – See Ordinance Exhibit A

**RECOMMENDATION:**

Tracy Waldron, CFO recommends approval of the first reading of Ordinance No. 2023-05 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2023 in accordance with existing statutory requirements; appropriating the various amounts herein as attached in Exhibit A; repealing all prior ordinances and actions in conflict herewith; establishing an effective date, and move to include on the April 11, 2023 City Council agenda for a second reading.

**ATTACHMENTS:**

- Ordinance 2023-05
- Exhibit A
- All Funds Summary FY2023 – updated to reflect proposed amendments.

**ORDINANCE NO. 2023-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE BUDGET FOR THE FISCAL YEAR 2023 IN ACCORDANCE WITH EXISTING STATUTORY REQUIREMENTS; APPROPRIATING THE VARIOUS AMOUNTS HEREIN, AS ATTACHED IN EXHIBIT A; REPEALING ALL PRIOR ORDINANCES AND ACTIONS IN CONFLICT HEREWITH; AND ESTABLISHING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Manager of the City of Bastrop, Texas has submitted to the Mayor and City Council proposed amendment(s) to the budget of the revenues and/or expenditures/expenses of conducting the affairs of said city and providing a complete financial plan for Fiscal Year 2023; and

**WHEREAS**, the Mayor and City Council have now provided for and conducted a public hearing on the budget as provided by law.

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

**Section 1:** That the proposed budget amendment(s) for the Fiscal Year 2023, as submitted to the City Council by the City Manager and which budget amendment(s) are attached hereto as Exhibit A, are hereby adopted, and approved as the amended budget of said City for Fiscal Year 2023.

**Section 2:** If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

**Section 3:** This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

**READ and APPROVED** on First Reading on the 28<sup>th</sup> day of March 2023.

**READ and ADOPTED** on Second Reading on the 11<sup>th</sup> day of April 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

## GENERAL FUND

### Budget Amendment #1: General Fund-Revenue

#### **FY 2023 Budget Book (Page 70-72)**

Original Budget	\$ 16,847,515
Sales Tax Revenue (101-00-00-4006)	\$ 142,715
Grant Revenue (101-00-00-4414)	<u>\$ 62,378</u>
New Total Revenue	<b>\$ 17,052,608</b>

This amendment increases several General Fund revenue sources to support other budget amendment expenditure items. Sales Tax revenue has been running approximately 10% over forecast. This amendment increase is conservative to specifically cover requested increases in budget amendment #2, #4 and #5. The City was approved for a US Department of Justice grant for a Crime Victim Advocate through their Victim Assistance Grant Program this revenue increase is offset by budget amendment #3.

### Budget Amendment #2: General Fund-City Secretary Expenditures

#### **FY 2023 Budget Book (Page 125)**

Original Budget	\$ 319,915
Budget Amendment Ord #2022-27	\$ (49,479)
Election Services (101-04-00-5681)	<u>\$ 25,000</u>
New Total Expenditure	<b>\$ 295,436</b>

This budget amendment is needed to increase Election Services by an estimated amount to cover the cost of a run-off election. Based on the number of candidates running in the May election, it is highly likely that a run-off election will be required.

### Budget Amendment #3: General Fund-Police-Administration Expenditures

#### **FY 2023 Budget Book (Page 139)**

Original Budget	\$ 1,362,723
Operational Salary (101-09-10-5101)	\$ 42,370
Social Security (101-09-10-5150)	\$ 3,241
Retirement (101-09-10-5151)	\$ 5,296
Group Insurance (101-09-10-5155)	<u>\$ 11,471</u>
New Total Expenditure	<b>\$ 1,425,101</b>

This budget amendment is needed to add the position of Crime Victim Advocate to the budget. The department applied for a grant from the US Department of Justice Victim Assistance Grant Program to fund this position in FY 2023. The budget mentioned the position but did not appropriate the funds because the grant funding had not been approved. This amendment is offset by the grant revenue reflected in budget amendment #1.

**Budget Amendment #4: General Fund-Organizational Expenditures**

**FY 2023 Budget Book (Page 123)**

Original Budget	\$ 3,073,559
380 Agreement Reimb. (101-02-00-5644)	\$ 19,500
Group Insurance (101-02-00-5155)	\$ 68,000
New Total Expenditure	<b>\$3,161,059</b>

This budget amendment is needed to increase group insurance 50% contribution to dependent coverage. The original estimate was not enough. Even though we polled the employees before making our estimate, we have had more employees take advantage of this benefit which caused the budget to be short. Also, the final payment was made to Bastrop Retail Partners for the Burleson Crossing 380 Agreement (tax rebate) and this final amount was over what was budgeted.

**Budget Amendment #5: General Fund-Fire Admin Expenditures**

**FY 2023 Budget Book (Page 143 )**

Original Budget	\$ 357,856
Operational Salary (101-11-10-5101)	\$ 22,215
Social Security (101-11-10-5150)	\$ 1,700
Retirement (101-11-10-5151)	\$ 2,800
Group Insurance (101-11-10-5155)	\$ 3,500
New Total Expenditure	<b>\$ 388,071</b>

This budget amendment will increase the total budgeted FTE's by one. This amendment is to add the position of Executive Administrative Assistant to the Fire Department Administration division. This was going to be a new request for FY 2024 but it has been determined that this position is needed sooner than October 1, 2023.

**Budget Amendment #6: General Fund-Development Services**

This department is being reorganized to better service our development community and to move away from using third-party providers. Currently there is a recommendation to increase Full-time equivalents within the department. There is already salary savings and will be additional professional services savings to fund these additional positions. There may need to be a budget amendment in the future but it will be tied to an increase in development revenue. The following eight (8) positions are being proposed:

Administrative Assistant	Technician
Senior Engineer	Senior Inspector
Planner	Senior Inspector
Subdivision Inspector	Plan Reviewer

SUMMARY OF GENERAL FUND BY DEPARTMENT		
City Secretary	\$25,000	New Expenditures
Police-Administration	\$62,378	
Organizational	\$87,500	
Fire	\$30,215	
Sales Tax	(\$142,715)	New Revenue
Grant Funding	(\$62,378)	
<b>Total Net Adjustment</b>	<b><u>\$0.00</u></b>	



## OTHER FUNDS

### Budget Amendment #7: Vehicle/Equip Replacement Fund

#### **FY 2023 Budget Book (Page 91)**

Original Budget	\$ 918,623
Budget Amendment Ord #2022-27	\$ 480,185
Loss from Fraud issue (380-00-00-5905)	<u>\$ 279,955</u>
New Total Expenditure	<b>\$ 1,678,763</b>

To cover the amount lost from the fraud issue. This will come out of fund balance of the fund. A review of fleet replacement will need to be performed and adjustments to replacement years will be made to absorb this loss within this fund.

### Budget Amendment #8: Water/Wastewater Operating Fund

#### **FY 2023 Budget Book (Page 159-160)**

Original Budget	\$ 7,927,692
Water Sales-Wholesale (202-00-00-4104)	<u>\$ 50,000</u>
New Total Revenue	<b>\$ 7,977,692</b>

#### **FY 2023 Budget Book (Page 159-160)**

Original Budget	\$ 8,592,325
Budget Amendment Ord #2022-27	\$ 7,500
Wholesale Water Contract (202-35-10-5565)	\$ 50,000
Pumping Fees (202-35-43-5524)	<u>\$ 40,000</u>
New Total Expenditure	<b>\$ 8,689,825</b>

The first part of this amendment deals with our wholesale agreements with Aqua Water Supply and West Bastrop Village. We have been waiting for the meter to be installed and billings to begin. This amendment increases revenue and expense to account for these agreements. This amendment also increases the budget to cover increased pumping fees for the new Simboro wells being constructed at XS Ranch Water Plant.

### Budget Amendment #9: Water/Wastewater Debt Fund

#### **FY 2023 Budget Book (Page 119)**

Original Budget	\$ 3,832,204
CO, Series 2023-Interest (220-00-00-7183)	<u>\$ 633,865</u>
New Total Expenditure	<b>\$4,466,069</b>

This amendment is to increase the budget to cover the interest payment for the CO, Series 2023 bond issued in January 2023. It will be covered by available fund balance in this fund.

**Budget Amendment #10: Water/Wastewater CIP Fund****FY 2023 Budget Book (Page 86)**

Original Budget	\$ 1,252,500
Improv., W/WW Dist. (250-50-00-6240)	\$ <u>35,131</u>
New Total Expenditure	<b>\$1,287,631</b>

This amendment is to increase the budget to cover the additional match amount required for the Riverwood Water Line project grant funded. On February 14, 2023 a construction contract was approved by City Council which was more than the available grant funds. This amendment makes up that gap in funding for the project.

**Budget Amendment #11: Hotel Occupancy Fund****FY 2023 Budget Book (Page 87)**

Original Budget	\$ 3,131,554
Hotel Tax Receipts (501-00-00-4007)	\$ <u>403,000</u>
New Total Revenue	<b>\$3,534,554</b>

**FY 2023 Budget Book (Page 88)**

Original Budget	\$ 3,899,827
Destination Marketing Corp (501-80-00-5576)	\$ 30,000
Destination Marketing Corp (501-80-00-5576)	\$ 453,225
Destination Marketing Corp (501-80-00-5576)	\$ <u>201,500</u>
New Total Expenditure	<b>\$4,584,552</b>

This amendment is to increase the budgeted revenue for Hotel Tax Receipts from \$2,830,000 to \$3,233,000, the ending actual revenue receipts for FY2022. Based on estimates of actual receipts in FY 2023, the current budgeted revenue is too low. The expenditures are being increased for funding to Visit Bastrop based on the total of the tables below and the additional \$30,000 being requested for Special Event funding. These tables represent the true-up for FY 2022 and an adjustment to the contract amount owed for FY 2023 based on the increased revenue budget. With this amendment the fund balance reserve continues to be above the 50% required by the financial management policy.

<b>Fiscal Year True-up:</b>	<b><u>2022</u></b>	<b>Fiscal Year True-up:</b>	<b><u>2023</u></b>
HOT Revenue	\$ 3,233,136	HOT Revenue	\$ 3,233,000
Less: debt	\$ (545,702)	Less: debt	\$ (523,000)
	<u>\$2,687,434</u>		<u>\$2,710,000</u>
DMO funding 50%	\$ 1,343,717	DMO funding 50%	\$ 1,355,000
Special Event	\$ 75,000	Special Event	\$ 75,000
	<u>\$1,418,717</u>		<u>\$1,430,000</u>
DMO Actual Funding	\$ 965,492	DMO Actual Funding	\$ 1,228,500
<b>true-up amount</b>	<b><u>\$ 453,225</u></b>	<b>true-up amount</b>	<b><u>\$ 201,500</u></b>

**Budget Amendment #12: Bastrop Power & Light Fund****FY 2023 Budget Book (Page 80)**

Original Budget	\$ 7,809,241
Line Extension Fees (404-00-00-4312)	<u>\$ 150,000</u>
New Total Revenue	<b>\$7,959,241</b>

**FY 2023 Budget Book (Page 82)**

Original Budget	\$ 8,175,435
Line Extensions (404-60-00-6099)	<u>\$ 150,000</u>
New Total Expenditure	<b>\$8,325,435</b>

This amendment is for increased activity in line extensions due to BISD infrastructure projects within the BP&L service territory. This amendment increases the revenue and expense accounts by the same amount therefore having no effect on fund balance.

**Budget Amendment #13: CO Series, 2023 (Funds 264 & 732)****FY 2023 Budget Book (not in book)**

Original Budget	\$ 0
Bond Proceeds (732-00-00-4380)	\$ 12,135,000
Transfer In WWF Fund (264-00-00-4707)	\$ 27,000,000
Bond Premium (732-00-00-4381)	<u>\$ 972,779</u>
New Total Revenue	<b>\$40,107,779</b>

**FY 2023 Budget Book (not in book)**

Original Budget	\$ 0
XS Ranch Water Plant (264-35-00-6325)	\$ 24,000,000
WWTP#3 – Phase II (264-35-00-6174)	\$ 1,600,000
Issuance Cost (732-00-00-5610)	\$ 107,779
Capital Outlay (732-00-00-6000)	<u>\$ 13,000,000</u>
New Total Expenditure	<b>\$38,707,779</b>

This amendment is to book the issuance of Certificate of Obligations Series 2023. This series was split between the General Fund and the Water/Wastewater Fund. This issuance was explained on page 23 of the FY2023 Budget Book. The City did end up reducing the amount issued for WWF projects to better control the debt based on cash flow needs.

## ALL FUND SUMMARY FY 2023

	GENERAL FUND	DEBT SERVICE FUNDS	HOTEL TAX FUND	SPECIAL REVENUE FUNDS	WATER/ WASTEWATER FUNDS	BP&L FUND	CAPITAL IMPROVEMENT FUNDS	INTERNAL SERVICE FUND	ECONOMIC DEVELOPMENT CORP	TOTAL ALL FUNDS
<b>BEGINNING FUND BALANCES</b>	\$ 7,558,857	\$ 422,708	\$ 2,891,934	\$ 5,898,571	\$ 5,027,207	\$ 3,597,330	\$ 27,277,209	\$ 3,324,217	\$ 7,171,259	\$ 63,169,292
<b>REVENUES:</b>										
AD VALOREM TAXES	4,848,261	2,989,161	-	-	-	-	-	-	-	7,837,422
SALES TAXES	7,892,715	-	-	-	-	-	-	-	4,183,039	12,075,754
FRANCHISE & OTHER TAXES	555,400	-	3,233,000	24,500	-	-	-	-	-	3,812,900
LICENSES & PERMITS	1,773,000	-	2,000	-	-	-	-	-	-	1,775,000
CHARGES FOR SERVICES	865,550	-	218,000	4,064,429	7,947,359	7,929,241	-	666,867	15,870	21,707,316
FINES & FORFEITURES	285,000	-	-	14,000	-	-	-	-	-	299,000
INTEREST	40,000	19,500	15,000	31,850	35,520	30,000	47,600	15,000	15,000	249,470
INTERGOVERNMENTAL	104,682	271,614	66,554	-	-	-	47,460,109	-	-	47,902,959
OTHER	35,000	-	-	40,200	7,500	-	1,365	-	-	84,065
<b>TOTAL REVENUES</b>	16,399,608	3,280,275	3,534,554	4,174,979	7,990,379	7,959,241	47,509,074	681,867	4,213,909	95,743,886
<b>OTHER SOURCES</b>										
Other Financing Sources	-	-	-	-	-	-	-	-	-	-
Interfund Transfers	653,000	589,900	-	-	4,537,639	-	1,547,395	753,623	-	8,081,557
<b>TOTAL REVENUE &amp; OTHER SOURCES</b>	17,052,608	3,870,175	3,534,554	4,174,979	12,528,018	7,959,241	49,056,469	1,435,490	4,213,909	103,825,443
<b>TOTAL AVAILABLE RESOURCES</b>	\$ 24,611,465	\$ 4,292,883	\$ 6,426,488	\$ 10,073,550	\$ 17,555,225	\$ 11,556,571	\$ 76,333,678	\$ 4,759,707	\$ 11,385,168	\$ 166,994,735
<b>EXPENDITURES:</b>										
GENERAL GOVERNMENT	7,508,922	-	-	25,000	-	-	923,500	-	-	8,457,422
PUBLIC SAFETY	5,875,651	-	-	27,080	-	-	47,160	200,000	-	6,149,891
DEVELOPMENT SERVICES	1,774,663	-	-	-	-	-	62,000	-	-	1,836,663
COMMUNITY SERVICES	2,897,819	-	-	513,106	-	-	13,540	-	-	3,424,465
UTILITIES	-	-	-	10,000	5,261,485	7,640,435	100,000	-	-	13,011,920
DEBT SERVICE	-	3,850,699	-	-	4,457,069	-	-	-	271,614	8,579,382
ECONOMIC DEVELOPMENT	-	-	4,061,552	-	-	-	-	-	5,137,634	9,199,186
CAPITAL OUTLAY	-	-	-	7,390,000	1,037,631	-	73,869,104	1,478,763	4,000,000	87,775,498
<b>TOTAL EXPENDITURES</b>	18,057,055	3,850,699	4,061,552	7,965,186	10,756,185	7,640,435	75,015,304	1,678,763	9,409,248	138,434,427
<b>OTHER USES</b>										
Interfund Transfers	2,051,018	-	523,000	1,144,200	3,678,340	685,000	-	-	-	8,081,557
<b>TOTAL EXPENDITURE &amp; OTHER USES</b>	20,108,073	3,850,699	4,584,552	9,109,386	14,434,525	8,325,435	75,015,304	1,678,763	9,409,248	146,515,984
<b>ENDING FUND BALANCES</b>	\$ 4,503,392	\$ 442,184	\$ 1,841,936	\$ 964,164	\$ 3,120,700	\$ 3,231,136	\$ 1,318,374	\$ 3,080,944	\$ 1,975,920	\$ 20,478,751



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-50 of the City Council of the City of Bastrop, Texas, approving the Financial Procedures Manual, which is attached as Exhibit A; providing for a repealing clause and establishing an effective date.

**AGENDA ITEM SUBMITTED BY:**

Tracy Waldron, Chief Financial Officer

**BACKGROUND/HISTORY:**

The purpose of the Financial Procedures Manual is to provide guidelines for the financial management and administrative staff in performing the City's day-to-day financial affairs. This document covers all of the major topics that are part of the day-to-day processing and provides clear procedures.

This procedures document will be reviewed and updated at least every two years. The management and administrative staff that duties include financial transactions will be required to review and sign their acknowledgment of such review.

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Tracy Waldron, CFO recommends approval of Resolution No. R-2023-50 of the City Council of the City of Bastrop, Texas, approving the Financial Procedures Manual, which is attached as Exhibit A; providing for a repealing clause and establishing an effective date.

**ATTACHMENTS:**

- Resolution R-2023-50
- Financial Procedures Manual

**RESOLUTION NO. R-2023-50**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE FINANCIAL PROCEDURES MANUAL, WHICH IS ATTACHED AS EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the responsibility of local government to ensure that public funds are managed in a prudent and financially sound manner; and

**WHEREAS**, the City Council of the City of Bastrop, Texas, identified fiscal responsibility and organizational excellence as two of their focus areas; and

**WHEREAS**, this Financial Procedures Manual has been developed to provide guidelines for the financial management and administrative staff in performing the City's day-to-day financial affairs. This document covers all of the major topics that are part of the day-to-day processing and provides clear procedures; and

**WHEREAS**, the City Council of the City of Bastrop, Texas requests that the Financial Procedures Manual be reviewed and updated at least every two years.

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

**SECTION 1:** The City Council hereby approves the City of Bastrop Financial Procedures Manual, which is attached as Exhibit A, and requests that it be reviewed and updated at least every two years.

**SECTION 2:** Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

**SECTION 3:** Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

**SECTION 4:** 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, Texas on the 28<sup>th</sup> day of March, 2023.

**CITY OF BASTROP, TEXAS**

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney



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# Financial Procedures

*Draft*  
*March 28, 2023*



## INTRODUCTION

The purpose of the Financial Procedures is to provide guidelines for the financial management and administrative staff in performing the City’s day-to-day financial affairs. This document covers all of the major topics that are part of the day-to-day processing and provides clear procedures.

This procedures document will be reviewed and updated at least every two years. The management and administrative staff that duties include financial transactions will be required to review and sign their acknowledgment of such review.

### Employee Acknowledgment

I have received a copy of these financial procedures and understand my responsibilities as it pertains to my day-to-day financial procedures.

Further, I understand that this document will become a part of my personnel file.

Employee Name (please print): \_\_\_\_\_

Department: \_\_\_\_\_

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**ACCOUNTS PAYABLE..... 1**

**AUTOMATED CHECK SIGNING .....6**

**AUTOMATED TIMEKEEPING.....7**

**BANK DEPOSIT .....9**

**BUDGET TRANSFER.....11**

**CHANGE ORDER .....12**

**FINANCIAL SYSTEM ACCESS .....15**

**FIXED ASSET DISPOSAL.....17**

**GRANT FUND APPLICATION AND ACCEPTANCE.....18**

**INTERNAL AUDITING PROCEDURES.....21**

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**MILEAGE REIMBURSEMENT FOR LOCAL TRAVEL .....25**

**PURCHASE ORDERS.....26**

**OPEN PURCHASE ORDERS .....29**

**POSTING PUBLIC NOTICE ON CITY WEBSITE.....30**

**TRAINING ON ERP SYSTEM .....31**

**TRAVEL POLICY.....32**

**NEW VENDOR REQUESTS.....33**

**GLOSSARY.....35**



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## ACCOUNTS PAYABLE

### Purpose

The purpose of this policy is to ensure that the vendors of the City of Bastrop are paid in accordance with established accounts payable procedures. The City of Bastrop will strive to make timely and accurate payments to all vendors.

### Scope

This policy applies to all departments that submit invoices or payment requests to accounts payable for payment.

### Policy

Any invoice or payment request form sent to the City of Bastrop for payment, will be presented to the Accounts Payable Finance Specialist as described below in the procedure section. All invoices will be paid within 30 days from invoice date (or receipt of goods or services date) as noted on the invoice. The Accounts Payable Finance Specialist will process payments bi-weekly (non-payroll weeks) for invoices due for payment that have been processed according to the procedure.

### Deadlines

Invoices or payment requests for bi-weekly AP processing should be submitted to Finance no later than Friday at 5PM prior to the week of processing (non-payroll weeks). The Finance Department will provide a fiscal year PAYMENT CALENDAR, located in the Ready to Pay folder of the AP Share drive at: **M:\AP Share\READY TO PAY**

## Accounts Payable Procedure - Departments

### Vendors

1. New Vendors
  - a. New vendors require the completion of a NEW VENDOR PACKET and must specify the requesting city department to whom they will be doing business with.
  - b. NEW VENDOR PACKETS must be submitted to the Finance Department from the department or origin and must be provided to the Finance Department prior to placing an order.
2. Established Vendors
  - a. If the vendor is in Incode but no payment has been processed in over a year, a NEW VENDOR PACKET will need to be completed to make sure all information is up to date.

## Regular Payables

Invoices that do not require a purchase order (see Purchase Order Policy & Procedures) are referred to as “Regular Payables”. Regular payable items are entered through Common > Processing > Processing > Add Packet and the back-up invoices should be scanned into the Ready to Pay folder of the AP Share drive at: **M:\AP Share\READY TO PAY\3 - 23-02-03 COB RP'S**

Once items are scanned in, pay close attention to the following:

1. Regular Payable Packet naming convention:

YYMMDD DEPT NAME (ex: 230203 HR)

*Note: the regular payable packet name and the name you assign to the scanned back-up in the ready to pay folder should be the same.*

2. Make sure you have correctly completed the AP Stamp/Authorization entirely, and make sure the approval signature is from an approver with the required authorization limits.
3. When entering a regular payable item, the PAYABLE ID is the invoice number. If there is no invoice number, use the invoice date in the format of YYMMDD.
4. DO NOT POST your regular payable packet. The Accounts Payable Finance Specialist will audit regular payable entries against the back-up invoices scanned to the ready-to-pay folder and post once discrepancies are cleaned up.

## PO (Purchase Order) Invoices

Invoices that require a PO will not be entered into Regular Payables. A purchase order is created using the Requisition process. Once an invoice is received for which a PO is required, you will simply scan the invoices and PO into the Ready to Pay Folder of the AP Share drive at:

**M:\AP Share\READY TO PAY\2 - 23-02-03 COB PO'S**

The Accounts Payable Finance Specialist will audit invoices to make sure the AP Stamp/Authorization is completed accurately, and all back-up documents are attached (PO and any necessary Purchasing Summary documents).

The Open PO number is documented correctly on the Invoice.

The Invoice amount is checked against the PO amount and any differences should be explained in writing on the Invoice or PO. (Also, noting if final payment and the balance of the PO needs to be voided).

## Monthly Statements

### 1. Shared statement accounts-

- a. The Accounts Payable Finance Specialist will provide an excel spreadsheet for each statement vendor in the Ready to Pay Monthly Statements folder at:

**M:\AP Share\READY TO PAY\5 - MONTHLY STATEMENTS (Napa B & B - BARNARD'S – CINTAS Uniforms - LOWE'S)**

- b. Each department will enter their individual transactions onto the excel spreadsheet by the 8th of every month, for the previous month's vendor statement (Napa B & B, BARNARD'S, CINITAS UNIFORMS, LOWES). They will also scan their stamped and coded receipts in each vendor folder. The naming convention for scanned receipts will be:

yymm vendor dept (ex: 2212 BARNARDS BPL)

- c. The Accounts Payable Finance Specialist will reconcile the excel spreadsheet entries to the monthly vendor statement and once reconciled, will import into the payment process for each vendor.

### 2. PNC PCards

- a. All individual card holders and departments will receive a monthly PNC statement and will be responsible for coding each expense in the PNC Spendnet Navigator portal, reviewing, and uploading stamped receipts for all transactions on their individual and department PNC PCard statements.
- b. The designated 1<sup>st</sup> line reviewer will review and approve that each expense entry is complete and correct and that each corresponding receipt has been stamped and scanned into the PNC portal.
- c. The authorized department head will review and give final approval for all transactions on the individual and department Pcards they are responsible for. This review and approval process must be completed by the 15th of the following month.
- d. Once the Accounts Payable Financial Specialist has reviewed, approved, and reconciled the statements to the amount drafted from the City's bank account, transaction detail will be imported to ERP software and all back-up and receipts will be moved over to Laserfiche.

Pay close attention to the following:

- a. All items scanned in should be ONE SIDED and RIGHT SIDE UP.
- b. All receipts should be a copy (no tape or staples for scanning purposes).

- c. If a receipt is missing, a memo explaining the expense with codes and appropriate signatures is required.

## Accounts Payable Procedure - Finance

### Vendors

1. Make sure that the new or updated vendor packet was received from a department. If not, the Accounts Payable Financial Specialist will call the department to confirm the initiation of this new or updated vendor. This verification will be documented on the vendor information form.
2. If a vendor has requested payment through Electronic Fund Transfer, the Accounts Payable Financial Specialist will use the EFT Verification Form to confirm the banking information provided on the EFT form. This verification will be documented on the EFT Verification Form and filed in Laserfiche with the vendor packet. If this information cannot be verified, the vendor put on HOLD until such verification can be completed.

### Invoices that do not require a purchase order:

1. The Accounts Payable Financial Specialist will review all invoices verifying the correct vendor and amount have been entered.
2. Finance will POST the packet which moves items to payment process.
3. If the invoice has not been approved by someone with signature authority in that department, the invoice is sent back to the department for approval (this could delay payment).

### For invoices that have POs entered:

1. The invoices are reviewed for authorized signature, account coding and required supporting documentation (ex. Purchasing Summary and backup).
2. POs are receipted in based on the invoice total (if the two amounts are different, an explanation should be in writing on the Invoice (ex. Partial pay).
3. The invoices are put into Laserfiche until payments are ready to be processed.

## Payment Processing Procedure

1. The Accounts Payable Financial Specialist will prepare the batches for processing (EFT, Checks/Drafts, pCard) and save the registers in Laserfiche.
2. The CFO, or their designee, will review the register along with the invoices in Laserfiche, review for proper signatures and backup, and confirm review by signing and dating the register.
3. Once reviewed, the CFO, or their designee, will sign the register and log onto the bank and process the EFT file. Providing the AP Finance Specialist with confirmation of payment.

4. The checks require dual passwords through secure signature. The CFO, or their designee will provide one password while the AP Financial Specialist will provide their own password. The checks are kept locked up while not in use.
5. The AP Financial Specialist will then prepare checks for mailing or held for pickup (if so noted).
6. The payment batches and back-up are scanned to Laserfiche for record retention.



## **AUTOMATED CHECK SIGNING**

### **Objective**

To ensure timely payment to vendors and employees while providing proper internal control over disbursements.

### **Scope**

This policy and procedure apply to the secure signature software, which issues accounts payable, and payroll checks with the signatures of the City Secretary and Mayor on the checks on the laser printer.

### **Authorization**

The Chief Finance Officer, Assistant Finance Director, Accountant, and Finance Specialists will have knowledge of the password that must be input to issue checks. It takes two separate passwords to complete the printing process.

### **Procedure**

#### **Accounts Payable**

The Accounts Payable Financial Specialist will prepare the check run. A review of the payment register is completed. At the point that checks are to be issued, the CFO or their designee will enter the first password and then one of the other authorized individuals will input their password to issue the checks. The review of the payment register is completed in the Accounts Payable procedures.

#### **Payroll**

The Financial Specialist will prepare the check run. The payment register will be reviewed by the CFO, or their designee, and sign to confirm. At the point that checks are to be issued, the CFO or their designee will enter the first password and then one of the authorized individuals will input their password to issue the checks.

### **Auditing**

The staff member responsible for the bank reconciliation will make note of any check numbers missing and research. The reason for the missing checks (ie. voids) will be noted on the bank reconciliation register.

## **AUTOMATED TIMEKEEPING**

### **Objective**

To facilitate the correct payment to employees for hours worked through automated timekeeping.

### **Scope**

This policy and procedure apply to the automated timekeeping system, which is administered by Finance, for use by all departments.

### **Authorization**

Each Department Head is responsible for the approval levels in the system. Finance is responsible for the correct payment of employees, using information generated by the departments in the automated timekeeping system and in accordance to Fair Labor Standards (FLSA).

### **Procedure**

#### **Approval Levels**

Directors are responsible for the accuracy of the employee submission of time through the system. The director may use his/her discretion to delegate authority to approve the timesheets within the division. Approval levels within the system must be approved by the Department Head.

#### **Reporting Hours in the System**

Hours worked and leave taken will be recorded by the employee, or designee, to the automated timekeeping system. This record may be done daily, weekly, or biweekly as determined by the employee's supervisor. Leave time must be taken and recorded according to the personnel policies of the city. Approvers within the division must approve and submit time to payroll no later than the Tuesday, the week of the pay date, by 12 noon unless the schedule has been modified due to a Holiday. The Finance Department provides a payment calendar located in the AP Share drive in the Ready to Pay folder.

#### **Terminated Employees**

City employees are paid "current" for regular hours. Therefore, departments are responsible for notifying Human Resources, and Payroll, as soon as possible upon knowledge that an employee is terminating. The Finance Specialist will advise the division

on reporting final hours for the employee based on the individual circumstances of the termination.

The Senior Accountant will review lists of terminated employees routinely, to ensure system access is removed for terminated employees.

### **Probation and Disciplinary Leave**

Likewise, if a supervisor and/or division director has a disciplinary situation that could put the financial system at risk by a disgruntled employee, the supervisor and director are responsible for notifying the Finance Department, so that system access for the individual can be removed.

### **Auditing**

The accuracy of time entered will be reviewed during the payroll process bi-weekly. Any questions will be directed to the approver. All variances noted will be documented in the backup for that payroll run.

## **BANK DEPOSIT**

### **Purpose**

The purpose of this policy/procedure is to ensure that the City's deposits are processed in a safe and timely manner.

### **Scope**

This policy applies to all departments processing bank deposits.

### **Policy**

All deposits made by the City of Bastrop must follow the procedures listed below.

### **Procedure**

#### **Utility Office**

1. A deposit is prepared daily and locked in a secure bank bag.
2. If the deposit register and cash/checks aren't reconciling, the deposit can be locked in the safe until the next morning for supervisor review.
3. The assigned utility staff will deliver the bag to the bank at the end of the day.
4. The bank has the key to open the secure bank bag and process the deposit.
5. A utility staff will return to the bank the next day to retrieve the bag and receipt. The receipt will be compared to the deposit register to confirm it matches and scanned and appended to the deposit register and backup in Laserfiche.

#### **Municipal Court**

1. A deposit is prepared daily.
2. The designated staff will take to the bank for deposit.
3. The receipt is scanned in with the deposit register.

#### **Library**

1. A deposit is prepared daily.
2. The designated staff will take to the bank for deposit.
3. Weekly the designated staff will prepare a packet to record the cash collections for that week. The packet total should equal the deposit receipts from the bank in total.
4. The packet register and backup are forwarded to Finance for review and record retention.

**Convention Center/Main St Program**

1. All cash/check/credit card deposits will be taken to Utility Customer Service Department to be processed with their daily deposit packet.
2. The deposit will need to include a form specifying what the deposit is for and the accounting codes to be posted to.
3. The Utility Customer Service department will provide the department turning in the deposit, a receipt for their records.

**Police**

1. All cash/check/credit card deposits will be taken to Utility Customer Service Department to be processed with their daily deposit packet.
2. The Utility Customer Service representative that takes the deposit will provide the department bringing the deposit with a receipt.

**Planning**

1. All cash/check/credit card transactions are processed through the MyGov software.
2. The register/receipts are generated from MyGov daily and forwarded to Finance for review and reconciliation to bank confirmations.
3. If cash/checks are received, these are to be turned over to Utility Customer Service Department daily for deposit. Planning is then responsible for upload deposit confirmation from the bank into Laserfiche.

**Recreation/Parks/Library**

1. All cash/check/credit card transactions are processed through the RecDesk software.
2. The register/receipts are generated from RecDesk daily and forwarded to Finance for review and reconciliation to bank confirmations.
3. If cash/checks are received, these are to be turned over to Utility Customer Service Department daily for deposit.

**Special Events**

1. All cash/check/credit card transactions are processed through the MyGov software.
2. The register/receipts are generated from MyGov daily and forwarded to Finance for review and reconciliation to bank confirmations.
3. If cash/checks are received, these are to be turned over to Utility Customer Service Department daily for deposit. Include on the documentation to Utility Department "FOR DEPOSIT ONLY – TRANSACTION POSTED IN MYGOV".

## **BUDGET TRANSFER**

### **Purpose**

The purpose of this policy is to provide authorized guidelines for the transfer of unencumbered appropriations from an expenditure account to another.

### **Scope**

The policy applies to Department Directors each being responsible for their budget for the City of Bastrop.

### **General**

It may become necessary to move funds from one expenditure line item to another due to unforeseen circumstances within a fiscal year.

### **Policy**

The level of budgetary control is the fund level budget in all Funds. Transfers between departments over \$25,000 will still require City Council approval. Transfers between expenditure accounts within a department may occur with the approval of the Department Director. City Manager approval is required if transferring from personnel accounts, capital accounts within a department, and transfers between departments.

The Department requesting the budget transfer should enter a packet in the ERP system, and submit the register signed by the Department Director to the Senior Accountant for review and approval.

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## CHANGE ORDER

### Purpose

The purpose of the change order policy and procedures is to provide the City staff with a guideline for implementing change orders that are in compliance with Texas Local Government Code §252.0481.

### Policy

1. If changes in plans or specifications are necessary after the performance of the contract has begun or if it is necessary to decrease or increase the quantity of work performed or of materials, equipment, or supplies to be furnished, change orders may be implemented by City employees with approved authority.
2. Change orders should not change the purpose or objective of the contract, except for extra work necessary to accomplish the project as described in the contract document.
  - a. This limitation applies even if expenditures do not exceed any contingency amount allocated for the project or the project budget.
3. The total amount of the contract may not be increased by more than 25 percent. This is a cumulative total of all change orders.
  - a. This amount is calculated based upon price stated in the executed contract for the project.
  - b. It **should not** be based on the amount of any unawarded alternates, approved contingency or project budget, unless approved contingency amount is included in contract.
  - c. The original contract price shall not be decreased by more than 25 percent without the consent of the contractor in writing.
4. If a change order(s) involves a decrease or an increase of \$50,000 or more, it must have Council's approval.
  - a. This amount is calculated based upon the total contract price stated in the executed contract for the project.
  - b. It **should not** be based on the amount of any unawarded alternates, approved contingency or project budget, unless approved contingency amount is included in contract.
  - c. Change orders are cumulative amounts and should be calculated in combination with draw payments.

5. If a new budget is adopted during the term of a contract which makes additional funds available for the project, a change order may be issued to include additional work which was included in the original contract document and is within the scope of the contract, provided statutory limitations are not exceeded.

## Procedures

Any City of Bastrop department executing a change order should follow all guidelines and contact the Finance Department if the circumstances are unique or questionable to ensure compliance with State law.

1. Prior to the issuance of a change order or contract modification, the City Manager, or Department Head shall determine if:
  - a. the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed; and
  - b. the change is germane to the original contract as signed; and
  - c. the change order or contract modification is in the best interest of the City and authorized by law.
2. Without invalidating the contract, the City may at any time or from time to time by written order have additions, deletions or revisions made to the contract.
  - a. A contract price may only be changed by a completed and approved Construction Change Order Form issued by authorized City personnel. Upon receipt of a copy of the completed and approved Construction Change Order Form, the contractor will proceed with the changes in the work so ordered or directed.
  - b. If the City agent and the contractor do not arrive at a mutually acceptable increase or decrease in the delivery order price at the time the written or directive is issued, the contractor shall not use such lack of mutual acceptance as a basis or cause to stop or otherwise delay the progress or completion of any of the work ordered. All such work shall be executed under the applicable conditions of the Contract.
  - c. Additional Work performed by the contractor without written authorization by means of a Construction Change Order form will not entitle him to an increase in the price or any extension of the completion time, except in the case of an emergency.
  - d. City employees are prohibited from verbally authorizing a change order unless it is determined to be a health or safety emergency. If such an emergency occurs, the Project Manager shall send a memo to the City Manager explaining the circumstances.
3. Prior to commencement on change order work,



- a. if less than \$50,000, a completed, approved Construction Change Order Form, along with the Contractor's original written claim for a change in price or extension of time, shall be submitted to the Project Manager authorizing work to commence.
  - b. Any change orders over \$50,000, must be approved by Council. Only after approval from Council, shall a complete, approved Construction Change Order Form, along with the Contractor's original written claim for change in price or extension of time, be submitted to the Project Manager for authorization to commence on change order work.
4. Upon completion of project,
- a. A project close-out should be included with Quarterly Financial Report for all projects completed during that quarter. This is to inform Council of the total project costs compared to budget/projections.
  - b. All Construction Change Order Forms, Council Agendas and Council minutes will be filed with original contract.

If a Payment Bond and a Performance Bond has been required, it is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of applicable Bonds shall be adjusted accordingly and an amended bond document furnished to the City.

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## FINANCIAL SYSTEM ACCESS

### Objective

To ensure proper internal controls are maintained through controlled access of the City's financial system.

### Scope

This policy and procedure apply to all components of financial systems administered by the Finance Department, including but not limited to, the ERP Financial System, Time Entry System, and Pcard program.

### Authorization

Each Department Director, along with the Chief Financial Officer and/or their designee, will authorize which employees will be allowed access to the various components of the Finance Systems.

### Procedure

#### Administrators

Administrative authority allows the individuals to add users to the systems. Administrators will only add users to the systems within their control. The following list the administrators and the systems under their authority.

- **Chief Finance Officer** – all systems
- **Assistant Finance Director** – all systems
- **Senior Accountant** – all systems
- **Finance Specialist** – Pcard and fuel card systems
- **Customer Service Supervisor** – CIS program, Cashiering program
- **Court Administrator** – Municipal Court system

#### Requests for system access

Requests for access to the financial systems should be completed by the employee's supervisor or department director. Requests can be done through e-mail, or by memo.

Requests for inquiry/reporting access, as well as time entry employee access and purchase order input capability will be processed immediately by the administrator. Other requests, involving the ability to access sensitive information, as well as the authority to

change records within the system, will be reviewed and approved by at least two administrators before allowing system access.

All changes in the Financial ERP system are tracked within the system.

Once access is established for a position, this access will automatically carryover to the next employee assigned to that position. This can be changed at any time with a request in writing from the director or supervisor.

### **Terminated employees**

In order to protect the City's financial systems from possible tampering by disgruntled employees, supervisors and department directors are responsible for notifying the Chief Financial Officer and IT Manager upon termination of an employee with system access. The employee will be immediately removed from system access.

The Senior Accountant will review lists of terminated employees routinely, to ensure system access is removed for terminated employees.

### **Probation and Disciplinary Leave**

Likewise, if a supervisor and/or department directors have a disciplinary situation that could put the financial system at risk by a disgruntled employee, the supervisor and department director are responsible for notifying the Chief Financial Officer and Senior Accountant, so that system access for the individual can be removed.

## **Auditing**

Reports will be generated periodically that report the users and the access levels of the users within the system. These reports will be reviewed by Finance and shared with department directors. Any changes that need to be made will be in writing.

## **Disclaimer**

This policy is for systems administered by the Finance Department only. System access policies for networks and other systems are maintained by the administering department and/or Information Resources.

## **FIXED ASSET DISPOSAL**

### **Purpose**

The purpose of this policy is to provide procedures for the disposal of fixed assets.

### **Scope**

The policy applies to all Departments that manage fixed assets.

### **Policy**

The Purchasing Policy provides specific guidelines for the disposal of fixed assets.

### **General**

The City uses an auction system to dispose of fixed assets. The departments need to submit an Inspection Form, either general, or vehicle specific. This will provide the Finance Department the information it needs to post the auction.

The department contact will be included on the auction to field questions regarding specific answers about the condition of the asset.

All proceeds will be posted to the Vehicle/Equipment and Replacement Fund.

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## GRANT FUND APPLICATION AND ACCEPTANCE

### Purpose

The purpose of this policy is to provide the correct guidelines for the Application for and Acceptance of Grant Funds.

### Scope

The policy applies to all Departments that seek grant funding through application.

### General

The application of grants is a decentralized function since the City does not have a Grant Administration department. A Grant Submittal Request Form must be completed and executed prior to any grants being submitted. Any grant applications submitted will be communicated to City Council by any method the City Manager deems appropriate.

### Policy

The Financial Management Policy includes policy on grant funding requests. All grants awarded must be accepted by action of the City Council.

### Accounting Responsibility for Grant Administration Procedure

#### Minimum accounting department file requirements:

- Copy of the signed grant agreement.
- Copy of the signed grant administration agreement (if used).
- Copies of the check vouchers and invoices for all expenditures that are allocated to the grant.
- Copies of draw requests.
- Correspondence initiated by the accounting department, or any correspondence relating to the financial aspects of the grant.
- Copies of the cover sheets for council actions on grant.

When a new grant agreement is signed, accounting initiates a meeting with the City department who will be the **program contact** for the grant. Roles and responsibilities are determined at that meeting. If any special circumstances are known relating to the grant, they are shared with everyone involved at that time. Accounting is provided with the name and phone number of the agency contact for the grant.

Accounting will familiarize themselves with the grant and its requirements, so that guidance can be provided to other City departments administering the grant. The departments usually focus on the programmatic aspects of the grant, so the financial details are often overlooked. Accounting's job is to communicate to the departments our fiscal responsibilities to the granting agency. Usually, the **financial administration** is the responsibility of the accounting department. The grant expiration period should be known by all, but accounting will provide reminders to the departments to file extensions when needed.

Most grants require **quarterly reports**. Normally, quarterlies are due 30 days from the last day in the calendar quarter (January 31, April 30, July 31 and October 31). Quarterly financial reports are generally prepared by the accounting department, based on financial and other information, provided by the City department administering the grant; however, program reports are generally prepared by the department. Copies of the program reports should be filed in the grant folder in Laserfiche.

General Ledger reports are reviewed monthly for grant activity. **Reimbursement requests** are prepared, as often as possible, and excessive expenditures should not build up before preparing a request. Grant agreements are reviewed for exact requirements for draw submissions. Once the draw amount is known, a copy of the request (summary only) is made for the Senior Accountant, with the fund and revenue account number noted that the funds should be credited to when the money is received.

A **grant summary spreadsheet** is prepared for most grants. This spreadsheet details all expenditures and revenues for the grant and is set up to reflect the categories stipulated by the grant agreement. This spreadsheet is reconciled to the General Ledger cash account after entries are made to the spreadsheet.

Accounting assists with the coordination of the **grant closeout**, since closeout often involves documentation of expenditures and visits from the granting agency.

*Accounting reviews each grant file before the annual audit for all requirements. Single audit summary reports are prepared by accounting for the auditor's review. Any supplemental schedules, such as the Grant Revenue and Expenditure Statements required by TDC for TCF grants, are prepared by accounting as part of the single audit. Accounting serves as the coordinator for the single audit and will ensure all issues are resolved.*

## Department Responsibility

There are times that the grant is administered entirely by the department. The following procedures should be adhered to so that the Finance Department has complete records for record retention.

1. All documents associated with the application, grant award, etc. should be forwarded to the Finance Department (a Laserfiche folder will be created).
2. All reimbursement requests should be forward to Finance so that we know to look for this payment. This aids in the cash collection process.

## **INTERNAL AUDITING PROCEDURES**

### **Objective**

To validate the accuracy and integrity of the City's financial records through the establishment of a scope to perform detail testing on individual transactions and to ensure compliance with City's financial and administrative policies.

### **Scope**

This policy and procedure apply to all financial transactions of the city.

### **Authorization**

The Chief Finance Officer and Senior Accountant establish auditing scope for this internal audit program.

### **Procedures**

#### **Purchase Orders**

The Purchasing Manager reviews each purchase order for adherence to purchasing policy.

#### **Accounts Payable**

The Finance Specialist will prepare the check run. They perform a detail review of each check issued, verifying amounts, vendors, approvals, and backup. The Chief Financial Officer, or their designee, reviews all payments before funds are released and signs the register identifying such review.

Wires and ACH payments – The Finance Specialist verifies amounts, approvals, vendors, and contracts for payments to be made by wire/ACH. The Chief Financial Officer, or their designee, verifies all payments along with the backup, signs off on the register and makes the transfer of funds and prints a confirmation. The confirmation is provided to the Finance Specialist to be included in the file.

#### **Payroll**

The Finance Specialist will prepare the check run. The Senior Accountant reviews the payroll calculation for each individual employee for accuracy, reasonableness and backup documentation. All changes to the payroll system, through Personnel Action Forms, Benefits Change forms and other changes are reviewed during the first affected payroll.



Finance Specialist notes on the check register any unusual payments to employees (i.e. High overtime hours, large flex reimbursement, payouts, etc. The Senior Accountant will review the payroll check register for reasonableness of net checks being issued before the checks are released and sign the register indicating review. The Senior Accountant will process the file through the bank for all direct deposits.

### **Bank Accounts**

The pooled cash account is reviewed by the Senior Accountant daily, first thing each morning. Transactions are cleared daily through the financial institutions positive pay program to ensure integrity of account information.

### **Journal Entries**

Journal entries are prepared by various members of staff and entered or reviewed by the Senior Accountant. The Senior Accountant reviews all journal entries for reasonableness, accuracy with generally accepted accounting procedures and proper backup documentation.

### **Petty Cash and Cash Drawer Audits**

The Senior Accountant or their designee will perform petty cash and cash drawer audits without notice on an annual basis. The cash in the box will be counted along with any outstanding receipts. This amount should be equal to the total petty cash authorized for the department. Overages/Underages will be reported on a form to the CFO.

### **Credit Card Usage**

Each department is responsible for uploading their receipts to the online Pcard system. These receipts should be signed and coded to an accounting code. The transaction line in the online system must be completed with a description of the purchase and the accounting code entered. The online system is set up for there to be an approval process for all assigned cards. All of these transactions are reconciled to the total card statement and downloaded into the Financial ERP system. The receipts are all downloaded and saved in Laserfiche.

### **Parks/Recreation Revenue**

Finance Department receives a report from the Parks/Recreation department that identifies funds collected for a specific period. Finance reconciles this report to the ACH receipt confirmations received from the bank. Any discrepancies are addressed with the Parks/Recreation department.

**Development Services Revenues**

Finance will audit the process of revenue collection for the Building Permit process by verifying the receipts generated out of MyGov into the correct G/L account to ensure that the revenue is handled properly and recorded correctly.

**Court Revenue**

Finance Specialist reviews every cash collection register received from court system against deposits and ACH receipts received from the bank to make sure both reconcile.

**Utility Refunds**

The Utility Customer Service Supervisor is responsible for reviewing the check register for refunds due. The Utility Customer Service Supervisor indicates their review of the check register by initialing the check register. The refund checks are processed through Finance monthly.

**Automated Time Keeping**

The Finance Department audits every payroll to verify hours entered through time entry records are accurate and reflect the correct number of hours worked.

Review methods will include reviewing the signed timesheets at the department level for those employees that do not enter their own time into the system. Other methods will be used as applicable.

The authorized approvers will be contract for any anomalies such as missing hours, excessive OT hours, and anything else that seems out of the norm.

**Financial System Access**

Reports will be generated annually that report the users and the access levels of the users within the system. The reports will be prepared by the Senior Accountant or their designee.

A listing of all authorized EFP users within each department will be sent to their Department Director for review and signature on an annual basis. This list will also indicate if the employees have administrative rights in certain areas of the system.

**Permit Revenue Audit**

Finance will audit the process of revenue collection for the Building Permit process by verifying the receipts generated out of MyGov into the correct G/L account to ensure that the revenue is handled properly and recorded correctly.

## **INVENTORY**

### **Objective**

To ensure that the departments have items on hand when needed for completing work orders and service orders. Maintain an accurate account of the items being held in inventory.

### **General**

#### **Disbursements**

Several departments stock a variety of items frequently used. These departments are Public Works, Water and Wastewater, and Bastrop Power & Light.

Each of these departments are responsible for maintaining a log when inventory items are removed. This log is used to disburse the items in the ERP Pro 10 financial software. This disbursement entry should be done at least monthly.

#### **Receipts**

As items are ordered for inventory, they are coded to the inventory reserve account in the respective fund. Once the item is received a transaction is processed to move the item from the reserve to the Inventory Control account.

#### **Annual Audit**

The department is responsible for conducting an annual audit of the items held in inventory. The Inventory Valuation Report should be run out of the ERP Pro 10 financial system and a physical count should be conducted. Any changes in units on hand should be noted. The report should be signed by the responsible party and forwarded to the Finance Department. This count should be performed as close to September 30 as possible.

## **MILEAGE REIMBURSEMENT FOR LOCAL TRAVEL**

### **Purpose**

This policy is an addendum to the current travel policy and will only be used for reimbursement to employees who incur mileage locally while conducting City business.

### **General**

1. Mileage should not be in conjunction with out-of-town travel or training. (Refer to Travel Policy).
2. This policy does not reimburse for incidentals associated with travel. Miscellaneous expenses should be reimbursed through the Travel Policy.
3. Employee should use a city vehicle when one is available for City business.

### **Approval/Reimbursement**

1. Local travel should be authorized by the employee's supervisor prior to using personal vehicle for City business.
2. Employee should get his/her supervisor approval on reimbursement form before forwarding to Accounts Payable or payroll for payment.
3. Reimbursement form should be completed monthly or as needed.
4. Reimbursement will be at the current IRS applicable rate.

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## PURCHASE ORDERS

### Purpose

The purpose of the Purchase Order Procedures is to provide City staff with a simplified guideline for City purchases that require a Purchase Order (PO). The City of Bastrop is committed to ensuring that all purchases made, are in compliance with purchasing laws and policies.

### General

Vendors:

1. If new vendor, make sure that a new vendor packet has been completed and provided to the Finance Department prior to placing an order.
2. If the vendor is in Incode but no payments have been processed in over a year, a new vendor packet needs to be completed to make sure all information is updated.

Purchases that require a Purchase Order **prior** to making the purchase are:

1. Items or services being ordered over \$500.
2. A contract is executed that commits the City to a specific dollar amount.
3. A purchasing summary is required.

A purchase order should be entered at the beginning of the fiscal year for the entire amount of monthly committed contracts and services (ex. Copier lease, property insurance, utilities, etc.). These amounts can be estimated based on historical if needed. This PO would require a completed Purchasing Summary Form.

A purchase order should be entered at the beginning of the fiscal year for any open amount being carried over from the prior fiscal year to re-encumber these committed funds. Finance will evaluate and communicate with each department to determine these carry-over PO's at the end of every fiscal year.

Point of sale purchases **do not** require a purchase order and should be run through the regular payable process (ex. Pcard, vendors paid by statement, deposit refunds, registration fees, employee reimbursements, etc.) (see Accounts Payable Policy & Procedures).

**Departmental Inputting of a Purchase Order Under \$3,000**

1. Input requisition into ERP under Purchasing/Requisition Input.
2. No bids or quotes required.
3. Originator must have proper signature authority.
4. Approval of the requisition is required. (the PO must be created so that the funds are marked as encumbered against the budget)!!
5. An invoice with PO attached is scanned to the AP shared drive "Ready to Pay" folder for the payment process to begin.

**Departmental Inputting of a Purchase Order \$3,000 and Over but Under \$25,000**

1. Input requisition into ERP under Purchasing/Requisition Input.
2. At least three quotes or exception required and noted on a Purchasing Summary Form and obtain authorizing signatures. (CFO > \$10,000, CM > \$15,000) These forms will be scanned to laser fiche once signatures are obtained and original sent back to ordering department. If CFO or CM signature is not required, the departments need to be responsible for scanning these documents into Laser fiche in the proper purchasing summary folder.
3. Supervisor or authorized person with proper signature authority must approve the purchase order.
4. The purchase order and Purchasing Summary form are to be held by the ordering department until an invoice is received.
5. Proper authorizing signature is obtained on the Invoice, noting the approval to pay.
6. All documents (PO, Purchasing Summary Form (just a copy of the signature page if the document is already in Laser fiche) and Invoice) are scanned to the "ready to pay" folder in the AP shared drive for the payment process to begin.

**Departmental On-Line Inputting of a Purchase Order \$25,000 and Over**

1. City Council approval is required for professional services over \$50,000.
2. May require formal bid process according to Purchasing Policy.
3. A Purchasing Summary Form is required documenting how you complied with purchasing laws and the purchasing policy and obtain authorizing signatures. (CFO >

\$10,000, CM > \$15,000) These forms will be scanned to laser fiche once signatures are obtained and original sent back to ordering department.

4. Supervisor or authorized person with proper signature authority must approve the purchase order.
  5. The purchase order and Purchasing Summary form are to be held by the ordering department until an invoice is received.
  6. Proper authorizing signature is obtained on the Invoice, noting the approval to pay.
- 7.** All documents (PO, Purchasing Summary Form (just a copy of the signature page if the document is already in Laser fiche) and Invoice) are scanned to the “ready to pay” folder in the AP shared drive for the payment process to begin.

# OPEN PURCHASE ORDERS

## Purpose

The purpose of the open purchase order procedure is to verify that all purchase orders are reviewed on a regular basis to ensure that money encumbered is for purchases that have or will be made resulting in an accurate figure of the funds available for each department’s budget.

## General

### Review of Open Purchase Orders

Each department should run a Purchase Order Status Report and review all open purchase orders on a quarterly basis.

Purchase Order Status Report As Of ×

► Run Report ▾ Options ▾ Delivery Comment

---

**Selection Criteria**

Invoices Posted As of

Use Activity Date

Department

Status

Vendor

Purchase Order

Issued From Date

Issued To Date

**Grouping**

Group 1

Group 2

---

**Report Options**

Style

Add PO Total to Detail

Wrap Fields

Finance will also review all open purchase orders twice a year and will contact the individual department for an explanation of any open purchase orders in question.

### Closing of Purchase Orders

After reviewing the PO status report, contact Finance to close any purchase orders. The amount of the closed purchase order will be released back into the current year’s available funds.



## POSTING PUBLIC NOTICE ON CITY WEBSITE

Since the public notice page is used by all departments, these procedures will help the page stay current.

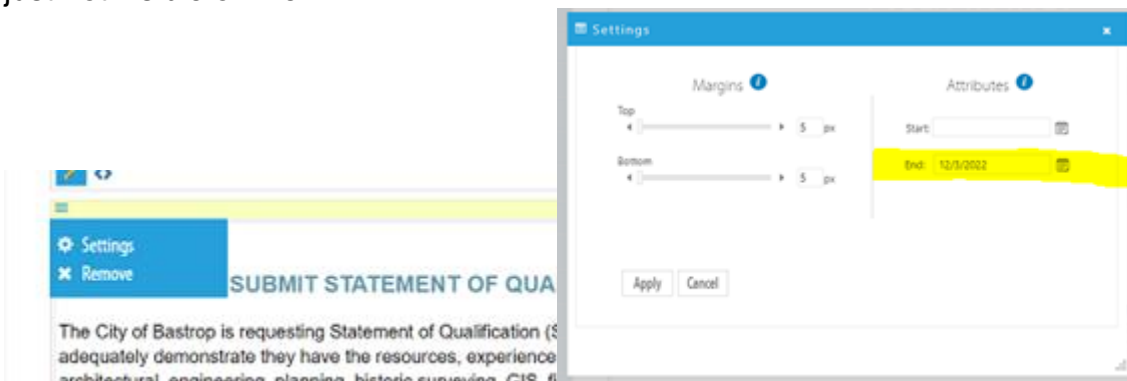
These instructions are for those departments that have permissions and can post their own public notices. If you are a department that submits your public notice to the Communications department to post, you are still required to provide them with the same information so that they can create the notice correctly with the appropriate end date. It is the responsibility of each department posting public notices to know the legal requirements of the public notice.

### Steps Required

1. From the public notice page – Make sure you are at the top of the page (right under the Public Notice text box). From the design mode banner at the bottom of the page, select Widgets then drag Text Editor to right under the Public Notice box. This will create a text box field.



2. Enter your information for the Public Notice. When you are ready to post, click on the settings tab (shown below). In settings enter you end date for the posting. This will allow the post to become unpublished on that date. The notice will still be in the archive just not visible online.



3. The last step is to publish the page.

## **TRAINING ON ERP SYSTEM**

### **Objective**

To ensure all administrative employees and managers are trained on the ERP Pro 10 financial system in relation to their job duties.

### **Scope**

This policy and procedure apply to accounting, purchasing, reporting, and time entry to conduct the training on the use of the ERP system.

### **Procedure**

Supervisor will coordinate training with the Finance Department for new administrative employees hired in their departments.

#### **Areas of Responsibility for Training:**

1. Accounting
  - a. General Ledger navigation – Senior Accountant
  - b. Accounts Payable Procedures – Finance Specialist (AP)
  - c. Budget – Senior Accountant
  - d. Time Entry – Finance Specialist (PR)
  - e. Reporting – Senior Accountant
  
1. Purchasing
  - a. Purchasing Order Entry – Finance Specialist (AP)
  - b. Pcard system and Policy – Finance Specialist (AP)

## **TRAVEL POLICY**

See Chapter 14 of the Employee Handbook (see forms at the end of this manual)

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## NEW VENDOR REQUESTS

### Objective

Vendors should be added when necessary to ensure that the departments are able to purchase items that are needed to provide necessary services to the citizens of Bastrop.

### Scope

This policy and procedure apply to all departments that purchase for the City of Bastrop.

### Procedure

When a purchase is required from a vendor that is not registered with the City, a new vendor packet must be sent to the new vendor for completion. This is the responsibility of the purchasing department. It is important that the department complete the top section of the first page so that the Finance Department knows which department is requesting this vendor.

Once the Finance Department receives the new vendor packet, the following verifications are completed:

1. A search is conducted on the Tax ID number – this backup is saved with the packet.
2. If the vendor is adding EFT form of payment,
  - a. an attempt to verify the vendor's account information by a direct call (initiated by the employee) to the vendor. This must be by with a person independent of the requestor AND by a method other than the original means of the request (i.e., emailed request requires a call verification).
  - b. This verification is documented on an Electronic Fund Transfer Verification form. This form must be signed by the employee calling on the verification
  - c. Once verification has been made the completed verification form should be sent to the next-level supervisor to be approved prior to any changes being implemented.
  - d. ***This verification is also required if the City receives an updated EFT form from a current vendor for changes to account details (including account numbers, routing numbers, telephone numbers, contact information, etc.).***
3. If the vendor is not adding EFT, the vendor is called to verify the address and TIN. This verification is also documented on the Electronic Fund Transfer Verification Form and requires next-level supervisor to be approved prior to any changes being implemented.

## Audit

The Finance Department is responsible for auditing the vendor list to make sure that we do not have duplicate vendors for the same commodity. Emphasis will be put on vendors that are participating in a COOP program.

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## GLOSSARY

**Accounts Payable** - A legal liability to pay and results from the goods and/or services requested in a purchase order or contract having been delivered to the City.

**Accounts Receivable** - A claim against a customer; sales on account allowing the customer to pay later instead of requiring payment of cash at the time goods or services are sold.

**Administrative Charges** - The charges imposed upon a fund for support services provided by another fund. For example, the Accounting Department (General Fund) provides services to the Electric Fund, therefore the General Fund charges the Electric Fund for these services.

**Appropriation** - An authorization made by the City Council through an approved budget which permits the City to incur obligations and to make expenditures of resources. Appropriations lapse at the end of the fiscal year.

**Asset** - Resources owned or held which have monetary value.

**Audit** - A comprehensive review of the way the City's resources were utilized.

**Balance Sheet** - A financial statement that discloses the assets, liabilities, reserves and balances of a specific fund as of a specific date.

**Budget** - A plan of operation detailing expenses and revenues for a fiscal year by department and fund. Following are the different types/descriptions of budgets used by the City of Bastrop:

**Adopted Budget** - Adopted, as used in fund summaries and department and division summaries within the budget document, represents the budget as approved by formal action of the City Council which sets the spending limits for the fiscal year.

**Amended Budget** - Adopted budget with adjustments for budget amendments and transfers.

**Base Budget** - The on-going expense for personnel, operating services and the replacement of supplies and equipment to maintain service levels. The base budget does not include new programs or projects, which are approved on an individual basis.

**Operating Budget** - This budget, associated with providing on-going services to citizens, includes general expenditures such as personal services, professional services, maintenance costs, supplies and operating capital items. It excludes capital outlay.

**Budget Report** - Displays summary totals of individual line items and category totals. Categories: personnel services, operating expenses, capital and department totals. The report lists the account number, description of the account name, annual budget, current period, year-to-date, percentage of budget, year-to-date encumbrance and budget amount balance.

**Budget Year** - The fiscal year of the City which begins October 1 and ends September 30.

**Cash Collection** - Money payable to the City of Bastrop is received by various departments the largest being the Utility Customer Service. The money is receipted and deposited to the bank.

**Department** - A specific functional area within a City division.

**Depreciation** - The process of estimating and recording the expired useful life of a fixed asset which is used to distribute its cost over its revenue producing years.

**Disbursement** - Expense that has been paid out.

**Division** - An organizational unit of the City having management responsibility for a group of departments.

**Employee Benefits** - For the purpose of budgeting, this term refers to the City's costs of health insurance, pension contributions, social security contributions, workers' compensation and unemployment insurance costs.

**Encumbrance** - An outstanding purchase order whose goods and services have not been delivered.

**ERP Pro 10** - The financial management system used by the City of Bastrop.

**Expenditures** - Charges incurred, whether paid or unpaid, including expenses, provision for retirement of debt not reported as liability of the fund from which retired, and capital outlays. If accounts are kept on the cash basis, the term covers only actual disbursements for these purposes. Encumbrances are not considered expenditures.

**Expense** - Charges incurred, whether paid or unpaid, for operation, maintenance, and capital.

**Fiscal Year** - Period of months for a given budget. The City of Bastrop begins with October 1 and ends September 30 of the next year.

**Fixed Assets** - Assets of a long-term character which are intended to continue to be held or used, such as land, buildings, machinery, furniture and other equipment.

**Fund** - A self-balancing set of accounts that are segregated for the purpose of carrying on identified activities or attaining certain objectives in accordance with specific regulations, restrictions, or limitations.

**Fund Balance** - The excess of a fund's assets over its liabilities and reserves.

**Funding Source** - Identifies the source of revenue to fund appropriations.

General Fund - The General Fund is used to finance the ordinary operations of a governmental unit, i.e. Police, Fire and Library.

**General Ledger (G/L)** - A group or set of accounts that records financial data for an organization.

**Grant** - A contribution by one government to another. The contribution is usually made to aid in the support of a specified function (for example, education), but it is sometimes also for general purposes.

**Internal Service Fund** - A fund established to finance and account for services and furnished by a designated department to other departments.

**Journal Entry** - A transaction made to correct an account number error. The transaction should show the reason for the entry and the accounts and amounts to debit and credit. Debits and Credits must balance.

**Per Diem** - An amount paid in lieu of the actual amount spent.

**Personnel Expenditures** - All wages and benefits.

**Petty Cash** - An on-hand special cash fund to use for small incidentals and purchases.

**Petty Cash Reconciliation/Reimbursement** - Process to balance the petty cash fund and request reimbursement for petty cash receipts paid out of the fund. The reimbursement request shows all payments made out of the petty cash for a specified period of time and the total to be reimbursed to the petty cash fund by the City. The reconciliation shows total to be reimbursed plus cash on hand and any receipts outstanding. This should equal the total of the departments Petty Cash Fund.

**Prior Year Encumbrance** - Expenses charged in prior year's budget but paid in current year.

**Property Taxes** - Used to describe all revenue received in a period from current taxes and delinquent taxes. Property taxes are levied on both real and personal property according to the property's valuation and the tax rate.



**Requisition** - A request for a purchase order.

**Reserve Amount** - A suspended requisition.

**Revenue** - Increase of money or assets that result from the normal business activities of the city. Credit entries increase the amount of a line item and debits will decrease the amount.

**Signature Authorization** - Authorization to approve monies spent from a department/division.

**Special Revenue Fund** - Used to account for specific revenues that can only legally be spent for specific purposes. Grant funds, PEG fees, and donations are examples of revenues that the City accounts for in Special Revenue Funds.

**Suspended** - Status of a requisition before funds have been approved to be encumbered

**Travel Advance** - An amount given to an employee in advance for a business trip.

**Travel Expense Report** - Form for reporting travel expenses in conjunction with City business.

**Vendor** - One that provides goods and services.



# STAFF REPORT

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**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve Resolution No. R-2023-53 by the City Council of the City of Bastrop, Texas, to select the proxy to represent the City of Bastrop Texas at the Bluebonnet Electric Cooperative Annual meeting and instruct the proxy to vote for candidate(s) selected by Council.

**AGENDA ITEM SUBMITTED BY:**

Ann Franklin, City Secretary

**RECOMMENDATION**

Consider action to approve Resolution No. R-2023-53 by the City Council of the City of Bastrop, Texas, to select the proxy to represent the City of Bastrop Texas at the Bluebonnet Electric Cooperative Annual meeting.

**ATTACHMENT**

- Resolution
- Information Sheet

**RESOLUTION NO. R-2023 -53**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, TO SELECT THE PROXY TO REPRESENT THE CITY OF BASTROP TEXAS AT THE BLUEBONNET ELECTRIC COOPERATIVE ANNUAL MEETING AND INSTRUCT THE PROXY TO VOTE FOR CANDIDATE(S) SELECTED BY COUNCIL.**

**WHEREAS**, The Bastrop City Council Members, as the governing body for the City of Bastrop, Texas do hereby resolve to approve the following:

**STEP 1: CHOOSE WHO YOU WANT TO VOTE YOUR PROXY.**

**I assign my proxy to the Proxy Committee:**

The Proxy Committee of Bluebonnet Electric Cooperative, Inc. comprised of Milton Shaw, Shana Whiteley, Bryan Bracewell, Debbi Goertz, and Ben Flencher, with full power of substitution, as my proxy and agent for the Annual Meeting of the Cooperative to be held at 2:30 P.M. on Tuesday, May 9, 2023, at The Silos on 77, 1031 CR 223, Giddings, Texas.

**OR**

**I assign my proxy to the individual named below:**

\_\_\_\_\_ with full power of substitution, as my proxy and agent for the Annual Meeting of the Cooperative to be held at 2:30 P.M. Tuesday, May 9, 2023, at The Silos on 77, 1031 CR 223, Giddings, Texas.

**STEP 2: CHECK EITHER "A" OR "B".**

**A. I instruct the Proxy Committee or the individual named above to vote my proxy at its discretion.**

**OR**

**B. I instruct the Proxy Committee or the individual named above to vote for the candidates checked below.  
(Cast only one vote per district.)**

**DISTRICT 3**  
BASTROP COUNTY

**Roderick Emanuel**  
(INCUMBENT\*)

**DISTRICT 4**  
LEE, MILAM, AND WILLIAMSON COUNTIES

**Russell Jurk**  
(INCUMBENT\*)

**DISTRICT 6**  
AUSTIN, COLORADO, AND FAYETTE COUNTIES

**Byron Balke**  
(INCUMBENT\*)

**DISTRICT 7**

**Richard Lamensky**  
  
 **Robert Mikeska**  
(INCUMBENT)

\*As the election for each of Districts 3, 4, and 6 were uncontested, they are elected by general consent in accordance with Article II, Section 6 of the Bylaws.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop, TX, this 28th day of March 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney



**Bluebonnet**  
ELECTRIC COOPERATIVE

c/o Election Services Corp.  
P.O. Box 9020  
Ronkonkoma, NY 11779-9822

Election Validation Number

0470699356

Voting Instructions

Item 9G.

**VOTING BY PROXY**

- Mark your selections by placing a ✓ or an ✗ inside the appropriate box(es).
- Fold and mail this form in the enclosed postage-paid envelope addressed to: Bluebonnet Electric Cooperative, c/o Election Services Co., P.O. Box 9020, Ronkonkoma, NY 11779-9822.
- All mailed proxies must be postmarked by May 2, 2023, in order to be valid.
- Proxies may also be registered with Bluebonnet's principal office by returning to any Bluebonnet Member Service Center by 5:00 P.M., May 2, 2023.

**VOTING IN PERSON AT THE ANNUAL MEETING**

- The Annual Meeting will be held on Tuesday, May 9, 2023 at 2:30 P.M. at The Silos on 77, 1031 CR 223, Giddings, Texas. Registration will open at 1:30 P.M. and close at 2:30 P.M.
- Once you register at the Annual Meeting your proxy may be revoked at that time.

If you need voting assistance please call toll-free 866-720-4357  
Monday through Friday 9 A.M. – 4 P.M. (CDT)  
or email: bluebonnethelp@electionservicescorp.com

City of Bastrop  
1311 Chestnut St.  
Bastrop, TX 78602-3404

P2 T28 P1



# PROXY

This proxy shall remain in effect on any subsequent date, time and place to which said Annual Meeting may be recessed or postponed, giving full authority to the appointed proxy to vote for me, as if I were present in person, on all matters that come before such meeting, including election of directors and passing upon reports as well as the transaction of such other business as may come before the meeting.

**STEP 1: PLEASE CHOOSE WHO YOU WANT TO VOTE YOUR PROXY.**

*If you do not make a selection below, your proxy will be assigned to the Proxy Committee.*

I assign my proxy to the Proxy Committee:

The Proxy Committee of Bluebonnet Electric Cooperative, Inc. comprised of Milton Shaw, Shana Whiteley, Bryan Bracewell, Debbi Goertz, and Ben Flencher, with full power of substitution, as my proxy and agent for the Annual Meeting of the Cooperative to be held at 2:30 P.M. on Tuesday, May 9, 2023, at The Silos on 77, 1031 CR 223, Giddings, Texas.

**OR**

I assign my proxy to the individual named below:

\_\_\_\_\_ with full power of substitution, as my proxy and agent for the Annual Meeting of the Cooperative to be held at 2:30 P.M. Tuesday, May 9, 2023, at The Silos on 77, 1031 CR 223, Giddings, Texas.

**STEP 2: CHECK EITHER "A" OR "B".**

*If you check both, your vote cannot be counted.*

A. I instruct the Proxy Committee or the individual named above to vote my proxy at its discretion.

**OR**

B. I instruct the Proxy Committee or the individual named above to vote for the candidates checked below. (You may cast only one vote per district.)

**DISTRICT 3**  
BASTROP COUNTY

Roderick Emanuel  
(INCUMBENT\*)

**DISTRICT 4**  
LEE, MILAM, AND  
WILLIAMSON COUNTIES

Russell Jurk  
(INCUMBENT\*)

**DISTRICT 6**  
AUSTIN, COLORADO, AND  
FAYETTE COUNTIES

Byron Balke  
(INCUMBENT\*)

**DISTRICT 7**  
WASHINGTON COUNTY

Richard Lamensky

Robert Mikeska  
(INCUMBENT)

**\*As the election for each of Districts 3, 4 and 6 were uncontested, they are elected by general consent in accordance with Article II, Section 6 of the Bylaws.**

SIGNATURE

City of Bastrop

ACCOUNT NAME

DATE

TELEPHONE #

5000001311

ACCOUNT NUMBER

0470699356

ALTERNATE NAME ON ACCOUNT (IF APPLICABLE)  
01-008919

277

# 2023 NOMINEES FOR BLUEBONNET'S BOARD OF DIRECTORS

Item 9G.



**Roderick Emanuel**  
District 3 (Incumbent)

Emanuel, vice president/vice chairman of the Bluebonnet Board of Directors, has been on the electric cooperative's Board since 2011. He has earned his Credentialed Cooperative Director, Board Leadership and Gold certifications through the National Rural Electric Cooperative Association. He served as secretary/treasurer for five years, is chairman of Bluebonnet's Member & Employee Services Committee and a member of the Legal & Governance Committee. Emanuel's leadership as an officer and committee

chairman has been a key reason for Bluebonnet's success since he joined the Board. He raises cattle on the family farm with his son. Emanuel previously spent 34 years in education as a teacher, principal, assistant superintendent and superintendent for the Bastrop Independent School District. He also worked at Gary Job Corps near San Marcos. He earned a bachelor's degree in education from what is now Texas State University and a master's degree from Prairie View A&M University. Emanuel is a motivational speaker and chairman of the deacon board at Hopewell Primitive Baptist Church in Cedar Creek. He previously served on the boards of directors of Hopewell Rosenwald School and the Bastrop Central Appraisal District. Roderick and Charlene have one son, Roderick Jr.



**Russell Jurk**  
District 4 (Incumbent)

Jurk has served four terms on the Bluebonnet Board of Directors, starting in 2011. He has earned both Credentialed Cooperative Director and Board Leadership certification through the National Rural Electric Cooperative Association. He is chairman of Bluebonnet's Audit & Finance Committee and a member of the Energy Services Committee. His leadership has been fundamental in growing Bluebonnet's financial capacity and providing its

members reliable, competitively priced power. He is vice president and general manager at Bobby Lehmann Inc., a Giddings-based trucking company that hauls oil field equipment. He has worked there since 1994. Jurk earned a technical degree from Southwest School of Electronics in Austin. He has served several positions with the Giddings Noon Lions Club, and he and his wife, Laurie, own Ashley's Attic, a boutique, home décor and collectibles shop in Giddings. Jurk is a past chairman of the Texas Trucking Association and has served as the association's foundation treasurer. His hobbies include target shooting, hunting, saltwater fishing and restoring old pickups and Jeeps. He and Laurie have two children, Ashley and Richard.



**Byron Balke**  
District 6 (Incumbent)

Balke, assistant secretary/treasurer of the Bluebonnet Board of Directors, has been on the electric cooperative's Board since 2000. He is a member of Bluebonnet's Audit & Finance and Legal & Governance committees. Balke's experience and involvement on both committees and as a Board officer has been indispensable in developing Bluebonnet's financial strength. He is a cattle rancher and former shopkeeper from Bleiberville, a

community of fewer than 100 people in northwestern Austin County. He helped run his family's historic general store and later operated a fertilizer and seed business. He played baseball at Blinn College in Brenham and had a short pro baseball career with the Houston Colt .45s (now the Houston Astros). He earned a bachelor's degree in agribusiness from what is now Texas State University and served in the Army Reserves. He is a member of the Austin County Livestock Association and the Bleiberville Volunteer Fire Department. His hobbies include collecting antiques, hunting and fishing on the Texas Gulf coast. He and his wife, Annette, have two children, Virgil and Phyllis, and four grandchildren.



**Robert Mikeska**  
District 7 (Incumbent)

Mikeska, secretary/treasurer of the Bluebonnet Board of Directors, has been on the electric cooperative's Board since 2008. He has earned his Credentialed Cooperative Director certification through the National Rural Electric Cooperative Association. He is chairman of Bluebonnet's Energy Services Committee and a member of the Audit & Finance Committee. His leadership as an officer and on these committees has been instrumental

in providing reliable, competitively priced power and building Bluebonnet's financial strength. Mikeska spent 33 years at Mike Hopkins Distributing Co. in Brenham, and retired as senior vice president/controller in 2022. He earned a bachelor's degree in finance from the University of Texas at Austin. He has also worked for the Texas House of Representatives, the Texas Office of State-Federal Relations, Wholesale Beer Distributors of Texas and Brenham National Bank. Mikeska is a former Brenham City Council member and Washington County commissioner, an active member of Abiding Word Lutheran Church and former board member of Brenham's Senior Activity Center. He and his wife, Marita, have a daughter, Michele, and two grandchildren.



**Richard Lamensky**  
District 7

Richard Lamensky is a native of Needville, Texas. He attended Lamar University, where he earned his bachelor's degree in mechanical engineering. He and his wife, Cindy, whom he met in college during a dance at Riverside Hall in East Bernard, have been married 44 years. Lamensky fell in love with Brenham as a child while visiting relatives and has lived there

his entire married life. He has been a Bluebonnet member for more than 30 years. Lamensky is the director of HVAC and energy management at Blinn College. His education and work experiences have enabled him to be familiar with the transmission and distribution of electricity from generation to the meter, and demand for power at homes and businesses. He is a member of Texas Energy Managers Association and holds the certification of an Accredited Energy Manager. Lamensky and his wife have two children, Cassy and Chelsy, and three grandchildren. In Lamensky's spare time he enjoys hunting and fishing.

## 2023 ANNUAL MEETING & BOARD ELECTION Q&A

Bluebonnet Electric Cooperative's Annual Meeting will be Tuesday, May 9, 2023, at The Silos on 77, 1031 County Road 223 in Giddings. Registration will begin at 1:30 p.m. and end at 2:30 p.m. The meeting will start at 2:30 p.m. Look for details about the meeting in the coming weeks with your bill, in Bluebonnet's pages in the April and May issues of Texas Co-op Power magazine, on our social media and on our website, [bluebonnet.coop](http://bluebonnet.coop).

### How many Board of Director seats are up for election?

Four of the seats on Bluebonnet's Board of Directors are up for election this year. Three of the candidates — Roderick Emanuel, District 3 for Bastrop County; Russell Jurk, District 4 for Lee, Milam and Williamson counties; and Byron Balke, District 6 for Austin, Colorado and Fayette counties — were unopposed and will be elected by general consent in accordance with Bluebonnet's bylaws. There are two candidates for the District 7 seat, representing Washington County: Robert Mikeska (incumbent) and Richard Lamensky. The term for the District 7 seat will end in 2027 in order to evenly distribute the number of directors' seats up for election each year.

### Bluebonnet's service area is divided into seven districts. Can I vote for candidates in all districts or just the district in which I live?

During contested Board elections, co-op members can vote for directors in all districts. The districts in the co-op's service area were drawn along Bluebonnet's service area boundary and county lines. The seven districts are represented by one to three directors based on, among other things, the number of meters in each district.

### What are my voting options?

Members may vote for Board candidates by submitting their proxy form by May 2, 2023, or by attending the Annual Meeting in person on May 9, 2023. There are currently no additional ballot items to be voted on this year. However, items can be added to the Annual Meeting agenda that would require a vote by members. Those items would have to be added no later than 10 days before the Annual Meeting. Your proxy could be used in that vote, in addition to selecting a candidate for District 7, which is why your proxy selection is important.

### What is proxy voting, and how does it work?

Proxy voting allows members to designate another person to vote in his or her place. On the proxy, members can assign their vote to either Bluebonnet's Proxy Committee or to an individual. Proxies are counted to ensure at least 1% of Bluebonnet's membership are present at the Annual Meeting to constitute a quorum.

### Who serves on Bluebonnet's Proxy Committee?

The Proxy Committee is composed of all Bluebonnet Board members whose terms are not currently up for election. This year's Proxy Committee members are Milton Shaw, Shana Whiteley, Bryan Bracewell, Debbi Goertz and Ben Fleucher.

### How do I vote by proxy?

Complete the proxy form and return it by mail or drop it off at any of Bluebonnet's member service centers in Bastrop, Brenham, Giddings, Lockhart or Manor. If you misplace the proxy form, pick one up at a member service center or call 800-842-7708 and ask a representative to mail one to you. Proxies must either be hand-delivered to a member service center by 5 p.m. May 2, 2023, or mailed to:

#### Bluebonnet Elections Processing

c/o Election Services Co.

P.O. Box 9020

Ronkonkoma, NY 11779-9822

Mailed proxies must be postmarked by May 2, 2023.

### Can this proxy be used again at future Annual Meetings?

No, the proxy is valid only for the meeting specified on the proxy form.

### Can I vote at the Annual Meeting if I send in a proxy form?

When you register at the meeting, you may revoke your proxy and then vote in person.

### Who administers the election?

Election Services Co., which is a third-party, independent vendor that specializes in administering corporate elections nationwide. It has the experience to efficiently and accurately tally proxies and votes while protecting members' confidential account information.

### What if I have more questions?

Visit [bluebonnet.coop/annualmeeting](http://bluebonnet.coop/annualmeeting), call a member service representative at 800-842-7708 between 8 a.m. and 5 p.m., Monday through Friday, or email [memberservices@bluebonnet.coop](mailto:memberservices@bluebonnet.coop).



Los formularios de poder en español y la información de elección de la Junta están disponibles. Llame al 800-842-7708 o visite un centro de servicios para miembros de Bluebonnet en Bastrop, Brenham, Giddings, Lockhart o Manor de 8 a. m. a 5 p. m., de lunes a viernes.



# City Council STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve the first reading of Ordinance No. 2023-08, the City Council of the City of Bastrop, Texas, amending Ordinance No. 2022-22 Fee Schedule of the City of Bastrop to amend Appendix A-Fee Schedule, A14.01.001, of the Code of Ordinances, to amend the cost of variance for Subdivision Variance Review, Zoning Review, and Zoning Board of Adjustment review fee from \$3,681 to \$500, as attached in Exhibit A; and providing for findings of fact, adoption, repealer, and severability; and establishing an effective date; and include in the April 11, 2023, consent agenda for the second reading.

**AGENDA ITEM SUBMITTED BY:**

Submitted by: Sylvia Carrillo, City Manager

**BACKGROUND/HISTORY:**

During the Development Services Process Improvement review project, an item of significant concern was raised by residents and members of the development community. The item of concern is related to the cost of variances that allow residents or members of the development community an opportunity from relief of the development codes via an appointed board or commission.

The exorbitant cost of the variance, as discussed by staff, is meant to be a deterrent to the variance process and ensure strict compliance with the adopted codes.

The existing fees are as follows:

- Subdivision variance fee: \$3,681
- Zoning variance fee: \$3,681
- Zoning Board of Adjustment: \$3,681

The nature of local government is not meant to be punitive, as there is always a way through a regulation, but never around. Boards and commissions are created to assist in the legislative amendment process that then makes its way to the City Council for future amendments; to create a fee that is a deterrent to this practice is counter to the process of accessible and fair governance.

This agenda item seeks to reduce the cost to \$500 as an amount that is more accessible to all.

**FISCAL IMPACT:**

Revenue reduction in the amount of \$25,448.

**RECOMMENDATION:**

Approve the variance cost reduction.

**ATTACHMENTS:** None



**ORDINANCE NO. 2023-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AMENDING ORDINANCE 2022-22 FEE SCHEDULE OF THE CITY OF BASTROP TO AMEND APPENDIX A-FEE SCHEDULE, A14.01.001, OF THE CODE OF ORDINANCES, TO AMEND THE COST OF VARIANCE FOR SUBDIVISION VARIANCE REVIEW, ZONING REVIEW, AND ZONING BOARD OF ADJUSTMENT REVIEW FEE FROM \$3,681 TO \$500, AS ATTACHED IN EXHIBIT A; AND PROVIDING FOR FINDINGS OF FACT, ADOPTION, REPEALER, AND SEVERABILITY; 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 Local Government Code; and

**WHEREAS**, the City seeks to ensure that impending and future development is conducted in a fiscally-sustainable and environmentally responsible manner that honors the City's rich heritage and unique ecological makeup; and

**WHEREAS**, the Subdivision variance fee, Zoning variance fee, and Zoning Board of Adjustment were last updated at the September 20, 2022 City Council.

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

**Section 1: Findings of fact.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**Section 2: Adoption and Amendment.** The City Council hereby adopts the amendments to the Appendix A-Fee Schedule, as attached in Exhibit A.

**Section 3: Repealer.** In the case of any conflict between other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

**Section 4: Severability.** 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: 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.

**READ & ACKNOWLEDGED** on First Reading on the 28<sup>th</sup> day of March 2023.

**READ & APPROVED** on the Second Reading on the 11<sup>th</sup> day of April 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

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APPENDIX

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BASTROP BUILDING BLOCK (B<sup>3</sup>) CODE

Item 9H.

SEC Reference	Last updated	Description	Amount of fee/Dep
<u>A14.01.001</u>	Ord. No. 2022-22 9/20/2022	Administration fee (per application, included in fees below unless otherwise noted)	5% of application fee
		Completeness Check (per application review)	\$250
		Technology Fee (per application, included in fees below)	\$6
		Meeting Re-Notification, if required by applicant action	\$500
		Appeal of Administrative Decision	\$531
		Appeal of Board/Commission Decision	\$531
		Misc. Administrative Plan Review	\$531
		Warrant Determination	\$60
<u>A14.01.001</u>	Ord. No. 2022-22 9/20/2022	<b>SUBDIVISION</b>	
		Preliminary Plat Review (plus 5% administration fee)	\$1706 + \$125 per acre
		Final Plat Review (plus 5% administration fee)	\$1,281 + \$125 per acre
		Amended/Administrative Plat Review (plus 5% administration fee)	\$1,281 + \$25 per acre
		Replat Review (plus 5% administration fee)	\$1,281 + \$125 per acre
		Plat Vacation Review	\$1,345
		Public Improvement Plan Review	\$5,256 minimum + all professional fees*
		Single Improvement Public Improvement Plan Review	\$1,345
		Public Improvement Plan Amendment Review	\$1,345
		Public Improvement Inspections	3.5% of total cost of improvement**, \$2,500 minimum
		Public Improvement Plan Agreement Review	\$3,156 + all professional fees*
		Conceptual Drainage Plan Review	\$1,266
		Preliminary Drainage Plan Review	\$2,421
		Final Drainage Plan Review	\$1,581
		Preliminary Infrastructure Plan Review	\$2,001
		<b>Subdivision Variance Review</b>	<del>\$3,681</del> <b>\$500</b>
		Plat Recordation with the County	\$150 + fees charged by the County
		Platting Exemption Determination	\$50
		License Agreement Review	\$3,156, plus professional fees*
		Land Disturbance Permit	\$216
		License to Encroach Review, Easement	\$531, plus professional fees*

**EXHIBIT A**

SEC Reference	Last updated	Description	Amount	Item 9H.
		License to Encroach Review, Right-of-Way	\$794, plus professional fees*	
		Traffic Impact Analysis Review	\$557, plus professional fees*	
		Right-of-Way Vacation Review	\$1,791, plus professional fees*	
		Easement Vacation Review	\$899, plus professional fees*	
		Neighborhood Regulating Plan	\$1056	
<b><u>DEVELOPMENT FEES IN LIEU</u></b>				
		Tree Mitigation	\$600 per 4 inch tree	
		Sidewalk	\$14 per square foot	
		Trail	\$14 per square foot	
<b>PARKLAND DEDICATION</b>				
		Less than 4 dwelling units per building	\$500 per Unit	
		4 or more dwelling units per building	\$400 per Unit	
<b>SITE DEVELOPMENT</b>				
		Site Development Plan Review (plus 5% administration fee)	\$1706 + \$125 per acre	
		Site Development Plan Amendment Review	\$531	
		Site Development Inspections	\$500	
		Work without Approved Plan	\$500 per violation per day	
<b>GIS MAPPING FEES</b>				
		Map Printing	\$6.67 per square foot + \$50 an hour	
		Custom Map	\$250 per hour	
		Public Improvement Plan Digitizing, May be waived if digital plans provided per City specifications	\$250 per hour	
<b>ZONING</b>				
<u>A14.01.001</u>	Ord. No. 2021-12 09/21/2021	Zoning Concept Scheme Review (greater than or equal to 3.4 acres) (plus 5% administration fee)	\$3,006 + \$200 per acre (rounded up)	
<u>A14.01.001</u>	Ord. No. 2021-12 09/21/2021	Zoning Concept Scheme Review (less than 3.4 acres)	\$1,581	
<u>A14.01.001</u>	Ord. No. 2021-12 09/21/2021	Planned Development Zoning Amendment Review (plus 5% administration fee)	\$9,006 + \$200 per acre (rounded up)	
<u>A14.01.001</u>	Ord. No. 2022-22 9/20/2022	<b>Zoning Variance Review</b>	<del>\$3,681</del> <u>\$500</u>	
		B <sup>3</sup> Code Text Amendment Review	\$2,106, plus professional fees*	

**EXHIBIT A**

SEC Reference	Last updated	Description	Amount of	Item 9H.
		Comprehensive Plan Amendment Review	\$1,056, plus professional fees*	
		Development Agreement Review	\$3,156, plus professional fees*	
		Special District Creation (MUD, PID, SUD, WCID, etc.)	\$26,256 + Professional fees*	
		Zoning Verification Letter	\$156	
		Zoning Violation	\$500 per violation per day	
<u>A14.01.001</u>	Ord. No. 2022-22 9/20/2022	<b>SIGNS</b>		
		Off-Premises Sign (Billboard) Repair	\$452	
		Repair or reface of existing sign cabinet	\$85	
		Building Signs (structural): Awning, Band (wall), Blade, Marquis, Outdoor Display Case, Construction Site (plus 5% administration fee)	\$106 plus \$1 per square foot	
		Building Signs (non-structural): Nameplate, Window (plus 5% administration fee)	\$56 plus \$1 per square foot	
		Small Freestanding Signs: Yard, Directional	\$60	
		Large Freestanding Signs: Monument, Pylon, Development Information, Construction Site (plus 5% administration fee)	\$206 plus \$2/ft. of sign height and \$2/sq. ft. of sign area	
		Banner	\$60	
		Sidewalk Sign	\$60	
		Master Sign Plan Review	\$531	
		Administrative Sign Variance Review	\$1,056	
		ZBA Sign Variance Review	<del>\$3,681</del> \$500	
		Work without Permit	100% the fee per sign type	
<u>A14.01.001</u>	Ord. No. 2022-22 9/20/2022	<b>HISTORIC PRESERVATION</b>		
		Certificate of Appropriateness	\$58.50	
		Certificate of Appropriateness - Demolition or Relocation	\$111	
		Work without Certificate of Appropriateness	\$500 per violation per day	
		*In accordance with Article 1.14 Professional and Consulting Fees or approved professional agreement		
		** Based on certified cost estimate provided by engineer of record and approved by the City		

**EXHIBIT A**

**CEMETERIES**

Item 9H.

SEC Reference	Last updated	Description	Amount of fee/Dep
A15.01		<b>FAIRVIEW CEMETERY</b>	
A15.01.012	Ord. No. 2022-22 9/20/2022	Cost of one (1) plot – Resident of the City of Bastrop	\$1,500
		Cost of one (1) plot – Non-Resident of the City of Bastrop	\$3,500
		80% of the fee is deposited into the Operating fund	
		20% of the fee is deposited into the Permanent Fund	
		Recording Fee	\$30
		Permit Fee	\$25
		<b>Burial Open/Close fees</b>	
		Adult burial	\$1,520
		Infant/cremations burial	\$1,160
		Weekend surcharge	\$125
		Holiday surcharge	\$600
		Disinterment/Re-interment	\$1,450 each
		Liners	\$750
		Setup fee	\$640



# Staff Report

**MEETING DATE:** March 28, 2023

**TITLE:**

Consider action to approve the first reading of Ordinance No. 2023-07 of the City Council of the City of Bastrop Texas, amending the Bastrop Building Block (B3) Code Chapter 6, Section 6.3.009 private frontage, Subsections (d) and (f); and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting; and include on the April 11, 2023, consent agenda for second reading.

**AGENDA ITEM SUBMITTED BY:**

Submitted by: Sylvia Carrillo, City Manager

**BACKGROUND/HISTORY:**

The Bastrop Building Code (B3) and the subsequent Iredell district were created to assist in the creation and preservation of what is considered authentic Bastrop.

At the onset, it was recognized that sections of the code would need to be amended as the code was placed into practice. The code has been in place since November of 2019. Since that time, developers and commercial contractors have discussed the burden that this section requires.

This agenda item seeks to address and clear a conflict among codes for an aesthetic requirement for commercial buildings to

“(d) Buildings with a first floor Commercial Use shall be glazed with clear glass no less than 70% of the first Story.”

Further, the International Building Codes (IBC) are also geared towards energy conservation in the International Energy Code (IEC) which has also been adopted by the City of Bastrop. A required 70% glass storefront and glazing requirement conflicts with the IEC unless significant investment is made into the design of the glass storefronts.

The Construction Standards board met on March 20, 2023 and voted unanimously to remove letter (d) related to the 70% glazing requirement.

In discussion of the item, the Board also voted to remove item (f) *All opening, including porches, galleries, Arcades, and windows, with the exception of shopfronts, shall be square or vertical in proportion.*

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Staff recommends removal or amendment of the code language to no longer conflict with the IEC and also to create a more authentic Bastrop.

**ATTACHMENTS:**

1. Proposed code amendment document.



CITY OF BASTROP, TX  
**ORDINANCE NO. 2023-07**

**AMENDING B3 CODE**

**AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE BASTROP BUILDING BLOCK (B<sup>3</sup>) CODE CHAPTER 6, SECTION 6.3.009 PRIVATE FRONTAGE, SUBSECTIONS (d) AND (f); AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.**

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

**WHEREAS**, on March 20, 2023, the Construction Board voted to recommend an ordinance amending provisions of the Bastrop Building Block (B3) Code.

**WHEREAS**, the City Council finds certain amendments to the aforementioned codes are necessary to meet changing conditions and are in the best interest of the City;

**WHEREAS**, the City Council finds the attached amendments reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:**

**1. FINDINGS OF FACT**

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

**2. AMENDMENT**

Chapter 6, Private Realm Development Standards, SECTION 6.3.009 PRIVATE FRONTAGE, Subsections (d) and (f) of the Bastrop Building Block Code (B3) is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as shown in each of the attachments.

### **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, herein.

### **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.

### **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.

### **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.

### **7. PROPER NOTICE AND 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.

*[Signatures on following page]*

**READ & APPROVED** on the First Reading on this, the 28<sup>th</sup> day of March 2023.

**APPROVED:**

by: \_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

**Attachment “A”**

*Bastrop Building Block Code*

*Chapter 6*

*Private Realm Development Standards*

**SEC. 6.3.009 PRIVATE FRONTAGE**

- (a) Permitted Encroachments into the First Layer of any Lot are specified in Section 6.5.002, Permitted Encroachments per Place Type. Terminology used to identify these elements is diagrammed for illustrative purposes only.
- (b) The Facade of the Principal Building shall be built parallel to the Frontage Line or to the tangent of a curved Frontage Line of a Lot, and along a minimum percentage of the Frontage width at the Build-to-Line as specified as Facade Buildout in Section 6.5.003, Building Standards per Place Type.
- (c) All Facades shall be glazed with clear glass not less than 20% of the first Story. Glazing shall be calculated as the total combined area of window glazing (lights or panes within each window's casing) divided by the total area of the Facade for the target Story of a Building.
- ~~(d) Buildings with a first floor Commercial Use shall be glazed with clear glass no less than 70% of the first Story.~~
- (e) Openings above the first Story shall not exceed 50% of the total Building wall area, with each Facade being calculated independently.

~~(f) All opening, including porches, galleries, Arcades, and windows, with the exception of shopfronts, shall be square or vertical in proportion.~~



# STAFF REPORT

**MEETING DATE:** March 28, 2023

**TITLE:**

Hold a public hearing and consider action to approve the first reading of Ordinance No. 2023-06 of the City Council of the City of Bastrop Texas, approving the zoning change for 1.998 acres out of the Nancy Blakey Survey, abstract 98, Bastrop County, Texas from P2 Rural to PS Core; 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; and include on the April 11, 2023, consent agenda for second reading.

**STAFF REPRESENTATIVE:**

Keehren Baah, Assistant Director of Planning & Development

**BACKGROUND/HISTORY:**

The applicant has submitted an application for a Zoning Concept Scheme (ZCS) for 1.998 acres of the Nancy Blakey Survey, located at the northwest corner of FM 969 and SH 71 (Exhibit A). The request is to rezone two lots from P2 Rural to P5 Core. This area was annexed into the city limits in 2011 with a default base zoning district of Agricultural/Open Space, which was rezoning in 2019 to P-2 Rural. The automotive shop and residential home were existing and considered as legal non-conforming for the existing buildings. The property to the north wishes to develop as a commercial site. The property to the south does not have any plans at this time but brings the site into a conforming zoning district.

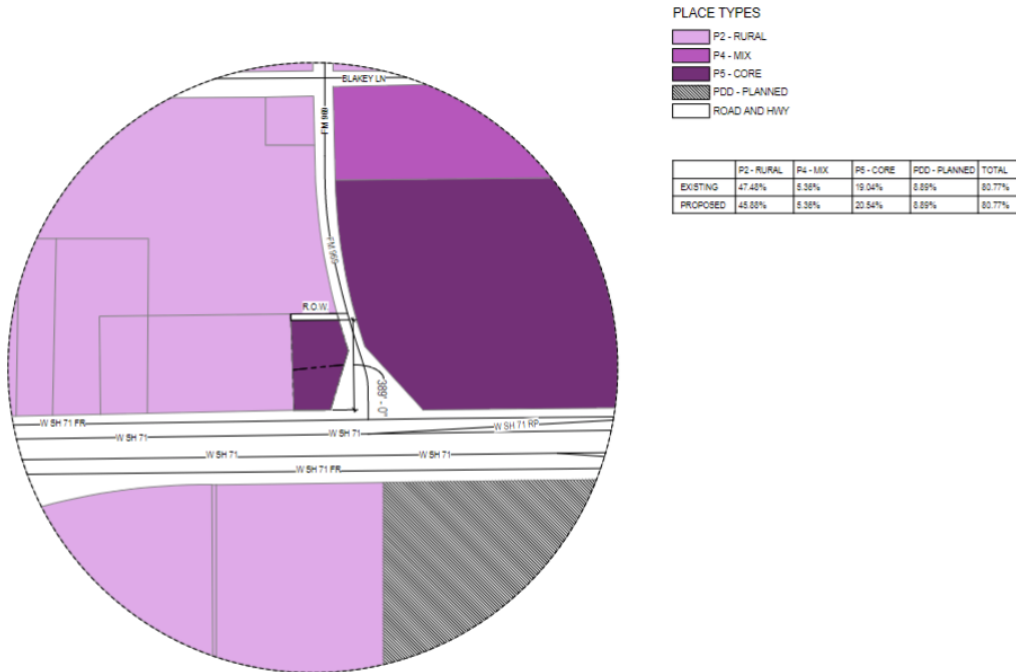
P5 Core Center is defined in the code as “Higher density mixture of Building Types that accommodate commercial, retail, offices, row houses, and apartments. It has a tight network of Streets, with wide sidewalks, steady Street Tree plantings, and buildings set close to the sidewalks. P5 is a highly walkable area. A continuous line of buildings is critical to define the Public Frontage and allow for visible activity along the Street edge.” Rezoning two parcels that have frontage onto two major thoroughfares (SH 71 W and FM 969) is compatible with the intent of the P5 Core Place Type.

To the west, the development is adjacent to Premier Portable Buildings, which is outside of the city limits. To the north, the property is adjacent to the Valverde development. To the south and east, the property is bounded by two major thoroughfares (SH 71 W & FM 969). The applicant is proposing to relocate their driveway to take access off FM 969 at the time of development.

Zoning Concept Schemes also take into account the variety of place type zoning districts in a pedestrian shed. For this area, the applicant has shown one pedestrian sheds around the requested area. The applicant is requesting P5 – Core base zoning, which appropriate given the existing surrounding zoning and the location at the corner of two highways.



For the Pedestrian Shed mix, P5 Core is a required Place Type to be within the Traditional Neighborhood and Village Center Development patterns. This development is proposing Traditional Neighborhood Development pattern and is showing the required dedication of the proportional share of the street right-of-way on the north edge of the property. This ROW is where the development will take access from FM 969.



**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 for the proposed new development and approved by the City Engineer. With the new development, the plan identifies a new drainage pond to mitigate the new development.

**PUBLIC COMMENTS:**

Property owner notifications were sent to four adjacent property owners on February 8, 2023 (Attachment 4). At the time of this report, no responses have been received. (Attachment 5)

**POLICY EXPLANATION:**

Texas Local Government Code

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

*Notice was published in the Bastrop Advertiser and notice was sent to property owners within 200 feet of the property boundary, and signage was posted on site.*

(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.

*The proposed Zoning Concept Scheme is in compliance with the Future Land Use Plan.*

Compliance with Bastrop Building Block (B<sup>3</sup>) Code:

B<sup>3</sup> CODE INTENT (See Executive Summary)

The code is built around three core intents:

- **Fiscal Sustainability**

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

*The development provides street and infrastructure connections to existing infrastructure with a Conceptual Utility Plan and Conceptual Drainage Plan.*

- **Geographically Sensitive Developments**

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

*The ZCS is providing additional connectivity for this and future developments at the north edge of the property that meets the requirements of block structure. The Conceptual Drainage Plan is addressing the existing topography with the placement of the drainage infrastructure at the front of the lot, to minimize disruption to the natural terrain.*

- **Perpetuation of Authentic Bastrop**

The B<sup>3</sup> Code will perpetuate the built form that has been predominate over the City's 189-year history. The recent trend of allowing parking and automobile traffic as the predominate feature has created a pattern that is contrary to the historical building patterns of the city and creates sites/buildings that are not adaptable and sustainable in the long-term.

*This zoning and auto-oriented use is compatible with the existing highway intersection and will provide local street access to the north of the property for this and future development.*

**B<sup>3</sup> Code ARTICLE 5.1 INTENT OF DEVELOPMENT PATTERNS**

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

*The Character District of this project is Cattleman's, which allows for Traditional Neighborhood Development (TND) using the standard building block pattern or Village Center (VCD). The development is proposing the TND form by providing internal blocks and external future connections to create new blocks with existing streets.*

SEC. 5.2.002 TND STANDARDS

1. Detail the block perimeters, block lengths, pedestrian shed area, place type allocations per B<sup>3</sup> Code 3.2.002b.

*This ZCS is depicting future right-of-way at the north side of the property, which approximates the 330 Building Block grid while meeting Texas Department of Transportation separation requirements.*

**PLANNING & ZONING COMMISSION RECOMMENDATION:**

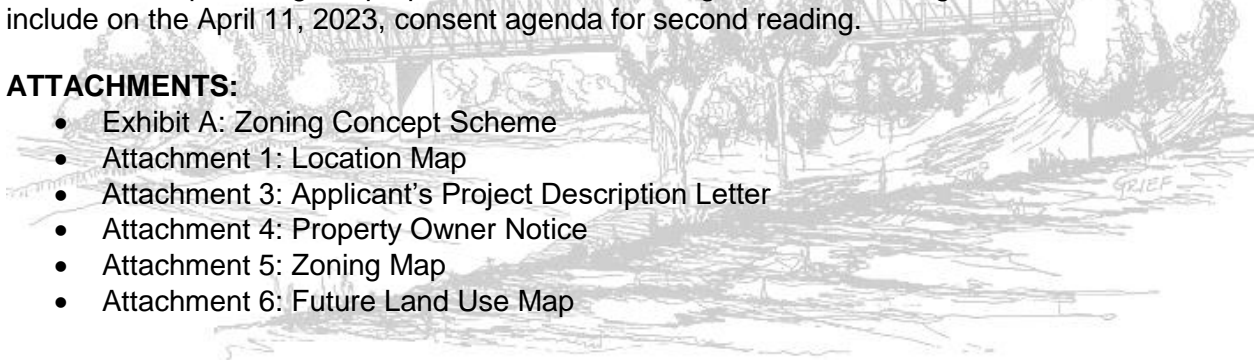
The P&Z Commission reviewed the Zoning Concept Scheme at their February 23, 2023, regular meeting and recommended approval of the rezoning request for P5 Core zoning by a vote of 6-0.

**STAFF RECOMMENDATION:**

Hold a public hearing and consider action to approve the first reading of Ordinance No. 2023-06 of the City Council of the City of Bastrop Texas, approving the zoning change for 1.998 acres out of the Nancy Blakey Survey, abstract 98, Bastrop County, Texas from P2 Rural to PS Core; 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; and include on the April 11, 2023, consent agenda for second reading.

**ATTACHMENTS:**

- Exhibit A: Zoning Concept Scheme
- Attachment 1: Location Map
- Attachment 3: Applicant's Project Description Letter
- Attachment 4: Property Owner Notice
- Attachment 5: Zoning Map
- Attachment 6: Future Land Use Map



## ORDINANCE 2023-06

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE ZONING CHANGE FOR 1.998 ACRES OUT OF THE NANCY BLAKEY SURVEY, ABSTRACT 98, BASTROP COUNTY, TEXAS FROM P2 RURAL TO P5 CORE; 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 January 30, 2023, Adam Gates submitted a request for zoning modifications for certain properties located at the Northwest corner of Highway 71 and 969 described as a 1.998 acre tract of land out of the Nancy Blakey Survey, Abstract 98, Bastrop County, Texas which is more particularly shown and described in Attachment A (“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**, 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 which is General Commercial, as shown in Attachment B, which allows for a wide range of commercial and retail uses; 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 February 23, 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 is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, the City Council recognizes changed conditions and circumstances in the particular location; 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 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 1.998 acre tract of land out of the Nancy Blakey Survey, Abstract 98, Bastrop County, Texas more particularly shown and described in Attachment A which is attached and incorporated herein, is hereby rezoned from P2 Rural to P5 Core. 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:** The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance. Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

**Section 6:** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

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

*[Signatures on following page]*

**READ & ACKNOWLEDGED** on First Reading on this the 28th day of March 2023.

**READ & ADOPTED** on Second Reading on this the \_\_\_\_ day of \_\_\_\_\_ 2023.

**APPROVED:**

\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan Bojorquez, City Attorney

## ATTACHMENT A

**ATTACHMENT B**



GENERAL WARRANTY DEED

STATE OF TEXAS, \*  
 \* KNOW ALL MEN BY THESE PRESENTS:  
 COUNTY OF BASTROP. \*

That, W. G. K. ENTERPRISES, INC., a Texas corporation, acting by and through WILBURN KIRSCH, President, hereinafter referred to as GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration to me in hand paid by WILBURN KIRSCH and wife, CAROL KIRSCH, of Bastrop County, Texas, hereinafter referred to as GRANTEES, the receipt of all of which is hereby acknowledged and confessed, no part of which consideration is secured by a lien either expressed or implied, have Granted, Sold and Conveyed and by these presents do Grant, Sell and Convey unto the said GRANTEES the following described real property, to-wit:

Being a 1.192 acre tract or parcel of land out of and being a part of the Nancy Blakey Survey A-98, in Bastrop County, Texas, and being a part of that certain tract said to contain 2.001 acres in a deed from Quinton F. Geltmeier and wife, Jesse Mae Geltmeier to W.G.K. Enterprises, Inc., dated June 27, 1986, recorded in Volume 425, Page 350, Official Records of Bastrop County, Texas; said 1.192 acre tract or parcel being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all pertinent purposes.

This conveyance is expressly made and accepted subject to the following:

1. Utility easement dated May 24, 1950, executed by Annie P. Erhard, et.vir., to L.C.R.A. recorded in Volume 103, Page 591, Deed Records of Bastrop County, Texas.
2. Utility easement dated September 18, 1961, executed by Annie P. Erhard, et.vir., to L.C.R.A. recorded in Volume 155, Page 232, Deed Records of Bastrop County, Texas.
3. Any and all other mineral and royalty reservations and leases, covenants, conditions, restrictions, easements, plats and all other conditions of record, if any, applicable to and enforceable against the above described property as reflected by the records of the County Clerk of Bastrop County, Texas, to the extent and only to the extent the same are valid and subsisting, and subject to any apparent easement not recorded of record and applicable to such property.

TO HAVE AND TO HOLD the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging unto the said GRANTEES, their heirs and assigns forever; and GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said premises unto the said GRANTEES, their heirs and assigns, against every person whomsoever claiming or to claim the same, or any part thereof.

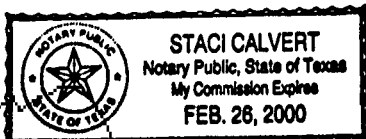
EXECUTED this 12 day of March, 1997.

W. G. K. ENTERPRISES, INC. a  
 Texas corporation:

By: Wilburn Kirsch  
 WILBURN KIRSCH, President

STATE OF TEXAS, \*  
\*  
COUNTY OF BASTROP. \*

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME on this the 12<sup>th</sup>  
day of March, 1997, by W. G. K. ENTERPRISES, INC.,  
by WILBURN KIRSCH, its President.



*Staci Calvert*  
NOTARY PUBLIC STATE OF TEXAS

*Stu Rt. Box 1AA  
Bastrop, Tex. 78602*

UNRECORDED INSTRUMENT

DALE L. OLSON  
REGISTERED PROFESSIONAL LAND SURVEYOR  
711 WATER STREET  
BASTROP, TEXAS 78602  
(512) 321-5476 Fax (512) 303-5476

FIELD NOTES FOR A 1.192 ACRE TRACT IN THE NANCY BLAKEY SURVEY IN BASTROP COUNTY, TEXAS.

Being a 1.192 acre tract or parcel of land out of and being a part of the Nancy Blakey Survey, A-98, in Bastrop County, Texas, and being a part of that certain tract said to contain 2.001 acres in a deed from Quinton F. Geltmeier and wife, Jesse Mae Geltmeier to W. G. K. Enterprises, Inc. dated June 27, 1986, recorded in Vol. 425, Page 350, Bastrop County Deed Records. Herein described tract or parcel being more particularly described by metes and bounds as follows:

COMMENCING for reference at a concrete monument found at the intersection of the north line of State Highway No. 71 with the west cut-back line of Farm to Market Road No. 969, the southeast corner of the said 2.001 acre tract.

THENCE with the east line of the said 2.001 acre tract and west cut-back line of Farm to Market Road No. 969, N 16 deg. 36 min. 58 sec. E, 204.78 feet to a 5/8 inch iron rod set in a fence line for the POINT OF BEGINNING, the southeast corner of this tract.

THENCE crossing said 2.001 acre tract with said fence line, S 84 deg. 14 min. 52 sec. W, 224.08 feet to a 1/2 inch iron rod found at a fence corner in the west line of same for the southwest corner of this tract.

THENCE with the west line of the said 2.001 acre tract, N 01 deg. 55 min. 52 sec. W, 241.58 feet to the northwest corner of same, a 1/2 inch iron rod found in a fence line in the south line of the John B. Duff Trustee, 469.652 acre tract described in a deed recorded in Vol. 662, Page 527, Bastrop County Deed Records, for the northwest corner of this tract.

THENCE with the south line of the Duff Tract and north line of the said 2.001 acre tract, N 89 deg. 33 min. 00 sec. E, 200.56 feet to a 1/2 inch iron rod found at a fence corner where same corner in the curving west line of Farm to Market Road No. 969, for the northeast corner of this tract.

THENCE with the east line of the said 2.001 acre tract and west line of Farm to Market Road No. 969 along a curve to the left whose radius is 2904.79 feet; whose central angle is 03 deg. 18 min. 13 sec.; whose long chord bears S 16 deg. 50 min. 41 sec. E, 167.46 feet; 167.48 feet along the arc to a 1/2 inch iron rod found at end of said curve.

THENCE continuing with the west cut-back line of Farm to Market Road No. 969 and east line of the said 2.001 acre tract, S 16 deg. 36 min. 58 sec. W, 62.91 feet to the POINT OF BEGINNING, containing 1.192 acres of land.

*Dale L. Olson*  
Dale L. Olson  
Registered Professional  
Land Surveyor  
Reg. No. 1753

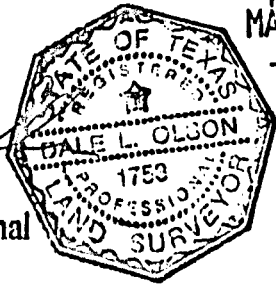


EXHIBIT "A"

FILED  
MAR 12 1997  
10:40 a.m.

*Shirley Wilhelm*  
COUNTY CLERK  
BASTROP COUNTY, TEXAS

ORDER

STATE OF TEXAS COUNTY OF BASTROP  
I hereby certify that this instrument was FILED on the date and time stamped hereon and was duly RECORDED in the Volume and Page of the named RECORDS of Bastrop County, Texas, as Stamped hereon by me on



MAR 19 1997  
*Shirley Wilhelm*  
COUNTY CLERK  
BASTROP COUNTY, TEXAS

**ADAM WORD GATES**  
ARCHITECTURE STUDIO

CITY OF BASTROP REQUIRED SIGNATURES

OWNER : STEVE CLASSEN

OWNER : MARISSA CLASSEN



ARCHITECT : ADAM WORD GATES, AIA

CIVIL ENGINEER : PAUL VIKTORIN

CITY OF BASTROP ENGINEER

# BASTROP AUTOMOTIVE ZONING AND DRAINAGE CONCEPT SCHEMIES

118 FM 969  
Bastrop, TX 78602

SET FOR INTERIM  
 REVIEW ONLY, NOT  
 FOR USE IN  
 CONSTRUCTION,  
 BIDDING, OR  
 PERMITTING

### INDEX OF DRAWINGS

NUMBER	NAME OF SHEET
<b>00 GENERAL</b>	
CS 0	DRAINAGE CONCEPT COVER
CS 1	COVERSHEET
CS 2	PROJECT INFORMATION
<b>02 CIVIL</b>	
1 OF 3	INFRASTRUCTURE PLAN
2 OF 3	EXISTING DRAINAGE AREA MAP
3 OF 3	PROPOSED DRAINAGE AREA MAP
<b>05 ARCHITECTURAL</b>	
ZS 0.1	EXISTING PLAN
ZS 0.2	PEDESTRIAN SHED EXHIBIT
ZS 1.1	PROPOSED DEVELOPMENT SCHEME
ZS 1.2	PROPOSED DEVELOPMENT SCHEME
ZS 2.1	ARCHITECTURAL VIEWS

### PROJECT GOAL

TO RE-ZONE 2 LOTS FROM PLACE TYPE P2 TO P5. THEN AT 118 FM 969, DEMOLISH EXISTING STRUCTURES AND DEVELOP THE SITE FOR USE AS AN AUTOBODY SHOP SIMILAR TO THE ADJACENT SITE.

### APPLICABLE CODES

- BASTROP BUILDING BLOCK (B<sup>3</sup>) CODE
- B<sup>3</sup> TECHNICAL MANUAL
- B<sup>3</sup> PATTERN BOOK
- STORMWATER DRAINAGE DESIGN MANUAL
- MASTER TRANSPORTATION PLAN CHAPTER 5
- BASTROP CODE OF ORDINANCES

### PREVIOUS ENGAGEMENT

**AUTOBODY SHOP – 118 FM 969 & 654 W HWY 71**  
 November 3, 2022

ATTENDEES:  
 Adam Gates and Banks Chisum  
 Jennifer Bills, Trey Job, Keehren Baah, and Vivianna Andre

### LEGAL DESCRIPTION

**1.192 ACRES WITHING THE NANCY BLAKEY SURVEY, ABSTRACT NO. 98, BASTROP COUNTY, TEXAS**

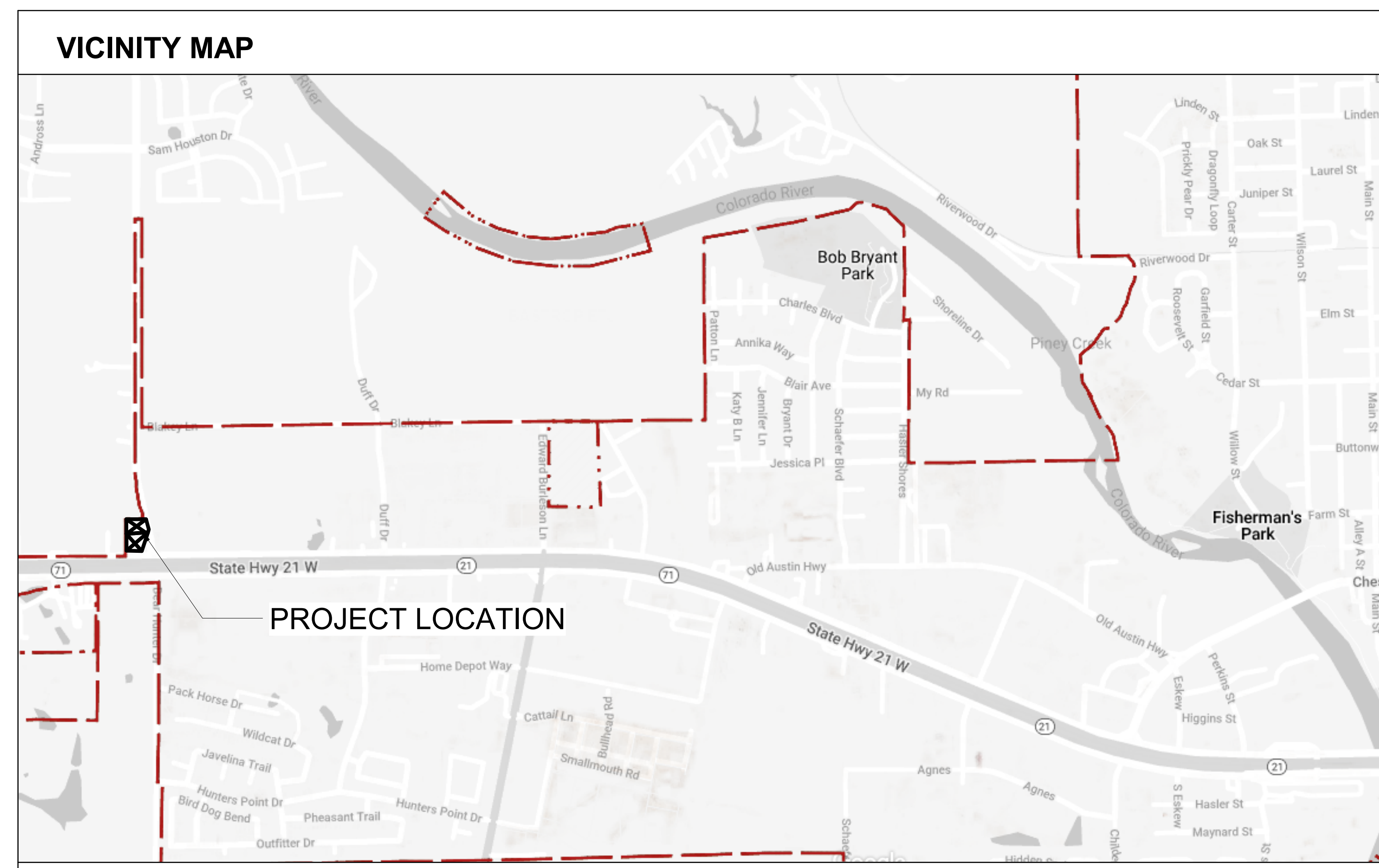
118 FM 969  
 BASTROP, TX 78602

PROPERTY ID: 78667  
 GEOGRAPHIC ID: R78667

**0.806 ACRES WITHING THE NANCY BLAKEY SURVEY, ABSTRACT NO. 98, BASTROP COUNTY, TEXAS**

654 W SH 71  
 BASTROP, TX 78602

PROPERTY ID: 24712  
 GEOGRAPHIC ID: R24712



### DESIGN TEAM

ARCHITECT	CIVIL ENGINEERING
<b>AWG STUDIO</b> ADAM W. GATES E: a.gates@awgstudio.com P: 512.653.8149	<b>SOUTHWEST ENGINEERS</b> GABE HOVDEY E: gabe.hovdey@swengineers.com P: 512.312.4336, ext. 312

### OWNER TEAM

CONSTRUCTION MANAGER	OWNER
<b>JB CHISUM CONSTRUCTION, INC.</b> BANKS CHISUM E: banks@jbchisum.com P: 512.395.7770	<b>STEVEN CLASSEN</b> 215 FARMERS RD MAXWELL, TX 78656

ZONING CONCEPT SCHEME  
**BASTROP AUTOMOTIVE**  
 118 FM 969  
 Bastrop, TX 78602

revision	date

ISSUE DATE 01/30/2023  
 PROJECT # 22-019  
 DRAWN BY Author  
 PROJECT ARCHITECT  
 ADAM W. GATES, AIA

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### PROJECT INFORMATION

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ZONING CONCEPT SCHEME  
**BASTROP AUTOMOTIVE**  
 118 FM 969  
 Bastrop, TX 78602

**COLOR LEGEND**

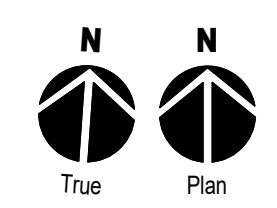
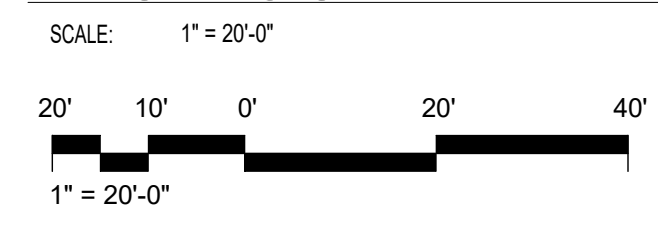
	GREEN - UNPROTECTED TREE	<13"
	ORANGE - PROTECTED TREE	13" - 24"
	RED - HERITAGE TREE	≥24"
	LIGHT GRAY	IMPERVIOUS COVER
	GRAY	EXISTING STRUCTURE
	DARK GRAY	EXISTING STREET

**TREE LEGEND**

001	19" DIAMETER - CEDAR ELM	TO BE REMOVED
002	POST OAK (DEAD)	TO BE REMOVED
004	8" DIAMETER - POST OAK	TO BE REMOVED
005	19" DIAMETER - LIVE OAK	TO BE REMOVED
006	12" DIAMETER - POST OAK	TO BE REMOVED
007	11" & 12" DIAMETER - PECAN	TO BE REMOVED
008	11" DIAMETER - PECAN	TO BE REMOVED
009	22" DIAMETER - POST OAK	TO BE REMOVED
010	17" DIAMETER - POST OAK	TO BE REMOVED
011	18" DIAMETER - POST OAK	TO BE REMOVED
012	14" DIAMETER - POST OAK	TO BE REMOVED
013	15" DIAMETER - CEDAR (DEAD)	TO BE REMOVED
014	15" DIAMETER - POST OAK	TO BE REMOVED
015	16" DIAMETER - POST OAK	TO BE REMOVED
016	22" DIAMETER - POST OAK	TO BE REMOVED
017	14" DIAMETER - RED OAK	TO BE REMOVED



**1 EXISTING SITE PLAN**



revision      date

ISSUE DATE      01/30/2023  
 PROJECT #      22-019  
 DRAWN BY      Author  
 PROJECT ARCHITECT  
 ADAM W. GATES, AIA

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EXISTING PLAN

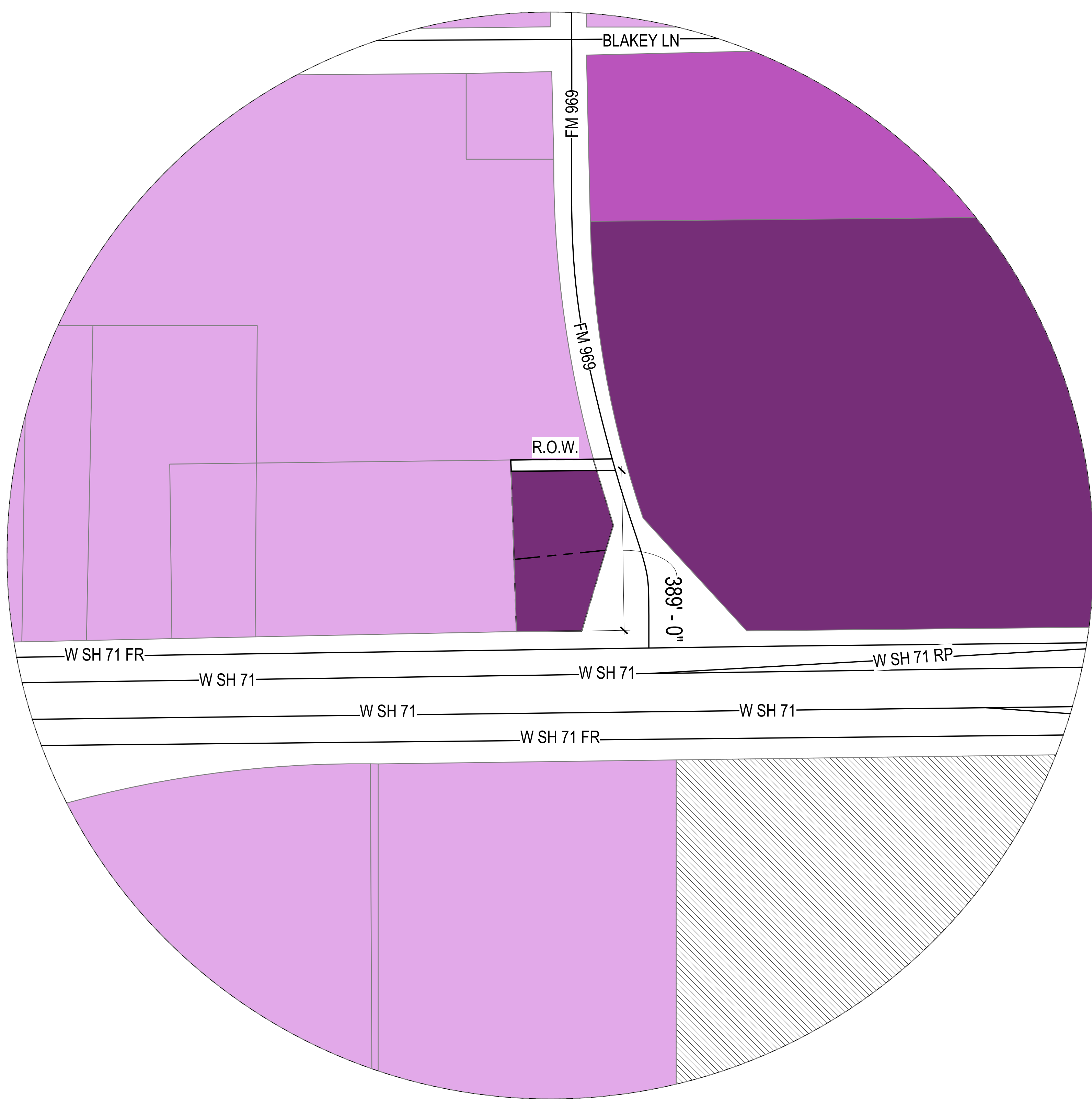
SET FOR INTERIM  
 REVIEW ONLY, NOT  
 FOR USE IN  
 CONSTRUCTION,  
 BIDDING, OR  
 PERMITTING

ZONING CONCEPT SCHEME  
**BASTROP AUTOMOTIVE**  
 118 FM 969  
 Bastrop, TX 78602

**PLACE TYPES**

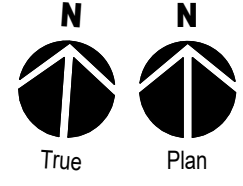
- P2 - RURAL
- P4 - MIX
- P5 - CORE
- PDD - PLANNED
- ROAD AND HWY

	P2 - RURAL	P4 - MIX	P5 - CORE	PDD - PLANNED	TOTAL
EXISTING	47.48%	5.36%	19.04%	8.89%	80.77%
PROPOSED	45.88%	5.36%	20.54%	8.89%	80.77%



**1 PEDESTRIAN SHED MAP**

NOT TO SCALE



1/30/2023 2:46:31 PM

revision      date

ISSUE DATE      01/30/2023  
 PROJECT #      22-019  
 DRAWN BY      Author  
 PROJECT ARCHITECT  
 ADAM W. GATES, AIA

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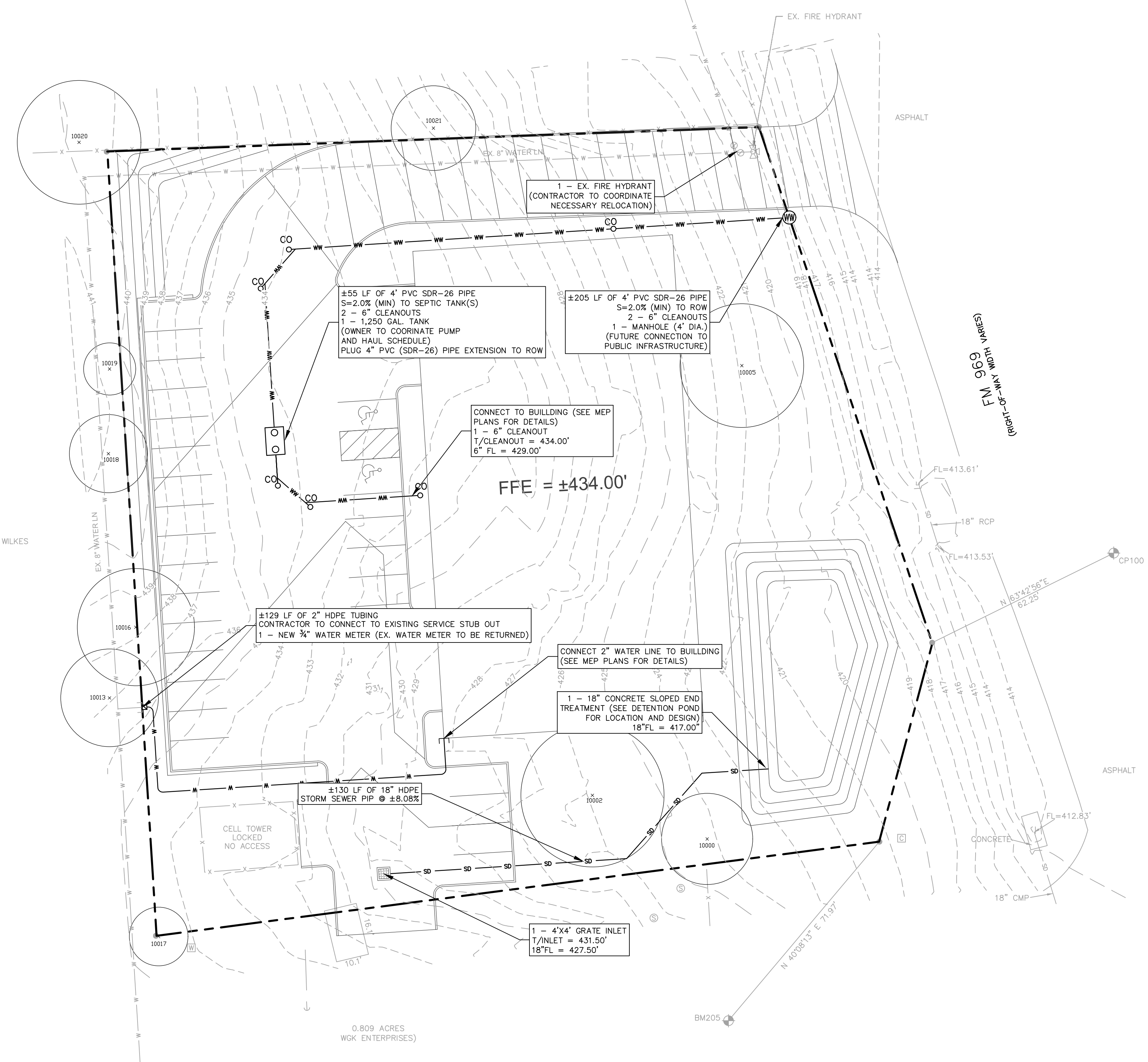
PEDESTRIAN SHED  
 EXHIBIT

**ZS 0.2**  
 311

C:\CompanyData\Clients\1062 - Steve and Marisa Clasen\001-22-Auto Repair Shop Site Plan\CAD [Comm]\Exhibits\1062-001-Infrastructure Plan.dwg - Layout: "INFRASTRUCTURE PLAN" - Tue, Jan 17, 2023, 3:28pm, By: mcsidney.park@agood.com

6.00 ACRES  
SHARON WARFIELD MILKES  
873/878

0.809 ACRES  
WGK ENTERPRISES)



**LEGEND**

- W — W — W — W — EXISTING WATER LINE
- W — W — W — W — PROPOSED WATER LINE
- WW — WW — WW — WW — EXISTING WASTEWATER LINE
- WW — WW — WW — WW — PROPOSED WASTEWATER LINE
- SD — SD — SD — SD — EXISTING STORM DRAIN LINE
- SD — SD — SD — SD — PROPOSED STORM DRAIN LINE
- G — G — G — G — EXISTING GAS LINE
- OE — OE — OE — OE — EXISTING OVERHEAD ELECTRIC LINE
- UE — UE — UE — UE — EXISTING UNDERGROUND ELECTRIC LINE
- T — T — T — T — EXISTING UNDERGROUND TELEPHONE LINE
- EXISTING WATER VALVE
- PROPOSED WATER VALVE
- ◻ EXISTING WATER METER
- ◻ PROPOSED WATER METER
- ⊕ EXISTING FIRE HYDRANT
- ⊕ PROPOSED FIRE HYDRANT
- ⊙ EXISTING WASTEWATER MANHOLE
- ⊙ PROPOSED WASTEWATER MANHOLE
- ⊙ EXISTING ELECTRIC MANHOLE
- ⊙ EXISTING TELEPHONE MANHOLE
- ⊙ EXISTING LIGHT POLE
- ⊙ EXISTING LIGHT POLE W/ARM
- ⊙ EXISTING UTILITY POLE
- ⊙ EXISTING SIGN

**TEXAS ONE CALL SYSTEM**  
1-800-245-4545

UNDER PENALTY OF LAW, THE CONTRACTOR IS REQUIRED TO CONTACT THE TEXAS ONE CALL SYSTEM AT LEAST 48 HOURS BEFORE STARTING EXCAVATION.

NOTE: ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARES THEM. IN APPROVING THESE PLANS, THE CITY OF AUSTIN MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.

**CAUTION - ELECTRICITY PRESENT**

THE GENERAL CONTRACTOR AND ALL SUBCONTRACTORS THAT ENTER OR WORK ON THIS PROJECT ARE RESPONSIBLE FOR LOCATING, USING ONE-CALL OR THE ELECTRIC UTILITIES THEMSELVES, ALL OVERHEAD AND UNDERGROUND ELECTRICAL OF ANY NATURE AND FOR SAFEGUARDING ALL PERSONNEL ON THIS PROJECT, INCLUDING ANY OFF-SITE WORK AREAS SHOWN ON THE PLAN, FROM ANY INTERFERENCE WITH THE ELECTRIC LINES OR FROM DAMAGING, DIGGING UP OR UNCOVERING THE ELECTRIC LINES, GETTING A LADDER IN HARMS WAY OR ANY OTHER ACTIVITY OF ANY NATURE THAT COULD HARM ANY INDIVIDUAL IN ANY MANNER. THIS RESPONSIBILITY HEREBY REMOVES THE ENGINEER AND THE OWNER FROM ANY LIABILITY OF ANY NATURE.

NO.	REVISION	DATE

PAUL J. VIKTORIN  
66879  
PROFESSIONAL ENGINEER  
01-17-2023

**Southwest Engineers**  
TBPE NO. F-1909  
www.swengineers.com

**HEADQUARTERS**  
307 Saint Lawrence Street, Gonzales TX 78629  
P: 830.672.7546 F: 830.672.2034

**CENTRAL TEXAS**  
205 Cimarron Park Loop, Ste. B, Buda TX 78610  
P: 512.312.4330

**WARNING**  
IF THIS BAR DOES NOT MEASURE 1",  
THE DRAWING IS NOT TO SCALE

DRAWN BY: P.S.

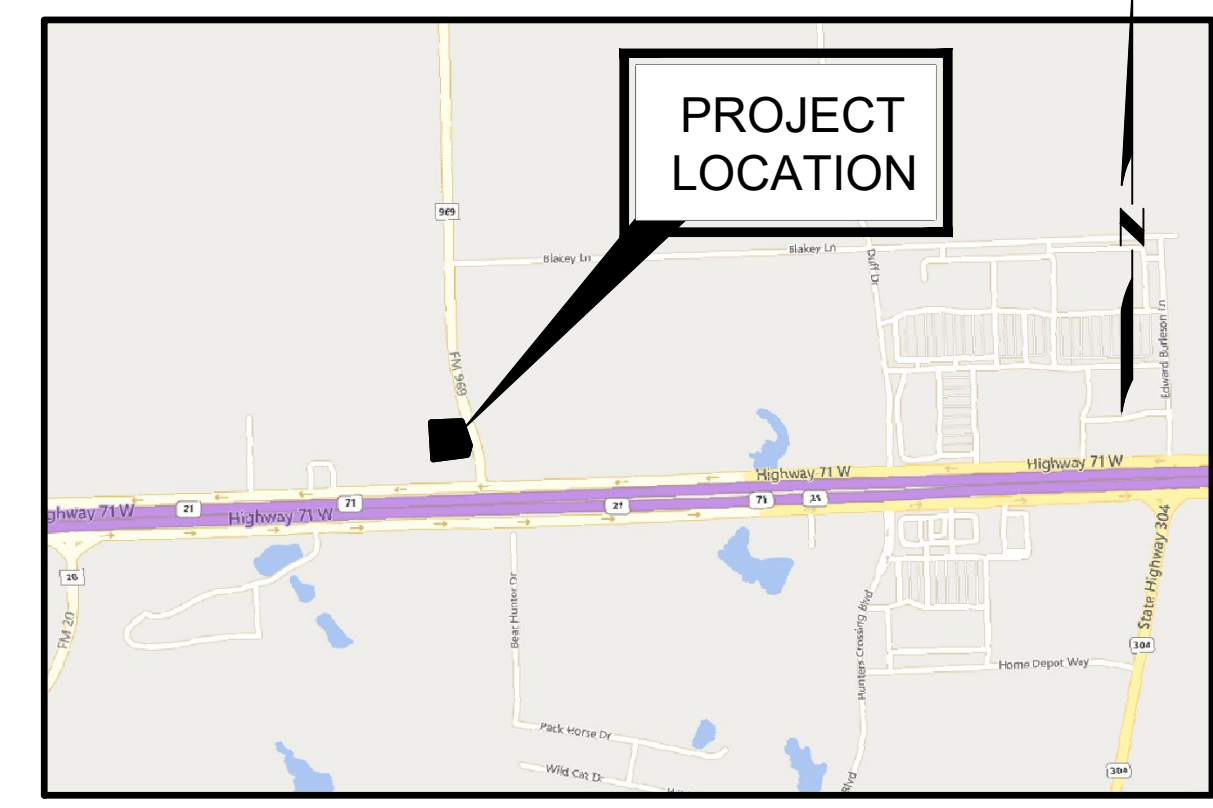
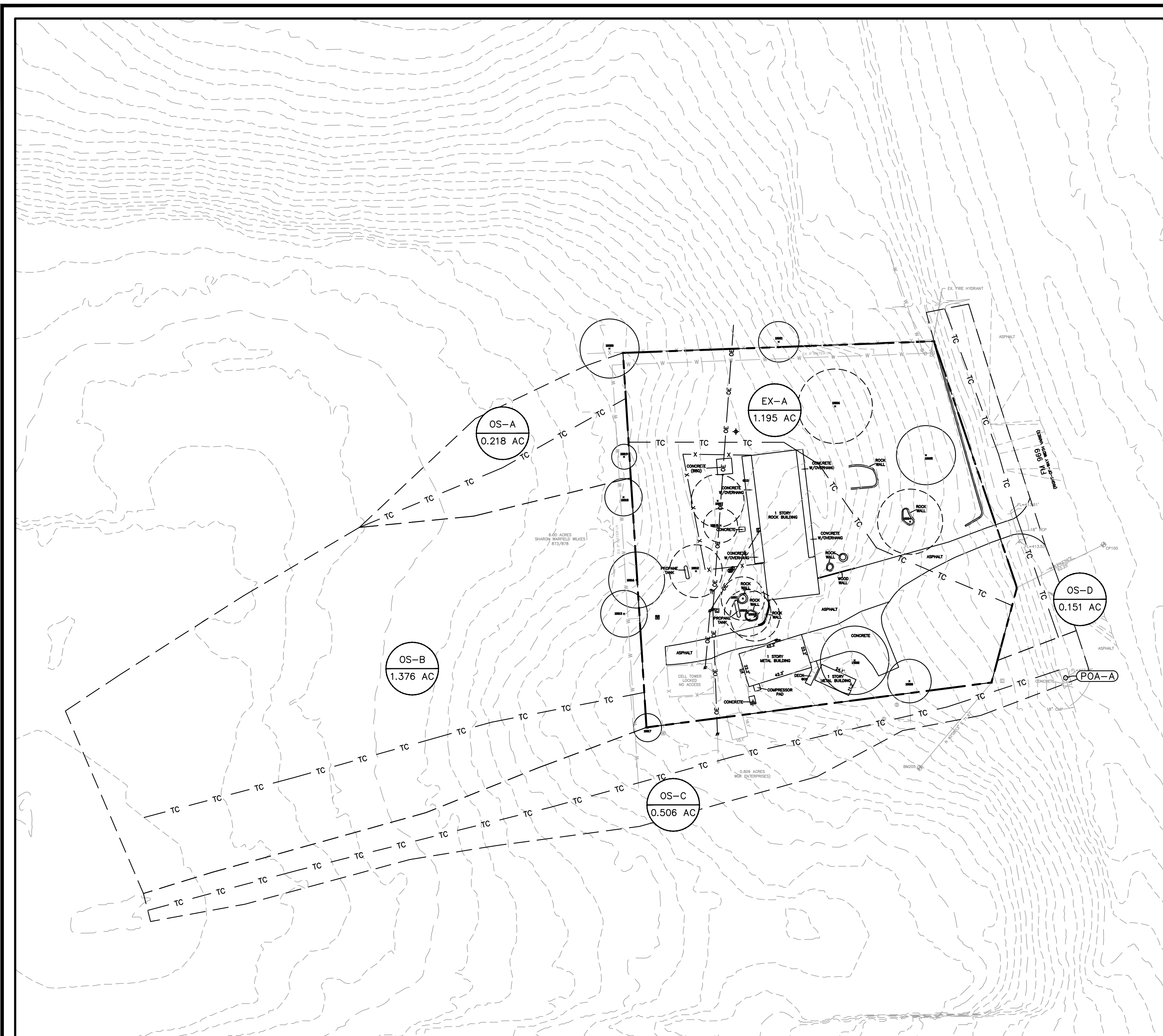
CHECKED BY: G.H.

INFRASTRUCTURE PLAN

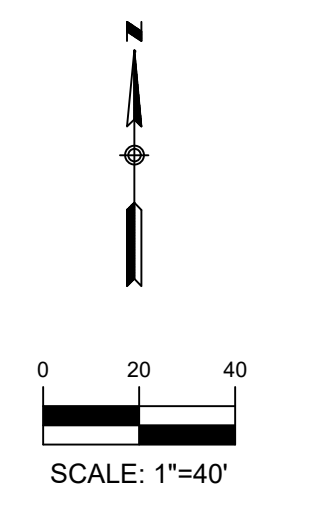
**AUTO REPAIR SHOP SITE PLAN**  
ADDRESS, CITY, TEXAS, ZIP

PROJECT NO.	1062-001
DRAWING NO.	
SHEET	1 OF 3





VICINITY MAP  
N.T.S.



- LEGEND**
- 700 --- EXISTING CONTOURS
  - 700 --- PROPOSED CONTOURS
  - DRAINAGE AREA
  - TC --- TIME OF CONCENTRATION
  - A-1 ○ POINT OF ANALYSIS
  - DRAINAGE FLOW DIRECTION
  - DA ○ DRAINAGE AREA LABEL
  - # INLET LABEL

**BENCHMARK INFORMATION:**

BM #205: COTTON SPINDLE WITH "SURE SHOTT CONTROL" WASHER SET IN THE SPLIT IN THE DRIVE FOR ALIBER AUTO GLASS, +1.72' SOUTHWEST OF THE MOST SOUTHERN CORNER OF THE SUBJECT TRACT

ELEVATION = 428.48'  
VERTICAL DATUM: NAVD 88, (GEOID 18)

**LEGAL DESCRIPTION**

A98 BLAKEY, NANCY, ACRES 1.1920

**EXISTING IMPERVIOUS COVER**

10,673.55 SQFT

**PROPOSED IMPERVIOUS COVER**

30,935.57 SQFT

**TIME OF CONCENTRATION**

DRAINAGE AREA	SHEET FLOW				SHALLOW CONCENTRATED FLOW				CHANNEL FLOW (GUTTER)			Total Tc	Tc Used
	SLOPE (FT/FT)	L FT	n	Tc sheet (MIN)	SLOPE (FT/FT)	L FT	Paved? Y or N	Tc Shallow (MIN)	Vavg (FT/S)	L	Tc Channel (MIN)		
EX A	0.070	100.000	0.240	7.6	0.074	187	N	0.7	4.00	0	0.00	8.3	10.0
OS-A	0.018	100.000	0.240	13.0	0.038	91	N	0.5	4.00	0	0.00	13.5	13.5
OS-B	0.023	100.000	0.240	11.8	0.053	232	Y	0.8	4.00	0	0.00	12.6	12.6
OS-C	0.022	100.000	0.240	12.0	0.063	507	Y	1.7	4.00	0	0.00	13.7	13.7
OS-D	0.012	100.000	0.240	15.3	0.000	0	Y	0.0	4.00	124	0.52	15.9	15.9

**EXISTING DRAINAGE SUMMARY TABLE (NRCS METHOD)**

AREA NAME	EX - A	OS-A	OS-B	OS-C	OS-D	POA - A
Drainage Area (ac.)	1.195	0.218	1.376	0.506	0.151	
% Impervious	0%	0%	0%	0%	0%	
Tc (hrs)	0.167	0.225	0.211	0.228	0.264	
2 year Discharge (cfs)	1.190	0.193	1.252	0.445	0.125	3.206
10 year Discharge (cfs)	2.456	0.396	2.571	0.913	0.255	6.591
25 year Discharge (cfs)	3.747	0.604	3.924	1.394	0.389	10.059
100 year Discharge (cfs)	6.354	1.028	6.675	2.374	0.664	17.096

**EXISTING DRAINAGE SUMMARY TABLE (RATIONAL METHOD)**

Drainage Area No.	Area (ac.)	Estimated Impervious Cover (ac.)	Impervious Cover (%)	T <sub>c</sub> (min.)	Pervious Cover Condition	2-Yr.				10-Yr.				25-Yr.				100-Yr.			
						C <sub>r12</sub>	C <sub>2</sub>	i <sub>2</sub> (in/hr)	Q <sub>2</sub> (cfs)	C <sub>r10</sub>	C <sub>10</sub>	i <sub>10</sub> (in/hr)	Q <sub>10</sub> (cfs)	C <sub>r25</sub>	C <sub>25</sub>	i <sub>25</sub> (in/hr)	Q <sub>25</sub> (cfs)	C <sub>r100</sub>	C <sub>100</sub>	i <sub>100</sub> (in/hr)	Q <sub>100</sub> (cfs)
EX-A	1.195 ac	0.000 ac	0%	10.0 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.74 in/hr	1.2 cfs	1.10	0.25	7.47 in/hr	2.5 cfs	1.20	0.29	9.01 in/hr	3.7 cfs	1.25	0.36	11.82 in/hr	6.4 cfs
OS-A	0.218 ac	0.000 ac	0%	13.5 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.21 in/hr	0.2 cfs	1.10	0.25	6.60 in/hr	0.4 cfs	1.20	0.29	7.96 in/hr	0.6 cfs	1.25	0.36	10.48 in/hr	1.0 cfs
OS-B	1.376 ac	0.000 ac	0%	12.6 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.33 in/hr	1.3 cfs	1.10	0.25	6.79 in/hr	2.6 cfs	1.20	0.29	8.19 in/hr	3.9 cfs	1.25	0.36	10.78 in/hr	6.7 cfs
OS-C	0.506 ac	0.000 ac	0%	13.7 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.19 in/hr	0.4 cfs	1.10	0.25	6.56 in/hr	0.9 cfs	1.20	0.29	7.92 in/hr	1.4 cfs	1.25	0.36	10.43 in/hr	2.4 cfs
OS-D	0.151 ac	0.000 ac	0%	15.9 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	3.93 in/hr	0.1 cfs	1.10	0.25	6.14 in/hr	0.3 cfs	1.20	0.29	7.40 in/hr	0.4 cfs	1.25	0.36	9.77 in/hr	0.7 cfs

**TEXAS ONE CALL SYSTEM**  
1-800-245-4545

UNDER PENALTY OF LAW, THE CONTRACTOR IS REQUIRED TO CONTACT THE TEXAS ONE CALL SYSTEM AT LEAST 48 HOURS BEFORE STARTING EXCAVATION.

NOTE: ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARES THEM. IN APPROVING THESE PLANS, THE CITY OF AUSTIN MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.

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NO.	REVISION	DATE

PAUL J. VIKTORIN  
66879  
PROFESSIONAL ENGINEER  
01-17-2023

**Southwest Engineers**  
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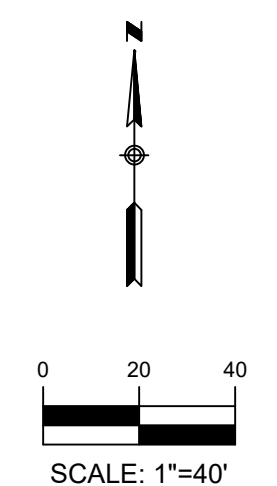
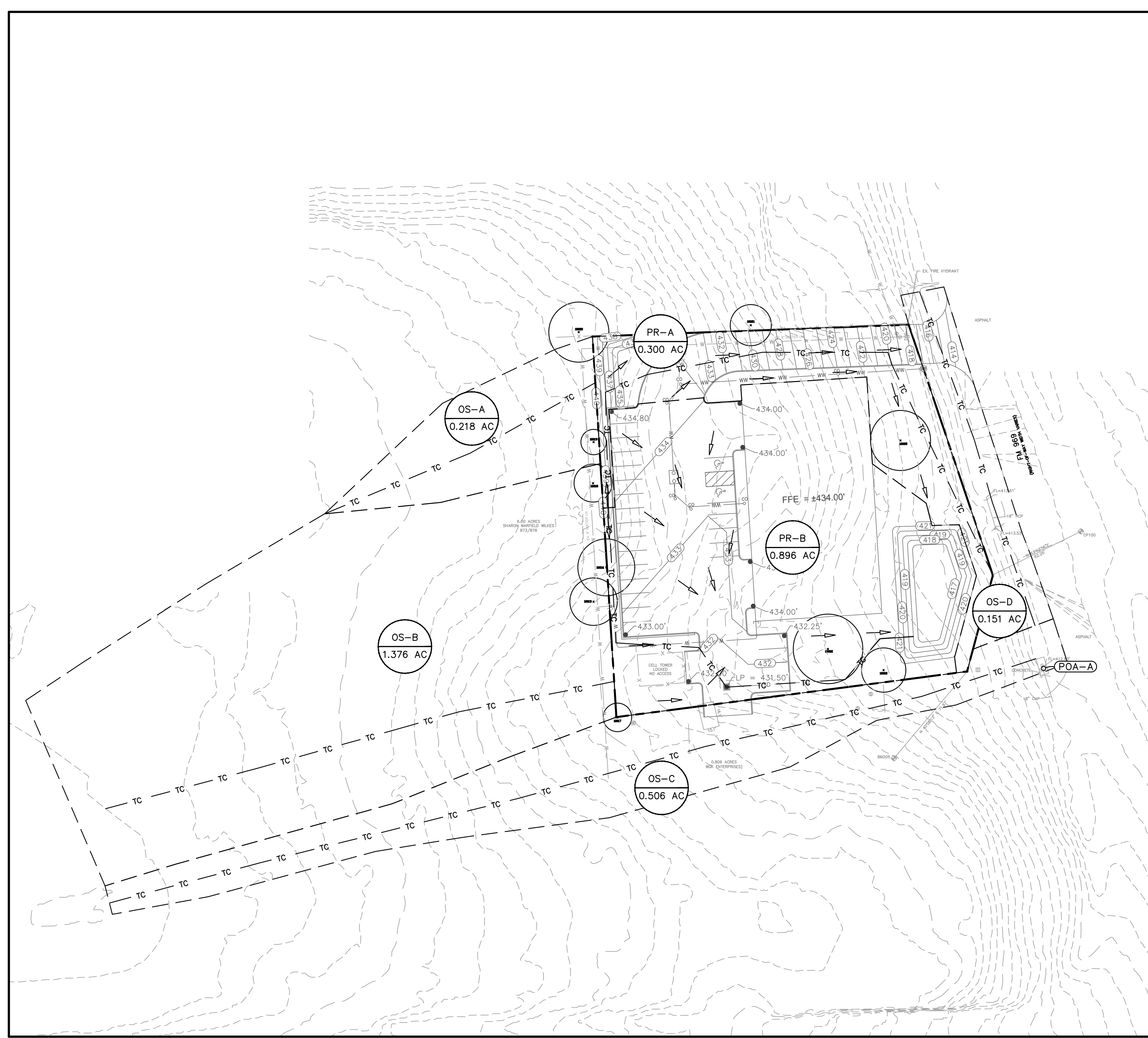
EXISTING DRAINAGE AREA MAP

**AUTO REPAIR SHOP SITE PLAN**  
ADDRESS, CITY, TEXAS, ZIP

PROJECT NO.	1062-001
DRAWING NO.	
SHEET	2 OF 3

C:\CompanyData\Clients\1062 - Steve and Marisa Closson\001-22-Auto Repair Shop Site Plan\CAD\Drawings\1062-001-Conceptual Drainage Plan.dwg - Layout: "EXISTING DRAINAGE AREA MAP" - Tue, Jan 17, 2023, 3:28pm, By: marisac, pchapsada

O:\CompanyData\Clients\1062 - Steve and Marisa Clasen\1001-Auto Repair Shop Site Plan\CAD\Drawings\1062-001-Conceptual Drainage Plan.dwg - Layout: "PROPOSED DRAINAGE AREA MAP" - Tue, Jun 17, 2023, 3:28pm, By: marci@swengineers.com



- LEGEND**
- 700 --- EXISTING CONTOURS
  - 700 --- PROPOSED CONTOURS
  - DRAINAGE AREA
  - TC --- TIME OF CONCENTRATION
  - A-1 ○ POINT OF ANALYSIS
  - ← DRAINAGE FLOW DIRECTION
  - DA ACRES DRAINAGE AREA LABEL
  - # INLET LABEL

TIME OF CONCENTRATION

DRAINAGE AREA	SHEET FLOW				SHALLOW CONCENTRATED FLOW				CHANNEL FLOW (GUTTER)				
	SLOPE (FT/FT)	L FT	n	Tc sheet (MIN.)	SLOPE (FT/FT)	L FT	Paved? Y or N	Tc Shallow (MIN.)	Vavg (FT/S)	L	Tc Channel (MIN.)	Total Tc (MIN.)	Tc Used (MIN.)
PR A	0.040	100.000	0.240	9.5	0.080	162	Y	0.5	4.00	147	0.61	10.6	10.6
PR B	0.040	100.000	0.240	9.5	0.029	88	Y	0.3	4.00	131	0.54	10.3	10.3
OS-A	0.018	100.000	0.240	13.0	0.038	91	N	0.5	4.00	0	0.00	13.5	13.5
OS-B	0.023	100.000	0.240	11.8	0.053	232	Y	0.8	4.00	0	0.00	12.6	12.6
OS-C	0.022	100.000	0.240	12.0	0.063	507	Y	1.7	4.00	0	0.00	13.7	13.7
OS-D	0.012	100.000	0.240	15.3	0.000	0	Y	0.0	4.00	124	0.52	15.9	15.9

PROPOSED DRAINAGE SUMMARY TABLE (NRCS METHOD)

AREA NAME	PR - A	PR - B (TO POND)	DETENTION POND RELEASE (POA-B2)				PROPOSED POA - A	EXISTING POA - A
			OS-A	OS-B	OS-C	OS-D		
Drainage Area (ac.)	0.300	0.896						
% Impervious	37%	67%	0.00%	0.00%	0.00%	0.00%		
Tc (hrs)	0.176	0.172	0.225	0.211	0.228	0.264		
2 year Discharge (cfs)	0.575	2.39	417.65 (msl)	0.61	0.193	1.252	0.445	0.125
10 year Discharge (cfs)	1.128	4.63	418.13 (msl)	1.29	0.396	2.571	0.913	0.255
25 year Discharge (cfs)	1.622	6.54	418.46 (msl)	2.02	0.604	3.924	1.394	0.389
100 year Discharge (cfs)	2.554	10.02	418.99 (msl)	3.76	1.028	6.675	2.374	0.664

PROPOSED POND A

Elevation (ft)	Area (acres)	Area (sf)	Volume (acre-ft)	Volume (cf)	Cumulative Volume (cf)
416.00	0.00	0	0	0	0
417.00	0.03	1,307	0.010	436	436
418.00	0.041	1,786	0.035	1,525	1,960
419.00	0.055	2,396	0.048	2,091	4,051
420.00	0.070	3,049	0.062	2,701	6,752
421.00	0.087	3,777	0.078	3,398	10,149

PROPOSED DRAINAGE SUMMARY TABLE (RATIONAL METHOD)

Drainage Area No.	Area (ac.)	Estimated Impervious Cover (ac.)	Impervious Cover (%)	Tc (min.)	Pervious Cover Condition	2-Yr.		10-Yr.		25-Yr.		100-Yr.									
						C <sub>12</sub>	C <sub>2</sub>	i <sub>2</sub> (in/hr)	Q <sub>2</sub> (cfs)	C <sub>10</sub>	C <sub>10</sub>	i <sub>10</sub> (in/hr)	Q <sub>10</sub> (cfs)	C <sub>25</sub>	C <sub>25</sub>	i <sub>25</sub> (in/hr)	Q <sub>25</sub> (cfs)	C <sub>100</sub>	C <sub>100</sub>	i <sub>100</sub> (in/hr)	Q <sub>100</sub> (cfs)
PR-A	0.300 ac	0.112 ac	37%	10.6 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.41	4.65 in/hr	0.6 cfs	1.10	0.47	7.32 in/hr	1.1 cfs	1.20	0.51	8.82 in/hr	1.6 cfs	1.25	0.59	11.58 in/hr	2.6 cfs
PR-B	0.896 ac	0.598 ac	67%	10.3 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.57	4.69 in/hr	2.4 cfs	1.10	0.64	7.38 in/hr	4.6 cfs	1.20	0.68	8.89 in/hr	6.5 cfs	1.25	0.77	11.67 in/hr	10.0 cfs
OS-A	0.218 ac	0.000 ac	0%	13.5 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.21 in/hr	0.2 cfs	1.10	0.25	6.80 in/hr	0.4 cfs	1.20	0.29	7.96 in/hr	0.6 cfs	1.25	0.36	10.48 in/hr	1.0 cfs
OS-B	1.376 ac	0.000 ac	0%	12.6 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.33 in/hr	1.3 cfs	1.10	0.25	6.79 in/hr	2.6 cfs	1.20	0.29	8.19 in/hr	3.9 cfs	1.25	0.36	10.78 in/hr	6.7 cfs
OS-C	0.506 ac	0.000 ac	0%	13.7 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	4.19 in/hr	0.4 cfs	1.10	0.25	6.56 in/hr	0.9 cfs	1.20	0.29	7.92 in/hr	1.4 cfs	1.25	0.36	10.43 in/hr	2.4 cfs
OS-D	0.151 ac	0.000 ac	0%	15.9 min.	Dev - Grass - Good Condition - Flat, 0-2%	1.00	0.21	3.93 in/hr	0.1 cfs	1.10	0.25	6.14 in/hr	0.3 cfs	1.20	0.29	7.40 in/hr	0.4 cfs	1.25	0.36	9.77 in/hr	0.7 cfs

**TEXAS ONE CALL SYSTEM**  
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01-17-2023

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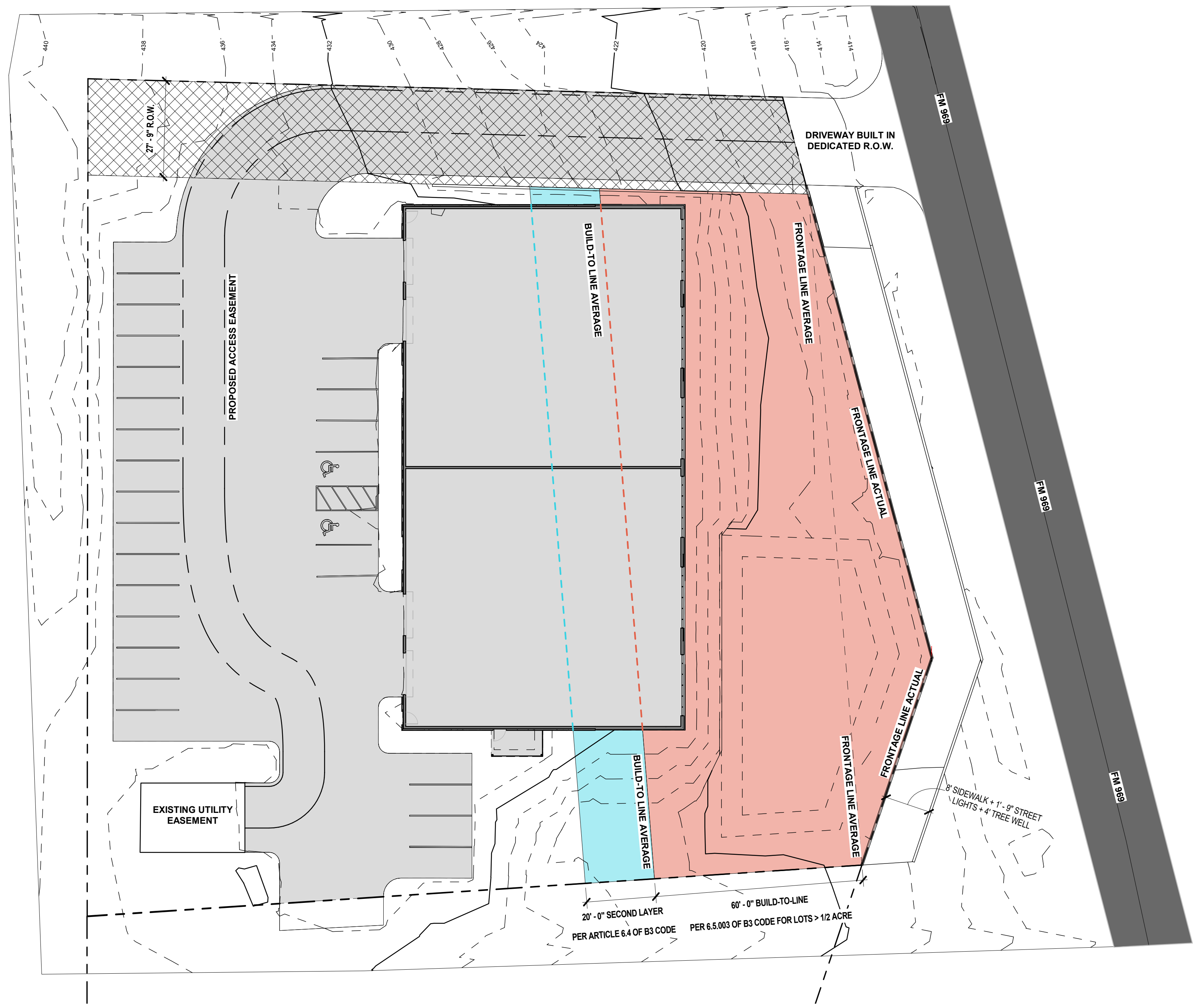
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PROPOSED DRAINAGE AREA MAP  
**AUTO REPAIR SHOP SITE PLAN**  
ADDRESS, CITY, TEXAS, ZIP

PROJECT NO. 1062-001  
DRAWING NO. \_\_\_\_\_  
SHEET 3 OF 3

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 118 FM 969  
 Bastrop, TX 78602

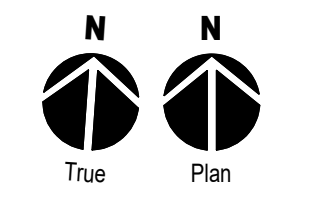
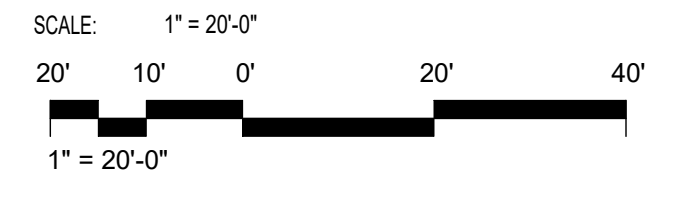


GENERAL SITE NOTES:	
LOT SIZE	1.192 ACRES
TOTAL IMPERVIOUS COVER (CONCEPTUAL APPROXIMATE)	31,000 SQFT
IMPERVIOUS COVER AS PERCENTAGE OF TOTAL	62% (80% ALLOWABLE)
PROPOSED BUILDING AREA	12,000 SQFT
BUILDING TYPE	CONVENTIONAL STEEL FRAMING - TYPE IIB
BUILDING USE	RETAIL (AUTOMOTIVE)
BUILDING HEIGHT	22' - 0"
PARKING COUNT	24 SPACES PLUS 2 VAN ACCESSIBLE
PROJECT SCHEDULING	SINGLE PHASE CONSTRUCTION

GENERAL SITE PATTERN LEGEND:	
	FIRST LAYER 60' - 0" BUILD TO LINE PER 6.5.003 OF B3 CODE FOR LOTS > 1/2 ACRE
	SECOND LAYER 20' - 0" PER ARTICLE 6.4 OF B3 CODE
	FM 969 (APPROXIMATED)
	R.O.W. DEDICATION
	IMPERVIOUS COVER
	PROPERTY LINE
	EASEMENT LINE

**1 LOT ARRANGEMENT PLAN**



revision      date

ISSUE DATE      01/30/2023  
 PROJECT #      22-019  
 DRAWN BY      Author  
 PROJECT ARCHITECT  
 ADAM W. GATES, AIA

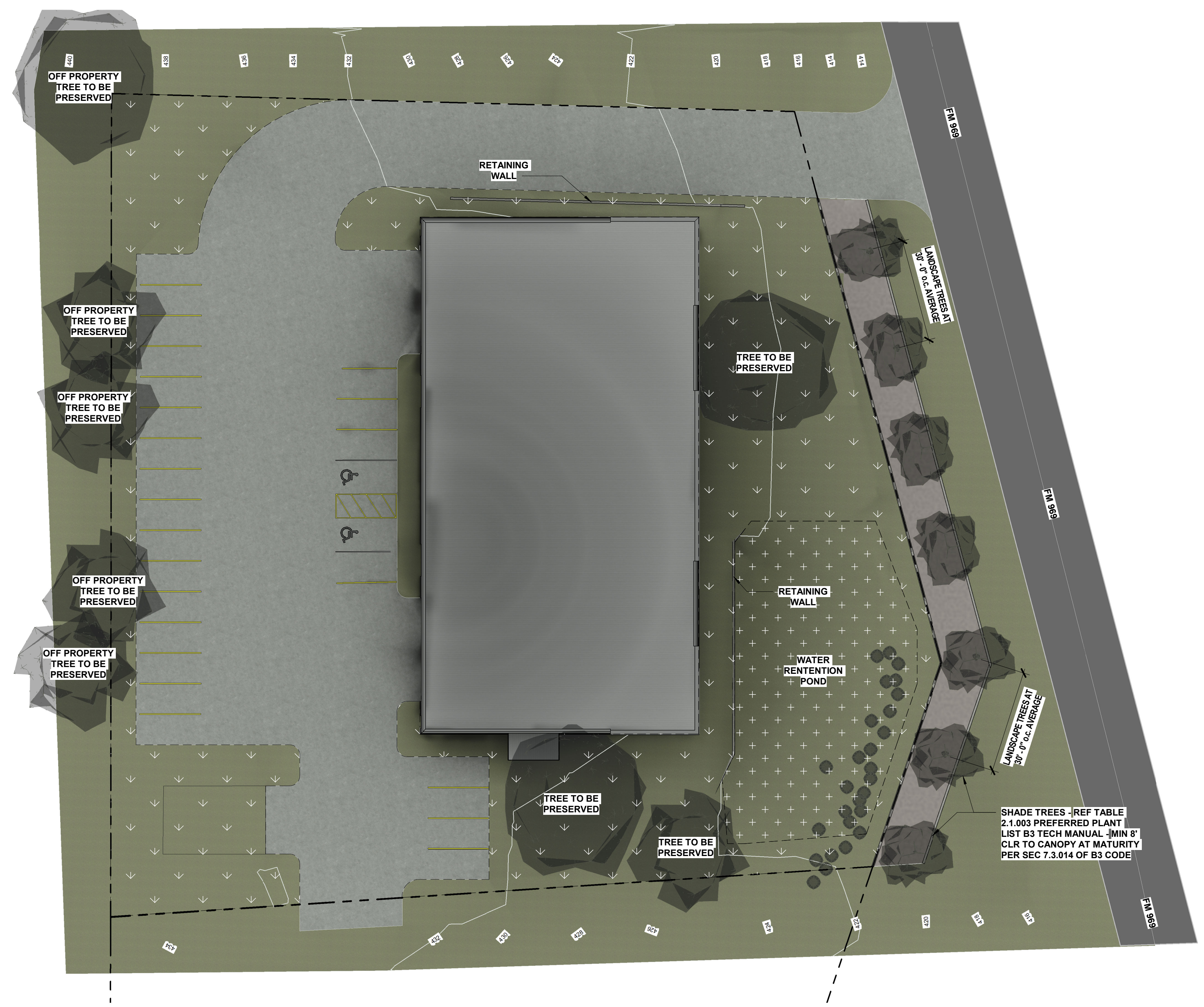
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PROPOSED  
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**ZS 1.1**  
 315

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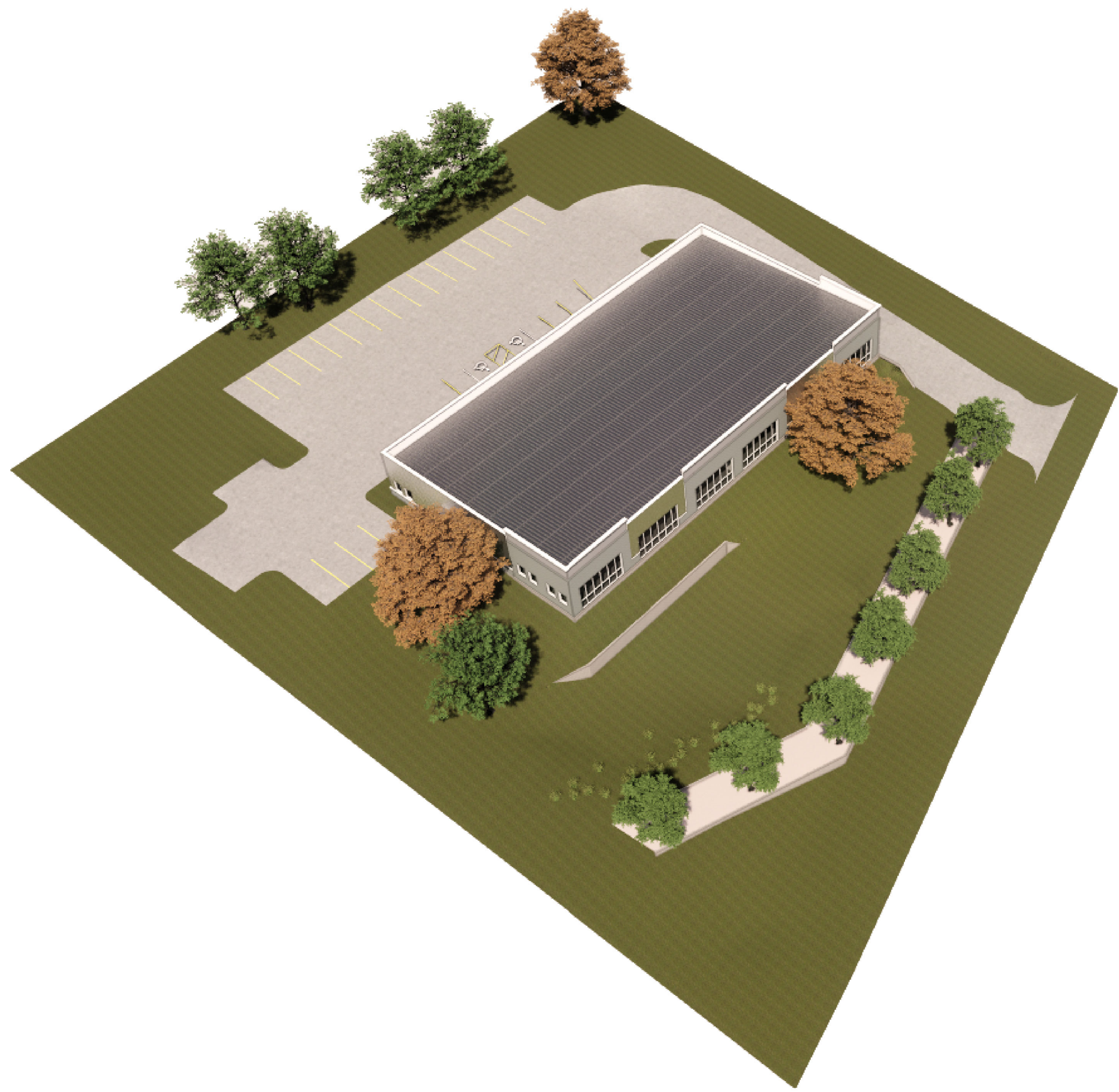


**GENERAL SITE NOTES:**

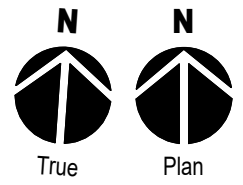
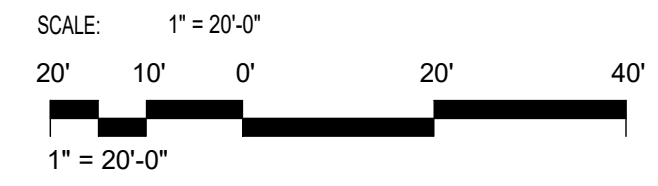
TREES AT LAYERS 1 & 2 TO BE PRESERVED. EXISTING TREES ON SOUTH BORDER OF LOT TO SCREEN PARKING THAT IS NOT OTHERWISE OBSCURED FROM VIEW BY BUILDING.  
 PUBLIC FRONTAGE TO INCLUDE 8' - 12' SIDEWALK, 1' 9" LIGHTWELL, AND 4' TREETWELL.  
 SWIFT TOPOGRAPHY OF THE SITE WILL REQUIRE THE USE OF RETAINING WALLS TO TERRACE THE LOT.

**GENERAL SITE PATTERN LEGEND:**

	MIXED PERENNIAL SHRUB AND WETLAND PLANTING
	DROUGHT RESISTANT NATIVE GRASS AND WILDFLOWER SEEDING



**1 SITE PLAN**



revision      date

ISSUE DATE      01/30/2023  
 PROJECT #      22-019  
 DRAWN BY      Author  
 PROJECT ARCHITECT  
 ADAM W. GATES, AIA

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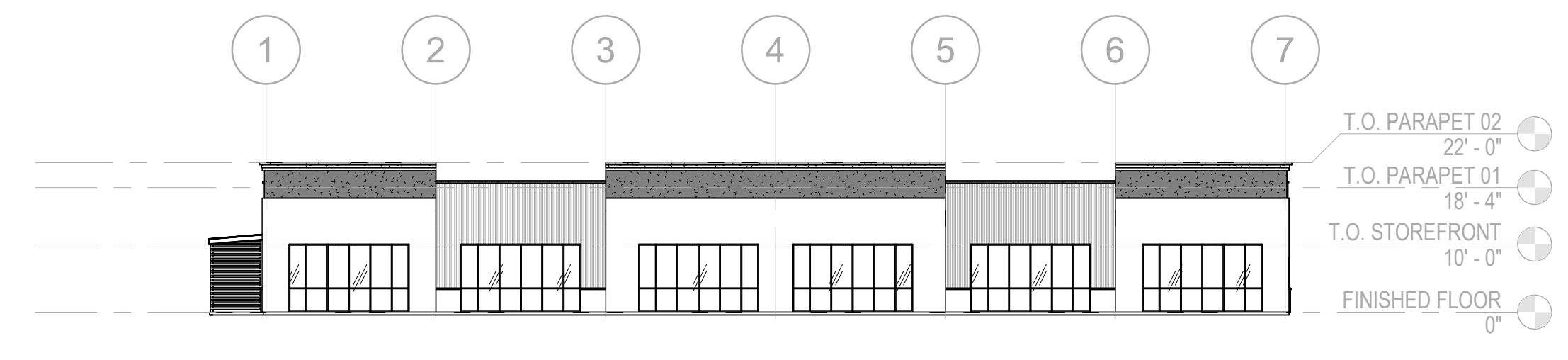
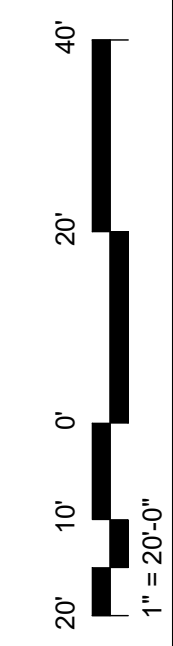
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ISSUE DATE      12/04/12  
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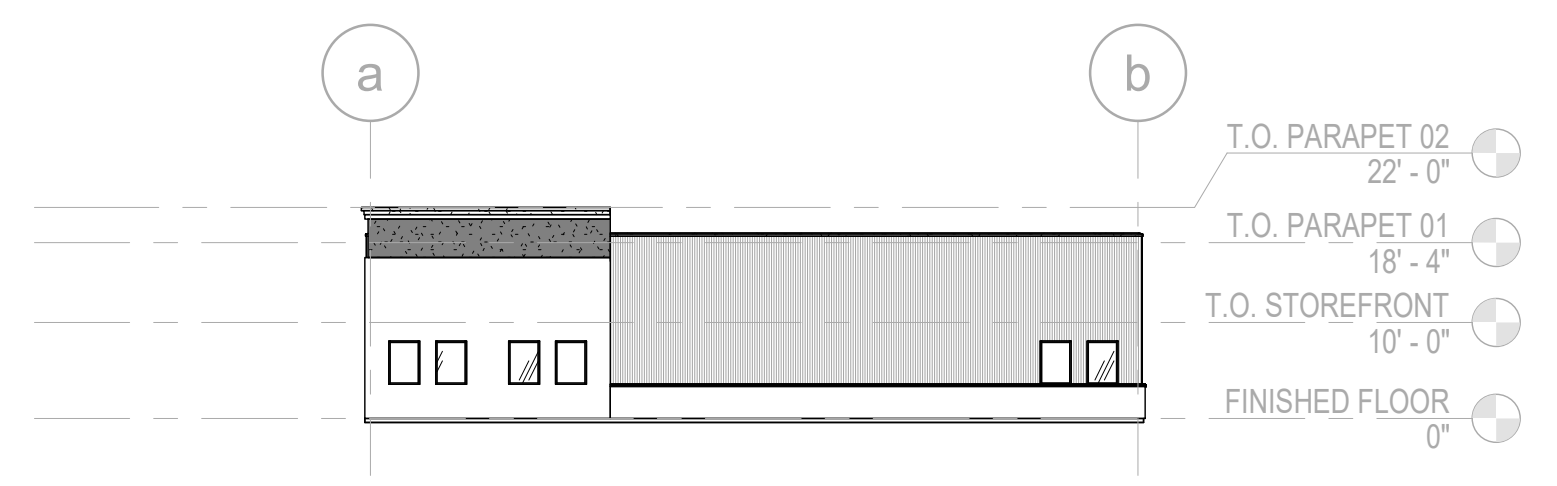
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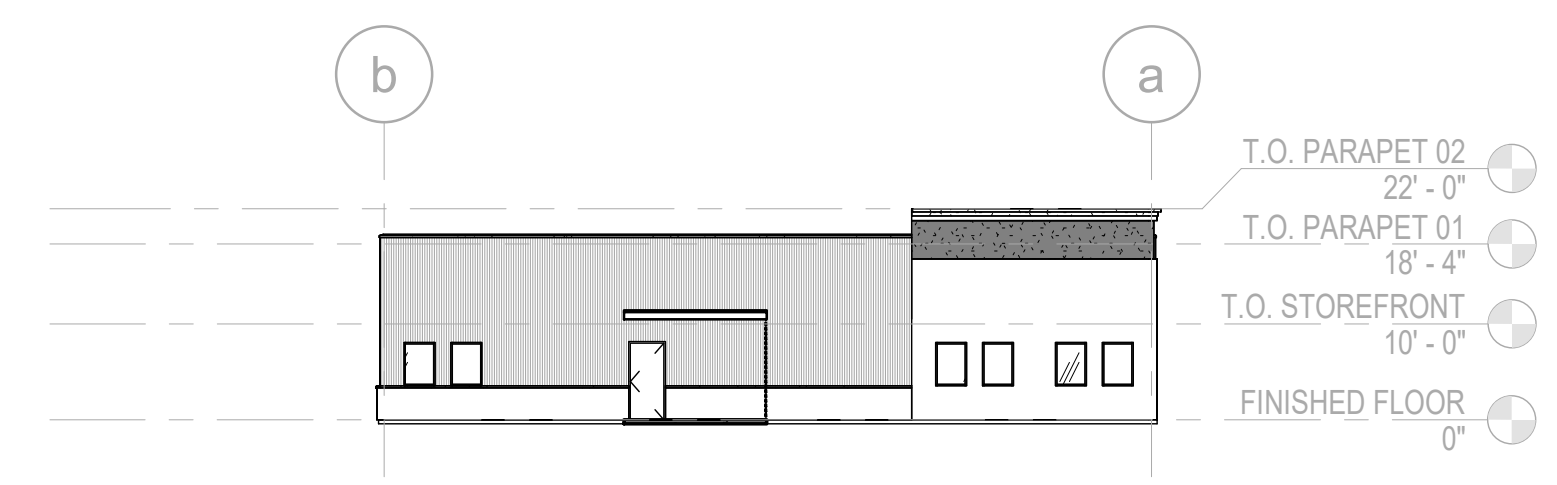
**ZS2.1**  
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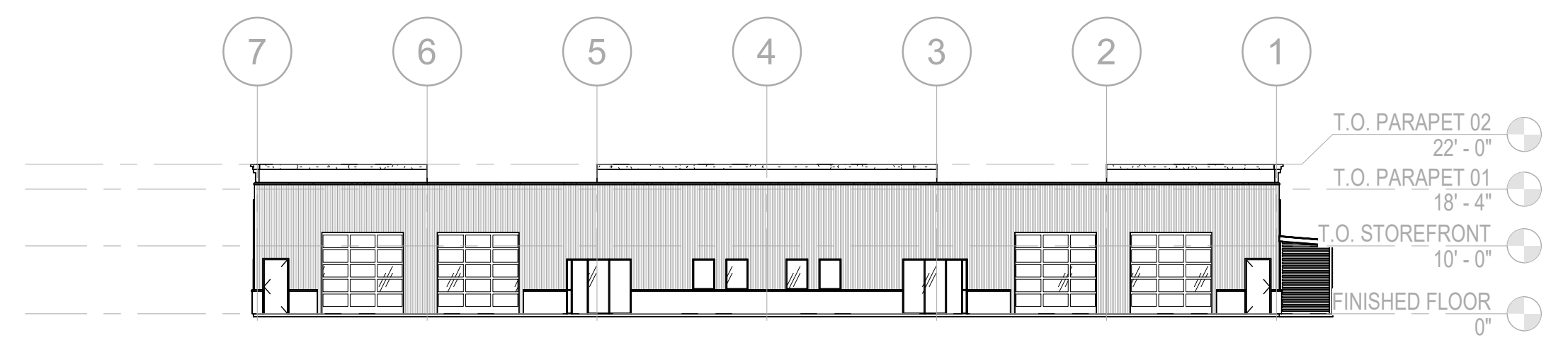
**1 FRONT ELEVATION**  
 SCALE: 1" = 20'-0"



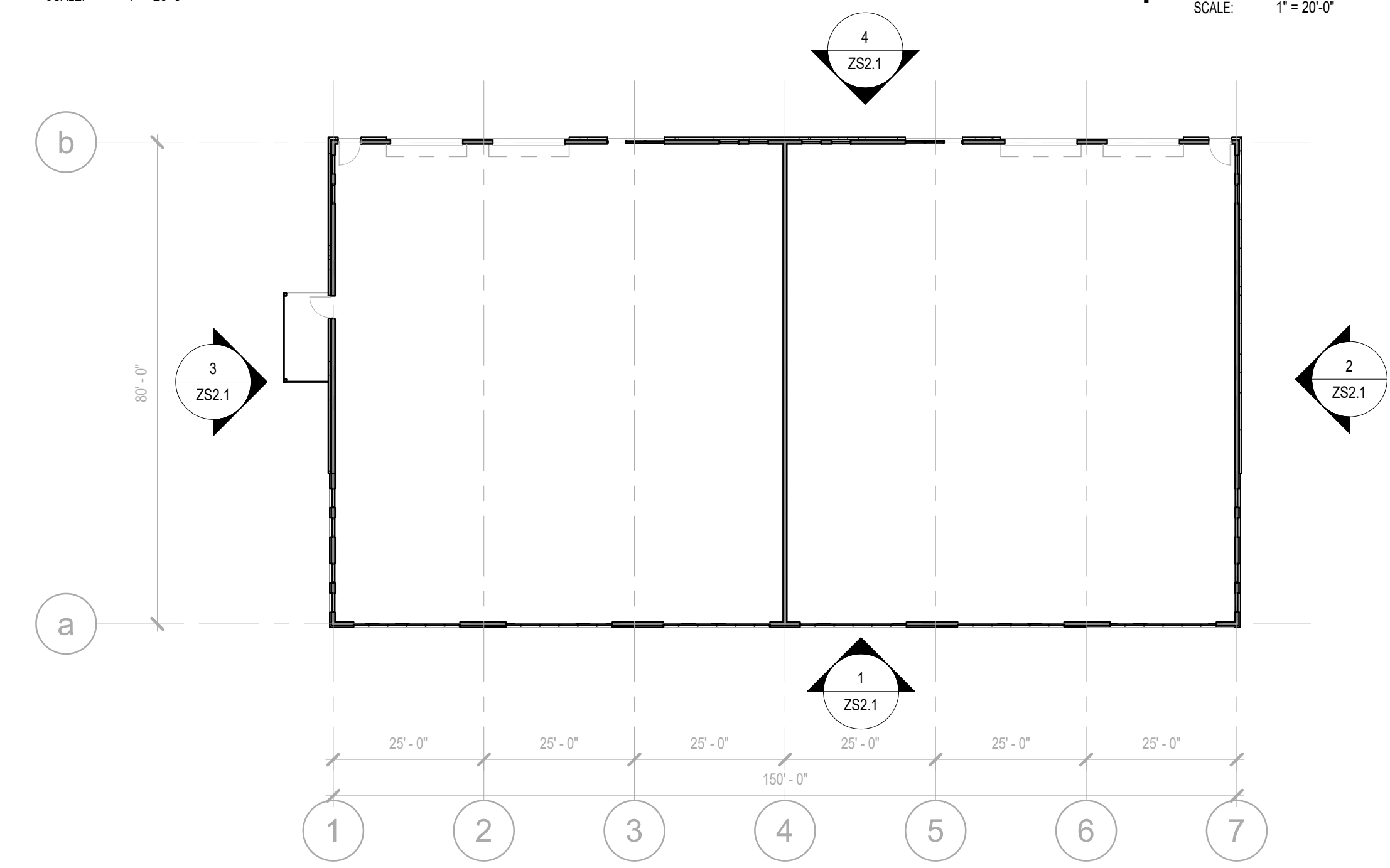
**2 PLAN EAST ELEVATION**  
 SCALE: 1" = 20'-0"



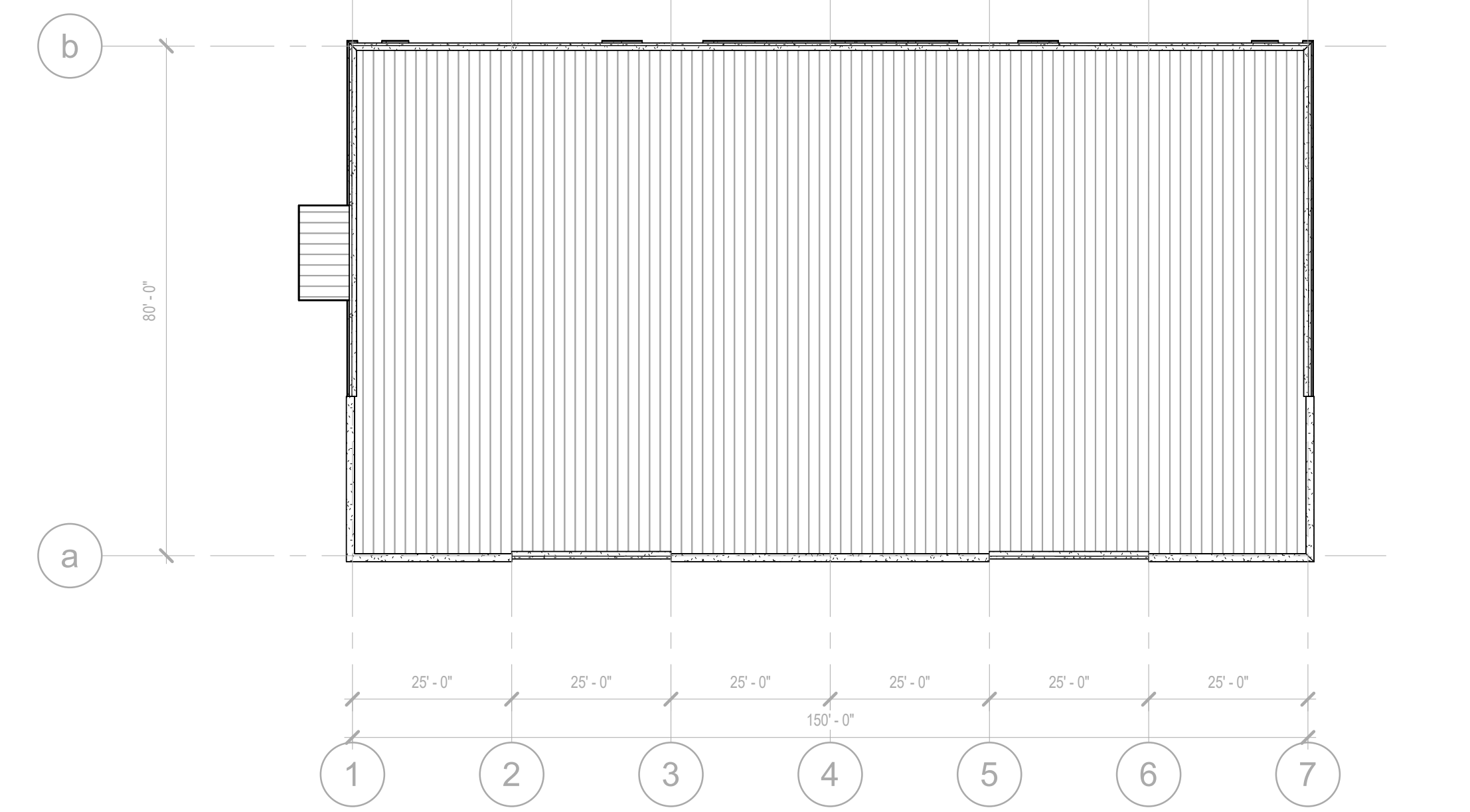
**3 PLAN WEST ELEVATION**  
 SCALE: 1" = 20'-0"



**4 REAR ELEVATION**  
 SCALE: 1" = 20'-0"



**5 FLOOR PLAN**  
 SCALE: 1" = 20'-0"



**6 ROOF PLAN**  
 SCALE: 1" = 20'-0"



**RENDERED VIEW OF SITE FROM SOUTHEAST CORNER OF FRONTAGE IMPROVEMENT**

**Project Description**  
 Rezoning Application  
 Proposed Autobody Shop  
 118 FM 969 – Bastrop, TX

January 30, 2023

To Whom It May Concern,

The goal of this project is to re-zone two properties at the northwest corner of Highways 71 & 969 from P2 Rural to P5 Core. At the northern property, located at 118 FM 969, we propose to demolish the existing structures and develop the site for use as an autobody shop similar to the adjacent site to the south. Please see property details below. Responses to B3 core intent statements are as follows.

- **Fiscal Sustainability** - Concept plan proposes commercial development and future extension of city wastewater.
- **Geographically Sensitive Developments** - Conceptual drainage plan shows development can adequately address drainage.
- **Perpetuation of Authentic Bastrop** - Development will dedicate ROW for future development of the grid while utilizing the area for access.

**654 W SH 71  
 BASTROP, TX 78602**

**Legal Description of Property :** 0.806 Acres within the Nancy Blakey Survey, Abstract No. 98, Bastrop County, Texas

**Property ID :** 24712

**Geographic ID :** R24712

**Project Goal :** To rezone from place type P2 to P5

**118 FM 969  
 BASTROP, TX 78602**

**Legal Description of Property :** 1.192 Acres within the Nancy Blakey Survey, Abstract No. 98, Bastrop County, Texas

**Property ID :** 78667

**Geographic ID :** R78667

**Project Goal :** To rezone from place type P2 to P5, demolish existing structures, and the develop the site for use as an auto body shop similar to the adjacent site.

**Proposed Impervious Cover :** 30,935.97 sqft = 62% (80% Allowable)

**Proposed Building and Use :** 12,000 sqft – Conventional Steel Frame Construction (Type IIB)

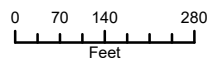
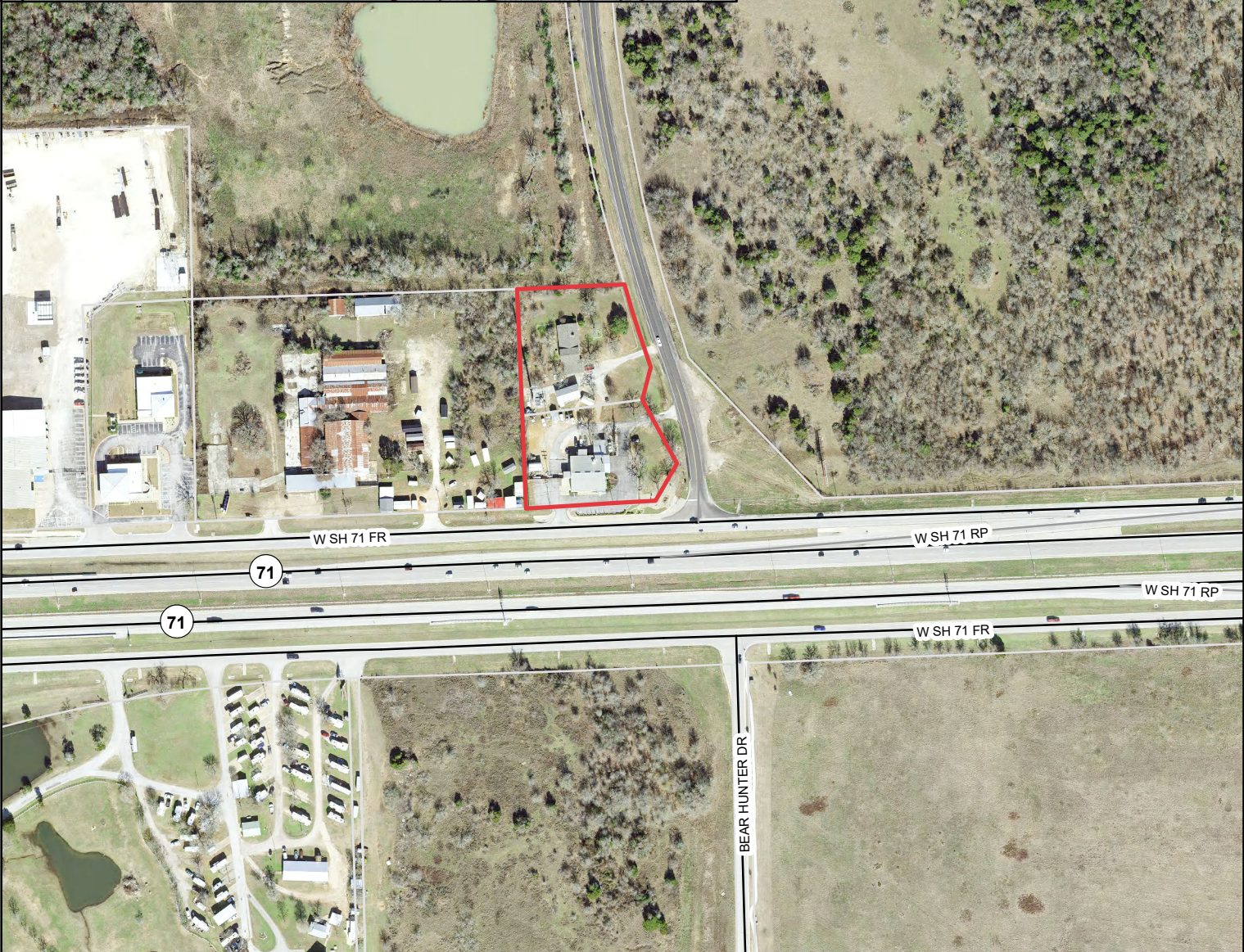
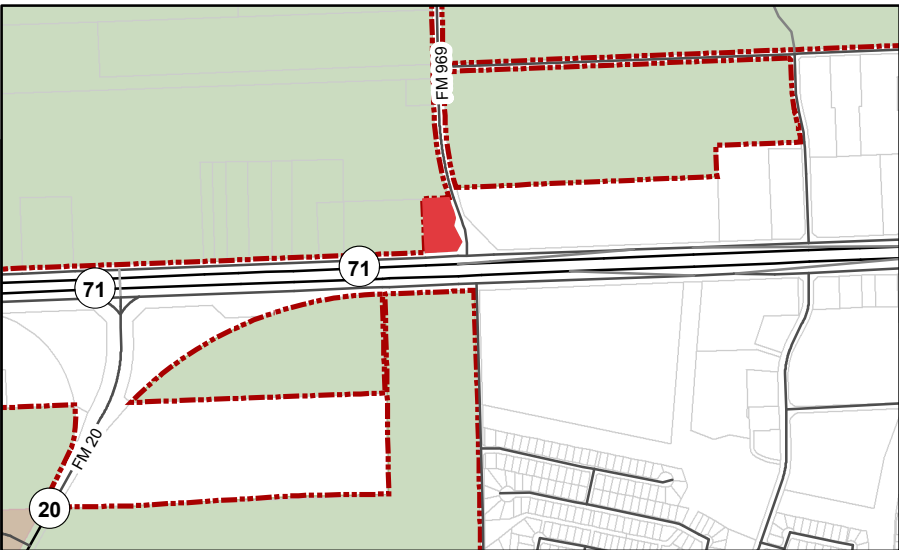
**Parking Count :** 26 spaces (2 van accessible)

**Project Scheduling :** Single phase of construction

Respectfully,



Adam W. Gates, AIA  
Architect  
(512)-653-8149  
a.gates@awgstudio.com



**NW Corner of SH 71 and FM 969  
 Bastrop Automotive  
 Zoning Concept Scheme**

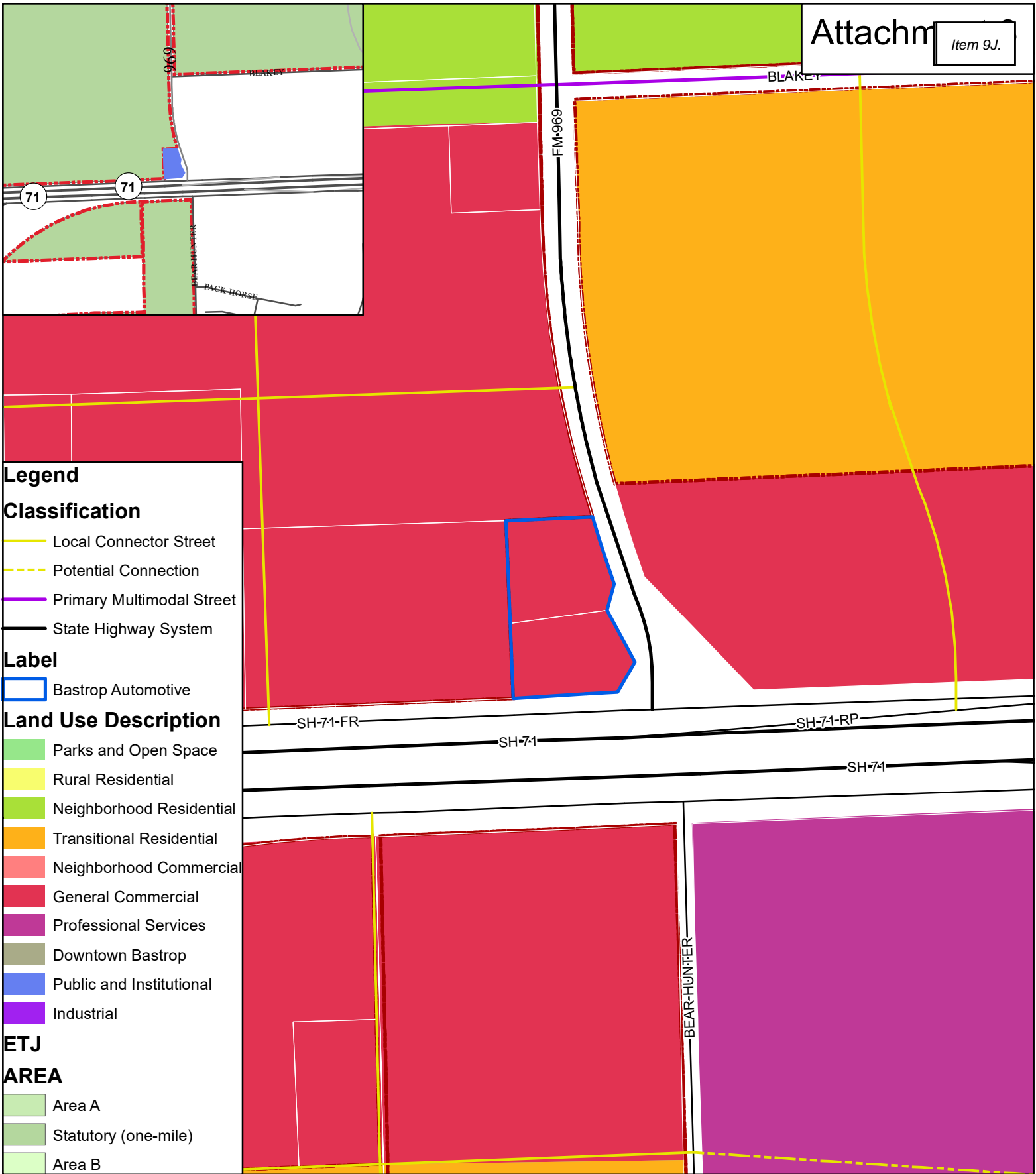
1 inch = 300 feet



Date: 2/9/2023

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



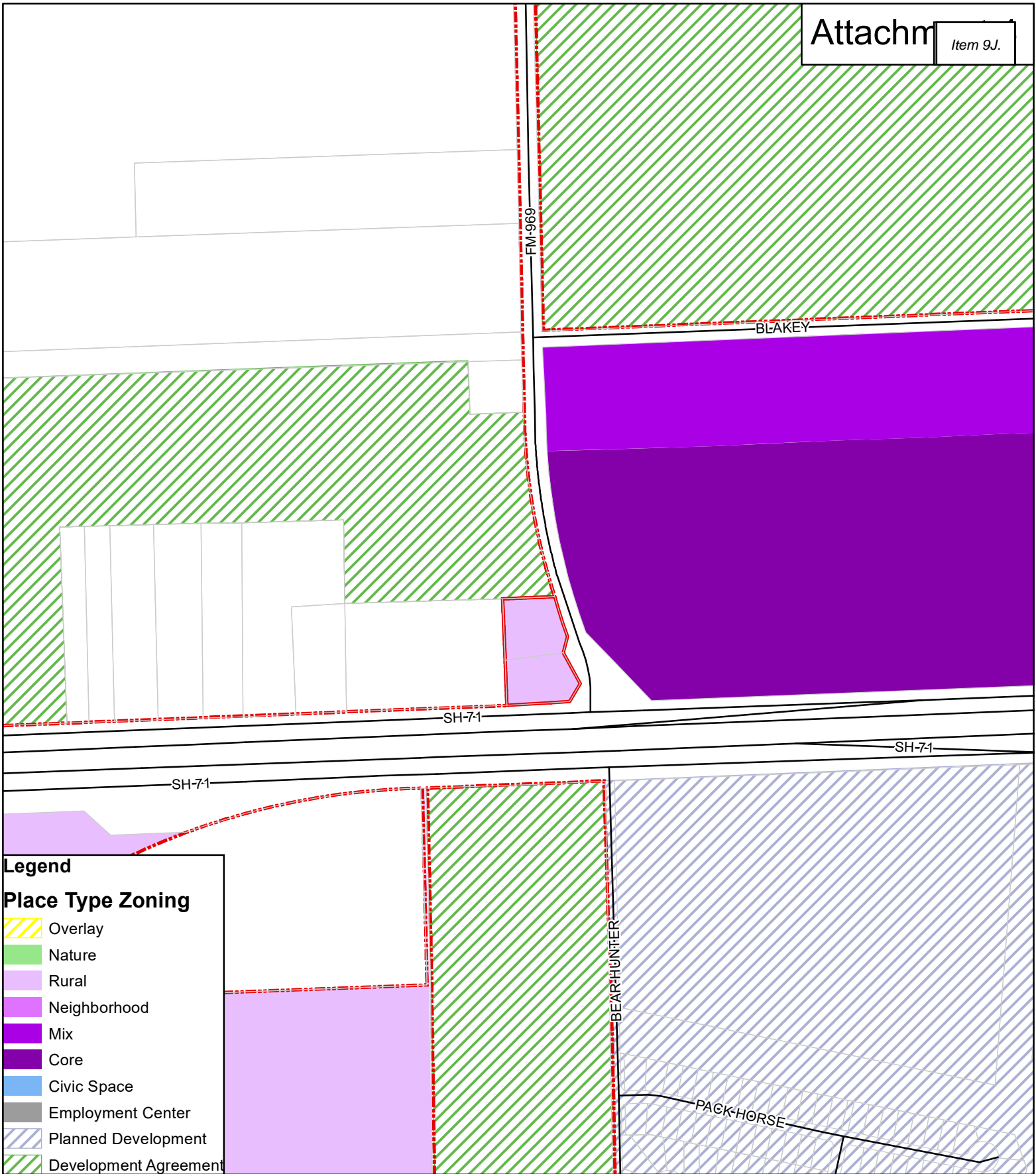


1 inch = 300 feet

Future Land Use Map  
 1.998 acres out of the  
 Nancy Blakey Survey  
 NW Corner of SH 71 and FM 969



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**Legend**

**Place Type Zoning**

- Overlay
- Nature
- Rural
- Neighborhood
- Mix
- Core
- Civic Space
- Employment Center
- Planned Development
- Development Agreement

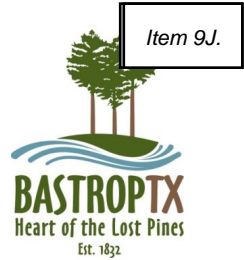
Existing Zoning Map  
 1.998 acres out of the  
 Nancy Blakey Survey Abstract 98  
 NW Corner of SH 71 and FM 969



1 inch = 500 feet



The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular use, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of the information, nor does it represent that it does not infringe upon privately owned rights.



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

Dear Property Owner:

The **Planning and Zoning Commission** will conduct a public hearing on **Thursday, February 23, 2023 at 6:00 p.m.** and the **City Council** will conduct a public hearing **Tuesday, March 28, 2023 at 6:30 p.m.** in the **City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas** on the following request: Public Hearing on request for a Zoning Concept Scheme for 1.998 acres out of Nancy Blakey Abstract 98 located at the northwest corner of SH 71 and FM 969 to change the Place Type zoning from P2 Rural to P5 Core, within the city limits of Bastrop, Texas.

Applicant: Adam Gates/AWG Studio  
 Owner: Steven Classen  
 Address: Northwest corner of SH 71 and FM 969  
 Legal Description: 1.998 acres out of the Nancy Blakey Abstract 98

**The site location map is attached for reference.**

As a property owner within 200 feet of the above referenced property, you are being notified of the upcoming meetings per the Bastrop Code of Ordinances. For more information or to provide comments on this project, you may contact the Planning & Development Department at (512) 332-8840, visit or mail your response card below to the office at 1311 Chestnut Street, Bastrop, Texas 78602. The agenda will be posted 72 hours in advance at [https://www.cityofbastrop.org/page/cs.board\\_agendas-pz](https://www.cityofbastrop.org/page/cs.board_agendas-pz).



**PROPERTY OWNER'S RESPONSE**

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

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

Property Owner Name: \_\_\_\_\_

Property Address: \_\_\_\_\_

Mailing Address (if different than property address): \_\_\_\_\_

Phone (optional): \_\_\_\_\_ Email (optional): \_\_\_\_\_

Property Owner's Signature: \_\_\_\_\_

Additional Comments (Optional):

\_\_\_\_\_

Re: Bastrop Automotive Zoning Concept Scheme