

**NOTICE OF MEETING OF BOARD OF DIRECTORS OF  
BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)  
Monday, August 17, 2020 – 5:00 P.M.  
Virtual Meeting will be Broadcast via Facebook from  
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

*Please note that due to the COVID-19 Pandemic and State of Disaster Declaration by the Governor of Texas, and subsequent suspension of certain open-meeting statutes, this meeting of the BEDC will be a virtual meeting only. No staff or BEDC Board Members will be physically present at City Hall. To access the meeting, please visit the City of Bastrop's Facebook account at <https://www.facebook.com/bastroptx/>.*

**1. CALL TO ORDER**

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The Bastrop EDC Board reserves the right to convene into Executive Session at any time during the meeting regarding any agenda item in compliance with the Texas Open Meetings Act, Chapter 551 Government Code.  
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**2. PUBLIC COMMENT(S)**

Due to the nature of this meeting and the need for social distancing, please email any public comments to the following email address prior to the beginning of the meeting at 5:00 p.m. August 17, 2020, with "Public Comments" in the subject line: [angela@bastropedc.org](mailto:angela@bastropedc.org).

**3. REGULAR BUSINESS & PRESENTATIONS**

- 3.1. Approval of meeting minutes from the Bastrop EDC Board Meeting of July 20, 2020. **(page 3)**
- 3.2. Acceptance of the Bastrop EDC's financial summary report for period ending July 31, 2020. **(page 6)**
- 3.3. Consideration, discussion and possible action on presentation by Phil Loeb, owner of AEI Technologies, concerning the final rebate of \$9,333 on the property he purchased from the BEDC located in the Bastrop Business & Industrial Park and the closing out of the performance agreement between the parties. **(page 20)**
- 3.4. Consideration, discussion and possible action on a presentation by Place Designers regarding a change order for the 921 Main Street Project; approval of Resolution R-2020-0019 approving the final, guaranteed maximum final amount of \$14,500 and amending the existing agreement with Place Designers. **(page 39)**
- 3.5. Update on 921 Main Street Project by Project Manager Jimmy Crouch. **(page 59)**
- 3.6. Consideration, discussion and possible action on Resolution R-2020-0020 approving a proposal by Garner Economics ("Addendum to the Economic Development Action Plan presented on January 15, 2020") to conduct a study to: 1) explore the possibility of automotive and related suppliers as a new target industry for the Bastrop EDC as they relate to the Tesla Gigafactory; and 2) conduct an economic impact analysis of film production and sound stage development in the Bastrop area, in a total amount not to exceed \$18,500. **(page 60)**

- 3.7. Consideration, discussion and possible action on Resolution R-2020-0021 of the Bastrop Economic Development Corporation approving the distribution of a third round of funds to City of Bastrop businesses to assist with the retention of employees, training of employees and the expansion of their business enterprise back to the levels sustained prior to the COVID-19 Pandemic and National Disaster, and in an amount not to exceed \$10,000 per project and per business. **(page 68)**
- 3.8. Consideration, discussion and possible action on Resolution R-2020-0022 of the Bastrop Economic Development Corporation approving the distribution of funds to City of Bastrop businesses to assist with the retention of employees, training of employees and the expansion of their business enterprise back to the levels sustained prior to the COVID-19 Pandemic and National Disaster, and in an amount exceeding \$10,000.00 per project and per business. **(page 83)**
- 3.9. CEO updates on Downtown Trail Project; BEDC website analytics; COVID-19 grant help around the state; and election of Board officers at the regular board meeting on September 21, 2020. **(page 87)**

#### **4. ADJOURNMENT**

##### **CERTIFICATE**

I, Angela Ryan, Operations Manager of the Bastrop Economic Development Corporation (Bastrop EDC), certify that this Notice of Meeting was posted at Bastrop City Hall, 1311 Chestnut Street, and on the Bastrop EDC's website on this the 13th of August 2020 at 5:00 p.m. Copies of this agenda have been provided to those members of the media requesting such information.

*Angela Ryan*

Angela Ryan, BEDC Operations Manager

THE BASTROP ECONOMIC DEVELOPMENT CORPORATION IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS WILL BE PROVIDED UPON REQUEST. PLEASE CALL 512-303-9700.



**Agenda Item: 3.1**

**AGENDA MEMORANDUM**

Meeting Date: August 17, 2020

Agenda Item: Approval of meeting minutes from the Bastrop EDC Board Meeting of July 20, 2020.

Prepared by: Kathy Merrifield, Office Manager

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The draft minutes from the July BEDC board meeting are attached.

Attachments:

Draft minutes from the Regular Board Meeting and Budget Workshop of July 20, 2020

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**Recommendation** – Approve the meeting minutes as submitted.

**[RECOMMENDED MOTION]** – I move to approve the meeting minutes as submitted.



**BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)**  
**BOARD OF DIRECTORS**  
**Minutes of Monthly Meeting, July 20, 2020**  
**Virtual Meeting Broadcast via Facebook from**  
**Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

The Bastrop Economic Development Corporation (BEDC) met virtually on Monday, July 20, 2020, at 2:00 p.m. for a Monthly Meeting and Budget Workshop, which was broadcast from Bastrop City Hall, 1311 Chestnut Street. Board members present: Kathryn Nash, Kevin Plunkett, Sam Kier, Connie Schroeder, Ron Spencer, Charles Washington Jr., and Jeff Haladyna. Staff members present: Cameron Cox, Angela Ryan, Jean Riemenschneider, and Kathy Merrifield. BEDC Attorney Robyn Katz was present via telephone.

1. **CALL TO ORDER** – Board Chair Kathryn Nash called the Board Meeting to order at 2:00 p.m. Ms. Nash acknowledged new board member Charles Washington Jr. who was appointed to Pat Crawford's seat.
2. **PUBLIC COMMENT(S)** – There were no public comments.
3. **REGULAR BUSINESS & PRESENTATIONS**
  - 3.1. Approval of meeting minutes from the Bastrop EDC Board Meetings of April 13, 2020, April 20, 2020, May 11, 2020, and June 1, 2020. Mr. Spencer made the motion to approve the minutes as submitted, Mr. Plunkett seconded, and the motion passed.
  - 3.2. Acceptance of the Bastrop EDC's financial summary reports for periods ending March 31, 2020, April 30, 2020, May 31, 2020, and June 30, 2020. Mr. Kier made the motion to accept all sets of financials, with adjustments made to the June report for 921 Main Street expenses, Mr. Spencer seconded, and the motion passed.
  - 3.3. Consideration, discussion and possible action on the 921 Main Street Building Project and approval of budget amendment for FY 2019-2020 in Resolution R-2020-18 in the amount of \$1,120,000 for the completion of the Project. Mr. Cox and project manager Jimmy Crouch gave an update on the progress of the 921 Main Street Project. Mr. Cox explained that the increased cost in the amount of the project is because the building is completely different from the building originally planned. Mr. Spencer made the motion to approve Resolution R-2020-18, Mr. Kier seconded, and the motion passed.
  - 3.4. Consideration, discussion and possible action on Resolution R-2020-17 of the Bastrop Economic Development Corporation approving of a budget amendment for FY 2019-2020 in the amount of \$320,000 to fund the third round of COVID-19 relief funds to City of Bastrop businesses to assist with the retention of employees, training of employees and the expansion of their business enterprise back to the levels sustained prior to the COVID-19 Pandemic and National Disaster, and in an amount not to exceed \$10,000.00 per project and per business. Mr. Plunkett recused himself for this portion of the meeting. After discussion, the consensus of the Board was to approve the budget amendment going to City Council at this time, but not the distribution of the grant funds, which will be addressed at a later date. Mr. Kier made the motion to approve Resolution R-2020-17, Mr. Spencer seconded, and the motion passed.
  - 3.5. **BUDGET WORKSHOP** – The BEDC Board of Directors met in a Budget Workshop to consider and discuss the draft BEDC budget for Fiscal Year 2020-2021. The Parks Department and Main Street Program explained their requests for funding to the Board. After reviewing the draft budget and making necessary changes, Mr. Kier made the following motion: Approve the FY 2020/2021 budget to include the agreed upon adjustments; the amount of the EDA grant for

which the BEDC will be applying; the removal of additional funding to the City of Bastrop entities; and the updated debt service schedule. The adjusted budget will be reviewed by the board treasurer prior to presenting to the City's CFO. Mr. Spencer seconded, and the motion passed.

#### 4. EXECUTIVE SESSION

4.1. At 4:55 p.m., the Bastrop EDC Board of Directors met in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:

- (1) **Section 551.071** Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on 921 Main Street Project – to include Project Paint by Number, 921 Main Street Project, Stone Development Group, and Sabre Commercial.
- (2) **Section 551.071** Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on potential projects – Silver Seed Projects, Project Gummy Bear, Project Westworld, and Project Orange.

4.2. At 5:14 p.m., the Bastrop EDC Board of Directors reconvened into open session to discuss, consider, and/or take any action necessary related to the executive sessions noted herein. No action was taken.

5. **ADJOURNMENT** – Board Chair Kathryn Nash adjourned the meeting at 5:15 p.m.

APPROVED: \_\_\_\_\_  
Kathryn Nash, Board Chair

ATTEST: \_\_\_\_\_  
Angela Ryan, Operations Mgr.



**Agenda Item: 3.2**

**AGENDA MEMORANDUM**

Meeting Date: August 17, 2020

Agenda Item: Acceptance of the Bastrop EDC’s financial summary report for period ending July 31, 2020.

Prepared by: BEDC Staff

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Attached for the Board’s review and consideration is the BEDC financial summary report for the period ending July 31, 2020.

Attachment:  
Financial Summary Report for period ending July 31, 2020

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**Recommendation** – Accept the financial summary report as submitted.

**[RECOMMENDED MOTION]** – I move to accept the July BEDC financial summary report as submitted.



# Bastrop Economic Development Corporation

## Financial Summary For Period Ending July 2020



# Summary of Revenues and Expenditures

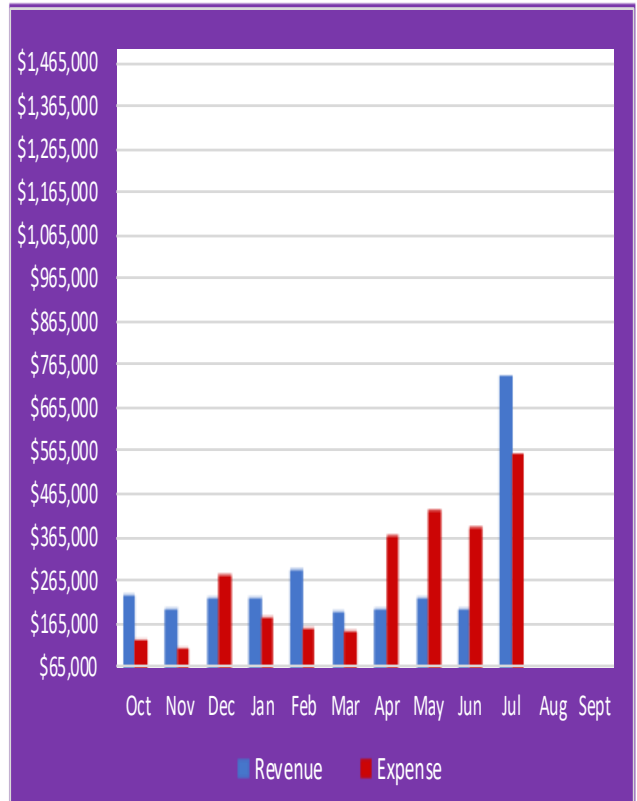
## As of July 31, 2020



### OVERALL FUND PERFORMANCE

### REVENUES VS EXPENSES

Month	FY2020 <u>Revenue</u>	FY2020 <u>Expense</u>	Monthly <u>Variance</u>
Oct	\$ 227,085	\$ 128,658	\$ 98,427
Nov	198,030	109,017	\$ 89,013
Dec	226,226	274,798	\$ (48,572)
Jan	226,086	175,434	\$ 50,652
Feb	289,608	156,054	\$ 133,554
Mar	190,987	144,165	\$ 46,822
Apr	194,814	368,409	\$ (173,595)
May	225,863	426,117	\$ (200,254)
Jun	200,832	383,625	\$ (182,793)
Jul	735,138	553,636	\$ 181,502
Aug			\$ -
Sept			\$ -
<b>Total</b>	<b>\$ 2,714,669</b>	<b>\$ 2,719,913</b>	<b>\$ (5,244)</b>



Positive

The revenue is in line with projections. July includes a \$500,000 loan draw. The expenses were budgeted to be higher than revenue, using available fund balance on capitol projects. These project funds are starting to be expensed. April and May reflects COVID payments to local





# Summary of Sales Tax Revenue

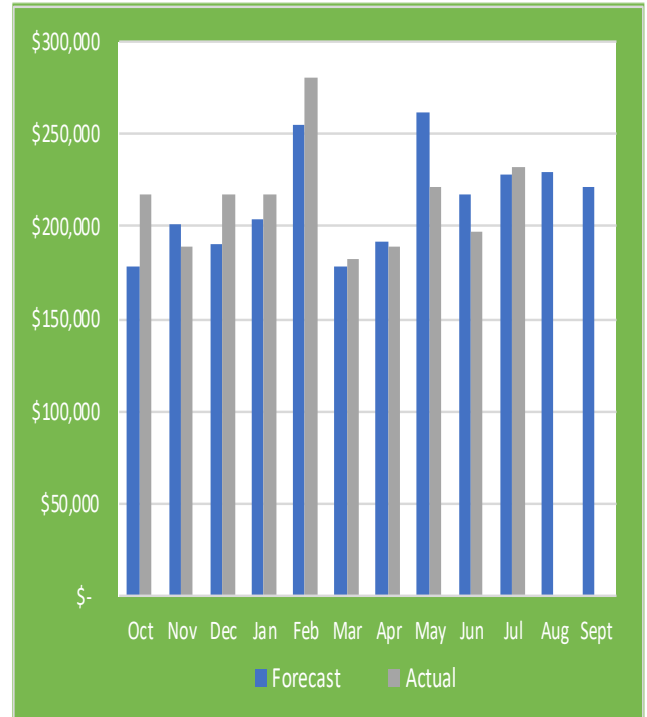
As of July 31, 2020



## REVENUE ANALYSIS

### SALES TAX REVENUE

Month	FY2020 Forecast	FY2020 Actual	Monthly Variance
Oct	\$ 178,902	\$ 217,223	\$ 38,321
Nov	201,052	189,029	\$ (12,023)
Dec	190,167	217,161	\$ 26,994
Jan	204,421	217,121	\$ 12,700
Feb	255,525	281,238	\$ 25,713
Mar	178,867	182,352	\$ 3,485
Apr	191,645	189,549	\$ (2,096)
May	262,161	221,585	\$ (40,576)
Jun	217,197	197,050	\$ (20,147)
Jul	228,184	232,925	\$ 4,741
Aug	229,973		
Sept	221,906		
<b>Total</b>	<b>\$ 2,560,000</b>	<b>\$ 2,145,233</b>	<b>\$ 37,112</b>
Forecast YTD	\$ 2,108,121		
Actual to Forecast	\$ 37,112	1.8%	



Positive

Sales Tax revenue is 75% of total revenue (excluding loan proceeds). The amount in Oct. and Nov. are estimated due to the timing of receiving the payments. The State Comptroller has a two month lag between month earned and month distributed. The Actual to forecast year to date is positive 1.8%. This budget was conservative due to the volatility of this revenue source. Staff estimates we will end the fiscal



# Expenditures Budget to Actual Comparison

## As of July 31, 2020



### OPERATING EXPENDITURES COMPARISON

<u>Category</u>	FY2020 <u>Forecast</u>	FY2020 <u>Actual</u>	Monthly <u>Variance</u>
Personnel	\$ 366,807	\$ 340,999	\$ 25,808
Supplies & Material	13,540	6,791	\$ 6,749
Maintenance & Repairs	13,527	4,277	\$ 9,250
Occupancy	45,000	43,511	\$ 1,489
Contractual Service	270,557	192,783	\$ 77,774
Marketing/Advertising	955,570	883,514	\$ 72,056
Contingency	-	-	\$ -
Debt Service	<u>267,860</u>	<u>267,860</u>	<u>\$ -</u>
<b>Total</b>	<b>\$ 1,932,861</b>	<b>\$ 1,739,735</b>	<b>\$ 193,126</b>

Forecast to Actual % 9.99%

Positive

The actual to forecast comparison is a positive 10% year-to-date. The forecast has been updated to reflect the transfers required to fund the COVID grants.



# Expenditures Budget to Actual Comparison

## As of July 31, 2020



### CAPITAL OUTLAY PROJECTS

<u>Project</u>	FY2020 <u>Budget</u>	FY2020 <u>Actual</u>	Budget <u>Balance</u>
<b>Trail System Downtown loop</b> (only engineering and permitting expenses so far)	\$ 140,000	\$ 59,637	\$ 80,363
<b>Bus. Ind. Park-Tech/MLK Infra</b> (only engineering expenses so far)	1,132,000	8,760	\$ 1,123,240
<b>921 Main St. Project</b> Engineering & Constr	1,420,000	953,210	\$ 466,790
<b>Agnes/Home Depot Infrast</b> (refund from drainage channel)		(32,669)	
<b>Total</b>	<b>\$ 2,692,000</b>	<b>\$ 988,938</b>	<b>\$ 1,670,393</b>

These projects are funded by various funds including 2013 Bond funds, operating funds and 2018 Bond funds. The 921 Main St. Project was funded through a loan and available reserves in the operating fund






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## BASTROP ECONOMIC DEVELOPMENT CORPORATION FUND FY 2019-2020 BUDGET

Working Capital 9-30-2019	\$	5,109,097
<b>FY 2019-2020</b>		
Budgeted		
Revenues	\$	<u>4,213,800</u>
Total FY 2018 Resources	\$	9,322,897
Budgeted Expenditures:		
Operating Expenses	\$	(2,066,446)
Capital Expenses	\$	(2,962,000)
Debt Service	\$	<u>(485,453)</u>
	\$	(5,513,899)
Projected Working Capital Balance 09-30-2020	\$	3,808,998
Reserve 25% of Operating Expense	\$	516,612

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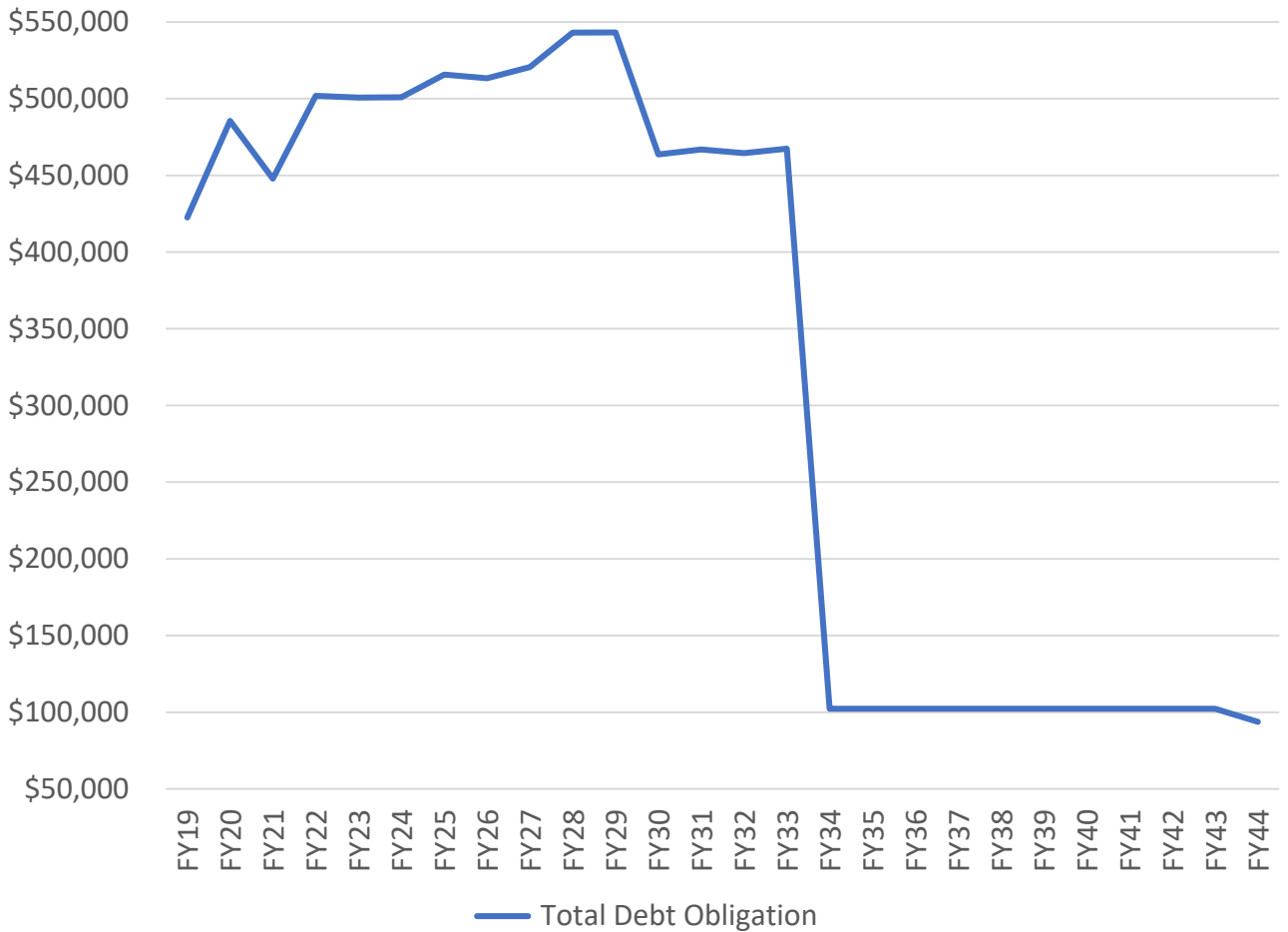


# Debt Obligation

## As of 6/24/19



### Total Debt Obligation



## FINANCIAL STATEMENT

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

REVENUES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>TAXES &amp; PENALTIES</u>						
00-00-4005 SALES TAX	<u>2,031,292.79</u>	<u>2,560,000.00</u>	<u>232,924.73</u>	<u>2,145,233.96</u>	<u>414,766.04</u>	<u>83.80</u>
TOTAL TAXES & PENALTIES	2,031,292.79	2,560,000.00	232,924.73	2,145,233.96	414,766.04	83.80
<u>CHARGES FOR SERVICES</u>						
00-00-4047 LEASE AGREEMENT	<u>11,500.00</u>	<u>13,800.00</u>	<u>0.00</u>	<u>10,350.00</u>	<u>3,450.00</u>	<u>75.00</u>
TOTAL CHARGES FOR SERVICES	11,500.00	13,800.00	0.00	10,350.00	3,450.00	75.00
<u>OTHER REVENUE</u>						
00-00-4385 LOAN PROCEEDS	<u>0.00</u>	<u>0.00</u>	<u>500,000.00</u>	<u>500,000.00</u>	<u>( 500,000.00)</u>	<u>0.00</u>
TOTAL OTHER REVENUE	0.00	0.00	500,000.00	500,000.00	( 500,000.00)	0.00
<u>INTEREST INCOME</u>						
00-00-4400 INTEREST INCOME	113,495.97	80,000.00	2,213.66	59,085.90	20,914.10	73.86
00-00-4401 INTEREST RECEIVED ON NOTES	<u>124.84</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL INTEREST INCOME	113,620.81	80,000.00	2,213.66	59,085.90	20,914.10	73.86
<u>MISCELLANEOUS</u>						
00-00-4514 MISCELLANEOUS INCOME	118,847.92	0.00	0.00	0.00	0.00	0.00
00-00-4524 RENTAL INCOME	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>
TOTAL MISCELLANEOUS	118,847.92	40,000.00	0.00	0.00	40,000.00	0.00
<u>TRANSFERS-IN</u>						
<u>OTHER SOURCES</u>						
00-00-4805 GAIN/LOSS ON SALE OF FIXED AS	0.00	100,000.00	0.00	0.00	100,000.00	0.00
00-00-4810 BOND PROCEEDS	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>
TOTAL OTHER SOURCES	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>
** TOTAL REVENUE **	2,275,261.52	4,213,800.00	735,138.39	2,714,669.86	1,499,130.14	64.42

FINANCIAL STATEMENT

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
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DUE TO/FROM

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00-NON-PROGRAM

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BEDC ADMINISTRATION

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00-NON-PROGRAM

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PERSONNEL COSTS

70-00-5101 BEDC OPERATIONAL SALARIES	265,937.04	333,625.00	36,918.90	260,432.94	73,192.06	78.06
70-00-5116 LONGEVITY	579.00	705.00	0.00	707.25	( 2.25)	100.32
70-00-5150 SOCIAL SECURITY	19,825.63	28,669.00	2,690.89	19,409.11	9,259.89	67.70
70-00-5151 RETIREMENT	32,734.68	42,973.00	4,322.19	30,557.21	12,415.79	71.11
70-00-5155 GROUP INSURANCE	31,636.85	43,479.00	2,937.13	28,903.46	14,575.54	66.48
70-00-5156 WORKER'S COMPENSATION	<u>430.79</u>	<u>701.00</u>	<u>361.59</u>	<u>988.84</u>	<u>( 287.84)</u>	<u>141.06</u>
TOTAL PERSONNEL COSTS	351,143.99	450,152.00	47,230.70	340,998.81	109,153.19	75.75

SUPPLIES & MATERIALS

70-00-5201 OPERATIONAL SUPPLIES (OFFIC	4,090.45	7,000.00	25.50	3,102.81	3,897.19	44.33
70-00-5203 POSTAGE	21.57	360.00	0.00	0.00	360.00	0.00
70-00-5206 OFFICE EQUIPMENT	<u>14,100.15</u>	<u>9,000.00</u>	<u>0.00</u>	<u>3,688.59</u>	<u>5,311.41</u>	<u>40.98</u>
TOTAL SUPPLIES & MATERIALS	18,212.17	16,360.00	25.50	6,791.40	9,568.60	41.51

MAINTENANCE & REPAIRS

70-00-5301 MAINT OF EQUIPMENT	511.00	1,000.00	0.00	0.00	1,000.00	0.00
70-00-5331 INDUSTRIAL PARK MAINT EXP	4,772.50	10,200.00	800.00	2,400.00	7,800.00	23.53
70-00-5345 BUILDING REPAIRS & MAINT.	<u>2,650.00</u>	<u>5,000.00</u>	<u>250.00</u>	<u>1,877.00</u>	<u>3,123.00</u>	<u>37.54</u>
TOTAL MAINTENANCE & REPAIRS	7,933.50	16,200.00	1,050.00	4,277.00	11,923.00	26.40

OCCUPANCY

70-00-5401 COMMUNICATIONS	6,196.73	9,000.00	199.50	6,542.60	2,457.40	72.70
70-00-5402 OFFICE RENTAL	36,300.00	42,000.00	3,500.00	35,000.00	7,000.00	83.33
70-00-5403 UTILITIES	<u>1,766.15</u>	<u>3,000.00</u>	<u>358.91</u>	<u>1,968.71</u>	<u>1,031.29</u>	<u>65.62</u>
TOTAL OCCUPANCY	44,262.88	54,000.00	4,058.41	43,511.31	10,488.69	80.58

## FINANCIAL STATEMENT

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTRACTUAL SERVICES</u>						
70-00-5505 PROFESSIONAL SERVICES	127,023.94	100,000.00	0.00	49,418.25	50,581.75	49.42
70-00-5518 AUDIT	4,000.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5525 LEGALS	15,107.51	20,000.00	573.50	6,452.13	13,547.87	32.26
70-00-5526 LEGAL PROJECTS	8,514.50	5,000.00	0.00	2,459.00	2,541.00	49.18
70-00-5530 ENGINEERING	11,900.00	15,000.00	0.00	1,050.00	13,950.00	7.00
70-00-5540 PROPERTY INSURANCE	1,028.76	4,974.00	216.29	4,589.19	384.81	92.26
70-00-5544 UNEMPLOYMENT TAX	0.00	0.00	0.00	414.20	( 414.20)	0.00
70-00-5561 CONTRACTUAL SERVICES	13,788.05	0.00	0.00	0.00	0.00	0.00
70-00-5574 CITY PROJECTS & PROGRAMS	0.00	49,950.00	0.00	0.00	49,950.00	0.00
70-00-5575 CITY SHARED SERVICES	3,218.00	7,500.00	0.00	0.00	7,500.00	0.00
70-00-5580 BIP TECHNOLOGY/MLK INFRASTR	94,600.00	103,200.00	8,600.00	77,400.00	25,800.00	75.00
70-00-5596 MAIN STREET PROG SUPPORT	41,666.70	50,000.00	0.00	37,500.03	12,499.97	75.00
70-00-5598 CITY ADMINISTRATIVE SUPPORT	<u>15,000.00</u>	<u>18,000.00</u>	<u>0.00</u>	<u>13,500.00</u>	<u>4,500.00</u>	<u>75.00</u>
TOTAL CONTRACTUAL SERVICES	335,847.46	383,624.00	9,389.79	192,782.80	190,841.20	50.25
<u>OTHER CHARGES</u>						
70-00-5603 MARKETING TRAVEL	17,549.54	18,000.00	0.00	10,097.14	7,902.86	56.10
70-00-5604 BUSINESS DEVELOPMENT	2,707.23	8,000.00	0.00	2,439.09	5,560.91	30.49
70-00-5605 TRAINING TRAVEL	18,938.46	12,000.00	79.00	1,484.95	10,515.05	12.37
70-00-5606 AUTO ALLOWANCE - STAFF	3,021.59	5,700.00	692.31	4,384.63	1,315.37	76.92
70-00-5615 DUES, SUBSCRIPTIONS & PUBLI	24,628.73	24,000.00	145.23	20,387.45	3,612.55	84.95
70-00-5631 BONDS FOR BEDC OFFICERS	929.83	1,000.00	0.00	885.50	114.50	88.55
70-00-5633 LOCAL/MISC ADV & SPONSORSHI	8,615.09	10,000.00	2.07	3,842.50	6,157.50	38.43
70-00-5634 NATIONAL/REG ADV & MARKETIN	9,185.03	33,000.00	0.00	18,403.27	14,596.73	55.77
70-00-5636 DIGITAL ADV & MARKETING	14,200.72	40,000.00	0.00	10,200.19	29,799.81	25.50
70-00-5637 SPECIAL ADV & MARKETING	0.00	30,000.00	0.00	15,200.00	14,800.00	50.67
70-00-5640 SPL PROJ-REDEVELOPMENT GRAN	0.00	35,000.00	0.00	35,000.00	0.00	100.00
70-00-5641 SPL EDUC & WORKFORCE DEVELO	11,870.97	15,000.00	0.00	11,003.70	3,996.30	73.36
70-00-5642 SPL ENTREPRENEURIAL/SM BUS	0.00	5,000.00	0.00	0.00	5,000.00	0.00
70-00-5643 SPL RETAIL RECRUITING	14,500.00	20,000.00	0.00	14,500.00	5,500.00	72.50
70-00-5644 380 AGREEMENT REIMBURSEMENT	293,718.91	385,000.00	82,351.73	296,936.01	88,063.99	77.13
70-00-5645 WATER RIGHTS PROP FUNDING	0.00	60,000.00	0.00	60,000.00	0.00	100.00
70-00-5646 LAND/GRANT REBATES	9,333.00	9,334.00	0.00	0.00	9,334.00	0.00
70-00-5649 SPL PRJT DISASTER RELIEF GR	0.00	215,076.00	0.00	0.00	215,076.00	0.00
70-00-5650 SPL PRJT BUS RETEN & EXPAN	22.65	0.00	0.00	0.00	0.00	0.00
70-00-5689 OPPORTUNITY AUSTIN	10,000.00	10,000.00	0.00	10,000.00	0.00	100.00
70-00-5690 CASH INCENTIVE	0.00	150,000.00	0.00	368,750.00	( 218,750.00)	245.83
70-00-5691 CLOSING COSTS	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>
TOTAL OTHER CHARGES	439,221.75	1,121,110.00	83,270.34	883,514.43	237,595.57	78.81



FINANCIAL STATEMENT

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTINGENCY</u>						
70-00-5900 CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
TOTAL CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
<u>CAPITAL OUTLAY</u>						
70-00-6060 REAL PROPERTY	0.00	270,000.00	0.00	0.00	270,000.00	0.00
70-00-6713 TRAIL SYS FROM ESKEW TO HWY	21,637.50	140,000.00	0.00	59,637.00	80,363.00	42.60
70-00-6714 921 MAINSTREET PROJECT	90,000.00	1,420,000.00	221,252.34	953,209.61	466,790.39	67.13
70-00-6715 BIP TECHNOLOGY/MLK INFRASTR	1,486.25	1,132,000.00	0.00	0.00	1,132,000.00	0.00
70-00-6716 AGNES/HOME DEPOT INFRASTRUC	1,085,433.13	0.00	0.00	(32,668.72)	32,668.72	0.00
TOTAL CAPITAL OUTLAY	1,198,556.88	2,962,000.00	221,252.34	980,177.89	1,981,822.11	33.09
<u>DEBT SERVICE</u>						
70-00-7133 C OF O SERIES 2013 PRINCIPL	76,000.00	79,000.00	79,000.00	79,000.00	0.00	100.00
70-00-7134 C OF O SERIES 2013 INTEREST	94,468.75	91,429.00	45,714.37	91,428.75	0.25	100.00
70-00-7137 C OF O SERIES 2010 PRINCIPA	49,274.00	49,968.00	49,968.00	49,968.00	0.00	100.00
70-00-7138 C OF O SERIES 2010 INTEREST	7,876.04	6,152.00	874.44	3,950.16	2,201.84	64.21
70-00-7156 GO REFUNDING 2017-INT	20,000.00	20,000.00	10,000.00	20,000.00	0.00	100.00
70-00-7164 GO REFUNDING, SERIES 2020-I	0.00	0.00	152.17	152.17	(152.17)	0.00
70-00-7603 BOND 2006 - PRINC	0.00	55,000.00	0.00	0.00	55,000.00	0.00
70-00-7604 BOND 2006 - INT	0.00	3,080.00	0.00	1,540.00	1,540.00	50.00
70-00-7605 BOND PRINCIPAL 2018	0.00	70,000.00	0.00	0.00	70,000.00	0.00
70-00-7606 BOND INTEREST 2018	26,131.25	40,341.00	0.00	20,170.50	20,170.50	50.00
70-00-7608 ROSCOE LOAN 2019 - INTEREST	0.00	70,482.60	1,650.00	1,650.00	68,832.60	2.34
TOTAL DEBT SERVICE	273,750.04	485,452.60	187,358.98	267,859.58	217,593.02	55.18
TOTAL 00-NON-PROGRAM	2,668,928.67	5,513,898.60	553,636.06	2,719,913.22	2,793,985.38	49.33
<u>ADMINISTRATION</u>						
=====						
<u>CAPITAL OUTLAY</u>						
<u>DEBT SERVICE</u>						
70-10-7604 BOND INTEREST 2006	3,080.00	0.00	0.00	0.00	0.00	0.00
TOTAL DEBT SERVICE	3,080.00	0.00	0.00	0.00	0.00	0.00
TOTAL ADMINISTRATION	3,080.00	0.00	0.00	0.00	0.00	0.00
TOTAL BEDC ADMINISTRATION	2,672,008.67	5,513,898.60	553,636.06	2,719,913.22	2,793,985.38	49.33
*** TOTAL EXPENSES ***	2,672,008.67	5,513,898.60	553,636.06	2,719,913.22	2,793,985.38	49.33

\*\*\* END OF REPORT \*\*\*

BALANCE SHEET

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

ASSETS

=====

00-00-1010	BEDC OPERATING ACCT	184,490.18
00-00-1012	TEXAS CLASS	2,709,204.40
00-00-1100	TEXPOOL	1,299,808.71
00-00-1135	DREYFUS MM ACCT	1,821.75
00-00-1141	CERTIFICATE OF DEPOSIT FN	1,063,000.00
00-00-1224	ACCT RECEIVABLE-SALES TAX	402,387.00
00-00-1227	ACCOUNTS RECEIVABLE-OTHER	8,333.32
00-00-1420	EQUIPMENT	8,300.77
00-00-1460	FIXED ASSETS - BUILDING	845,593.73
00-00-1470	FIXED ASSETS - LAND	511,694.80
00-00-1480	FIXED ASSETS - INFRASTRUC	0.18
00-00-1490	CONST IN PROGRESS-INFRAST	2,012,118.74
00-00-1499	ACCUMULATED DEPRECIATION(	348,389.28)
00-00-1570	DEFERRED OUTFLOW-CITY OPE	202.00
00-00-1575	DEFERRED OUTFLOWS-PENSION	49,454.35
00-00-1579	DEFERRED OUTFLOW-TMRS OP(	187.00)
00-00-1587	PREPAID EXPENSES	<u>15,793.78</u>

8,763,627.43

TOTAL ASSETS

8,763,627.43

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BALANCE SHEET

AS OF: JULY 31ST, 2020

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

LIABILITIES & FUND BALANCE

=====

00-00-2000	ACCOUNTS PAYABLE	973.50
00-00-2039	RETAINAGE PAYABLES	95,209.19
00-00-2080	NOTES PAYABLE-CITY-WTR PR	180,000.00
00-00-2101	BONDS PAYABLE CURRENT POR	313,968.00
00-00-2103	TAX/REV BOND SERIES 2018	1,120,000.00
00-00-2125	ACCRUED INTEREST PAYABLE	24,886.16
00-00-2235	UNEARNED REVENUE-TOWER	3,450.00
00-00-2340	DUE TO GENERAL FUND	414.20
00-00-2346	DUE TO CLEARING FUND	107,518.03
00-00-2356	DUE TO OTHER GOVERNMENTS	2,871,450.44
00-00-2376	DEFERRED INFLOW-ACTUARIA (	4,867.00)
00-00-2405	ENCUMBRANCE ACCOUNT	( 1,857,063.94)
00-00-2406	RESERVE FOR ENCUMBRANCE	1,857,063.94
00-00-2407	PRIOR YR ENCUMBRANCE ACCT	10,839.78
00-00-2408	PR YR RESERV FOR ENCUMBR(	10,839.78)
00-00-2850	NET PENSION LIABLIITY	134,170.00
00-00-2851	OPEB HEALTH LIAB	22,941.00
00-00-2852	OPEB DEATH BEN TMRS LIAB	9,107.00
00-00-2870	COMPENSATED ABSENCES PAYA	<u>12,027.20</u>

4,891,247.72

TOTAL LIABILITIES

4,891,247.72

SURPLUS (DEFICIT) ( 5,243.36)

00-00-3000	NET ASSETS	3,102,520.67
00-00-3119	DESIGNATED OPERATING	150,000.00
00-00-3400	CONTRIBUTED CAPITAL	521,695.50
00-00-3506	RESTRICTED-ELLIOTT PARTN(	0.01)
00-00-3507	RESTRICTED - AEI TECHNOLO	9,333.00
00-00-3510	RESTRICTED-RESERVE 2018 B	108,127.42
00-00-3700	PRIOR PERIOD ADJ	( <u>14,053.51</u> )

TOTAL EQUITY

3,872,379.71

TOTAL LIABILITIES & FUND EQUITY

8,763,627.43

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## AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Consideration, discussion and possible action on presentation by Phil Loeb, owner of AEI Technologies, concerning the final rebate of \$9,333 on the property he purchased from the BEDC located in the Bastrop Business & Industrial Park and the closing out of the performance agreement between the parties.

Prepared by: BEDC Staff

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In May 2016, Phil Loeb purchased 1.4 acres of property from the BEDC in the Bastrop Business and Industrial Park to relocate his company, AEI Technologies, from Pennsylvania to Bastrop.

To date, Mr. Loeb has received all rebates but the final one for \$9,333. This includes the 50% for obtaining Certificate of Occupancy and 4 full time employees “FTEs” in the amount of \$28,000 in the initial year. This also includes the payment for his 5<sup>th</sup> and 6<sup>th</sup> FTE in the amount of \$9,333 each in 2018 and 2019.

Mr. Loeb is now seeking payment of his 7<sup>th</sup> FTE, but with an exception from the Board. Mr. Loeb is expected to attend the meeting in order to explain why he is requesting the final rebate prior to having a seventh employee for a full year.

The important terms of the Performance Agreement are as follows:

- (1) Page 3 - Section 3: Contract term is for 10 years or upon the hiring of 7 FTEs
- (2) Page 3 - Section 2.14: “one FTE equals employee(s) working at least 1,820 hours/year... and each ‘Operational Year’ will begin the day the permanent Certificate of Occupancy is issued by the City, and each Operational Year, thereafter, will be a period of 365 days. Note: Owner’s Employment Obligation will be measured by Operational Year...”
- (3) Page 6 - Section 6.3: “The four (4) initial FTEs must be maintained for twelve consecutive months after the first rebate is issued... New FTEs are added and eligible for Rebate by the BEDC. Failure to continuously employ an initial FTE at the Project... shall trigger reimbursement of the paid Incentives Funds... Once employed, New FTEs must be continuously maintained for the full remaining Term of the Agreement. Failure to do so shall trigger reimbursement to the BEDC of the incentives paid for that New FTE...”
- (4) Section 11 - BEDC Board may amend any portion of the Agreement by board approval.

Attachments: Agreement between the BEDC and AEI Technologies  
Signed affidavit from Phil Loeb

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**Recommendation** – CEO does not recommend the approval of the final distribution at this time.



**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN  
THE BASTROP ECONOMIC DEVELOPMENT CORPORATION  
AND  
AEI TECHNOLOGIES, INC.**

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This Economic Development Agreement (this "Agreement") is entered into by and between AEI Technologies, Inc., a Texas corporation, and its successors and assigns (the "Owner") and the Bastrop Economic Development Corporation, a public instrumentality and 4B non-profit industrial development corporation (the "BEDC"), which is incorporated under the State law set forth in the Local Government Code, Chapters 501.001, *et seq.*, and Chapter 505.001, *et seq.*, as amended. The Owner and the BEDC may be referred to jointly as the "Parties" and singularly as a "Party."

**RECITALS**

**WHEREAS**, BEDC is legally authorized to provide certain economic development incentives to the Owner in recognition of the economic benefits that will occur as a result of the Owner's development of a medical equipment manufacturing facility, identified by the BEDC to fall within NAICS number 334, which facility (the "Project") will be located on a tract of land situated in the Bastrop Business and Industrial Park ("Industrial Park").

**WHEREAS**, the BEDC desires to offer incentives to the Owner that will enable the Owner to develop the Project on Land, identified herein below, as a medical equipment manufacturing facility.

**WHEREAS**, the BEDC has determined that development of the property in the Industrial Park (the "Land"), as is more particularly described on Exhibit "A" ( i.e., the Legal Description of Property), will contribute to the economic development of the City by generating property tax, sales tax revenue and by enhancing employment in the Bastrop community.

**NOW, THEREFORE**, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the BEDC and the Owner agree as follows:

1.

**AUTHORITY/CONSIDERATION**

The BEDC's execution of this Agreement is authorized by Chapter 501 of the *Texas Local Government Code*, and constitutes a valid and binding obligation of the BEDC, subject to the condition precedent that Owner acquires the appropriate Land, obtains all necessary financing to develop the Project, completes development and improvements related to the Project, and fulfills all obligations and duties, as specified herein.

The Owner's execution and performance of this Agreement constitutes a valid and binding contractual obligation of Owner for the Owner to proceed with the Project. Owner acknowledges that BEDC is acting in reliance upon Owner's full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources of the BEDC to Owner's Project.

## 2.

**DEFINITIONS**

As used in this Agreement, the following words or phrases shall have the following meanings:

**2.1 “Act of Default or Default”** means failure to timely, fully, and completely comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this Agreement. In certain circumstances, the BEDC, in its sole discretion, may accept substantial compliance in lieu of full compliance and may waive the act of default by the Owner, and vice versa. The Parties agree and acknowledge, however, that a single waiver does not waive any other/future defaults.

**2.2 “Certificate of Occupancy”** shall mean that final document issued by the City of Bastrop, Texas, entitled “Certificate of Occupancy,” indicating that all applicable codes, regulations, and ordinances enforced by the City of Bastrop have been unconditionally, fully and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake or upon a misrepresentation of facts, nor any temporary or “conditional” document, authorizing temporary or conditional occupancy.

**2.3 “Incentive Payment(s)”** means money paid by the BEDC to the Owner, rebating the appraised value of the Land paid by the Owner, less closing costs incurred by the BEDC (i.e., net proceeds to the BEDC), to incentivize Owner’s development of the Project.

**2.4 “City of Bastrop” or “City”** means the governing municipal corporation that is legally authorized to control the area that is within the corporate limits of the City of Bastrop, and the area that is within the City’s ETJ and/or Bastrop County, Texas, if within the City’s jurisdictional control.

**2.5 “Code”** means the Bastrop Code of Ordinances in effect on the date the Project construction plans, permits, and related documents are approved by the City.

**2.6 “Designated Successors and Assigns”** shall mean (i) an entity to which Owner assigns (in writing) all or any portion of its rights and obligations contained in this Agreement; (ii) any entity which is the successor, by merger or otherwise, to all or substantially all of Owner’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or partnership interest of Owner.

**2.7 “Effective Date”** means the date upon which this Agreement has been signed by both Parties.

**2.8 “Force Majeure”** means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, unavailability of any utility service, restrictive governmental laws or regulations, riots, insurrections, the act, the failure to act, or default of another Party or a material worsening of current conditions caused by acts of terrorism or war (whether or not declared), or severe weather occurring after the execution of this Agreement, which materially impairs the Party’s ability to perform any act required under this Agreement.

**2.9 “Construction Documents”** shall mean construction plans approved by the City, related to construction of the Project.



**2.10 "Owner"** means AEI Technologies, Inc., and its successors and assigns.

**2.11 "Project"** means the development of the Land as a medical equipment manufacturing facility, under NAICS 334, for the purposes of enhancing employment in Bastrop and generating sales tax, within the Bastrop community. Details related to the Project are set forth in Exhibit "B" (i.e., the Project Description), attached hereto and incorporated herein for all purposes.

**2.12 "Minimum Investment Amount"** means the Owner's minimum investment for construction of the Project, including FF&E (Furniture, Fixtures, and Equipment).

**2.13 "Operations"** means that the Certificate of Occupancy has been obtained for the Facility, AEI Technologies has hired the number of full-time employees (FTEs) required to open and to maintain regular business hours, and continues to maintain a staffing level appropriate for the full-time operation of the Project as a medical equipment manufacturing facility, based on current economic conditions.

**2.14 "Employment"**. Enhancing employment opportunities in Bastrop is the primary objective of the BEDC. Therefore, in order to qualify for the incentives offered by the BEDC, Owner will contractually commit to continuously employ the number of "fulltime"/"full-time equivalent" employees ("FTE") (i.e., one (1) FTE equals employee(s) working at least 1,820 hours/year). The Parties agree that the 'term' of the first 'Operational Year' will begin the day the permanent Certificate of Occupancy is issued by the City, and that each Operational Year, thereafter, will be a period of 365 days. Note: Owner's Employment Obligations will be measured by Operational Year and not by years congruent with the annual anniversary date of the Agreement.

### 3.

#### TERM

"Term" means the period of time this agreement shall be in effect, beginning on the Effective Date and terminating on the first to occur of:

- (a) Ten (10) years following receipt of the Certificate of Occupancy, or
- (b) Twelve (12) months after the Minimum Investment Amount is met and seven (7) FTEs are created, or
- (c) Upon termination or default as otherwise provided for herein.

### 4.

#### DESIGN CRITERIA/DEVELOPMENT STANDARDS/MAINTENANCE VARIANCES GRANTED FROM PROTECTIVE COVENANTS AND RESTRICTIONS

**4.1** Owner agrees to comply with the Code in effect upon the Effective Date, as amended or supplemented by this Agreement, unless otherwise varied by the provisions noted and approved herein. Notwithstanding the foregoing, Owner, in its sole discretion, may choose to comply with any or all City rules, regulations, or Codes promulgated after the Effective Date of this Agreement.

**4.2** It shall be the duty and responsibility of the Owner to ensure that the Land and the buildings and improvements located thereon are consistently maintained in good order and condition and state of repair in accordance with other medical equipment manufacturing facilities located in Central Texas, including, but not limited to, sweeping and removal of trash, litter and refuse, painting of structures and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas, detention pond and on-site drainage improvements, removal and

maintenance of landscaped areas, detention pond and on-site drainage improvements, removal and proper disposal of any and all production wastes from the Land, clearing of waste from any on-site processes and debris from driveways and parking areas, and maintenance and repair of fencing, lighting fixtures and signs. The failure or refusal of Owner, at any time during the Term, to fulfill or perform any of the obligations contained in this Section 4.2 shall constitute an event of default under this Agreement if such failure or refusal shall continue without correction for a period of thirty (30) days from and after written notice from City and/or the BEDC to Owner; provided, however if due to the nature of said obligation, the same could not be reasonably fulfilled or performed within said thirty (30) day period exercising due diligence, an event of default shall not be deemed to have occurred if Owner has been continuously and diligently pursuing the fulfillment or performance of the obligation and shall thereafter continuously and diligently proceed therewith until completion. With respect to any event of default under this Section 4.2, the BEDC shall have, as its sole and exclusive remedy, the right, but not the obligation, after such notice and cure period to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the defaulting Owner. To effectuate any such cure, either the City or the BEDC shall have the right to enter upon the Land to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Owner. In the event the City and/or the BEDC cures a default during the Term, the defaulting Owner shall reimburse City and/or the BEDC for all reasonable and out-of-pocket costs and expenses incurred in connection with the uncured condition and such curative action within thirty (30) days of receipt of demand, together with reasonable documentation supporting the costs incurred and/or expenditures made.

**4.3 Variances to Restrictive Covenants and/or City Codes Granted by the City/BEDC to Owner:**

**a. Building Materials/Partial Use of Metal Siding on Front Façade – RC "C"**

The Board grants to the Owner a variance that will allow the Owner to use a combination of stone or masonry wainscot and metal siding materials on the front façade of the building that faces Technology Drive. This variance will allow up to thirty-six inches (36") of that front facing façade to be of stone or masonry wainscot, with the remaining portion to be comprised of metal, with the same combination of stone or masonry wainscot and metal continuing on the adjoining two sides of the building, for not less than twelve feet (12') on each of the adjoining sides. The Board shall have final approval of the metal proposed to be used, and a sample of same shall be provided to the Board for its evaluation and approval prior to a final decision on its use on the structure. Failure to obtain pre-approval of the metal will negate this variance.

**b. City Code Parking – RC "F"**

The Project will include a minimum of ten (10) on-site parking spaces, one (1) of which will be compliant with the Americans with Disabilities Act (ADA). After issuance of Certificate of Occupancy, the Owner shall otherwise comply with the City of Bastrop's Parking Codes and Regulations that are in effect as of the date the Owner submits its site development Plan to the City for approval.

**5.**

**BEDC OBLIGATIONS**



BEDC makes the following covenants and warranties to the City and to the Owner, and agrees to timely and fully perform the obligations and duties provided below. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be a material Act of Default by BEDC.

**5.1** The BEDC will sell to the Owner the tract of land located in the Industrial Park that is a minimum of 1.4 acres in size, which is situated at the southeast corner of Lot 2, of the Replat of Lots 1 & 2, Reserve B of the Bastrop Business and Industrial Park, Phase 1 [as more fully defined in Exhibit "A"] [the "Land"]. It is agreed and understood that the BEDC shall, at its own expense, take all necessary action to have the Land that will be sold to the Owner appropriately re-platted through the City of Bastrop's Planning Department. The Owner shall have up to fourteen (14) days prior to the BEDC's submission of its request to replat the lot to the City of Bastrop's Planning Department, to either approve or provide the BEDC its written comments or objections, if any, concerning the proposed Land replat which action by BEDC will create the Land to be conveyed to the Owner by the BEDC. If for any reason the Owner does not approve or provide comment regarding the proposed replat within the 14 day period noted herein, then both Parties acknowledge and agree that this Agreement shall be automatically null and void, *ab initio*, with no further action or notice required to be taken by either Party, and with no penalty or claim available to or resulting from either Party.

**5.2** The BEDC agrees it will sell the Land to the Owner for \$56,185.00, as determined by a 2016 independent third-party appraisal, obtained and paid for by the BEDC. ("Purchase Price") The Land shall be used by Owner solely for construction and operation of the Project, and for no other purpose(s).

**5.3** The BEDC will place the Purchase Price, less all costs incurred by the BEDC on the sale (the "Incentive Funds"), in a designated incentive account at the time of closing the sale of the Land to Owner. These Incentive Funds will be rebated back to the Owner in the future, contingent upon the Owner's successful performance of the agreed upon "Incentive Milestones" set forth herein. [See Section 6.3, below, for the Incentive Milestones that will apply.]

**5.4** The BEDC understands that the Owner must acquire the Land in a timely manner to allow the Owner adequate time to complete the Project and move the Owner's production facility prior to May 31, 2017. BEDC agrees to be prepared to close on the sale of the Land on or before August 31, 2016, or this Agreement may become null and void without penalty, at the Owner's discretion.

**5.5** BEDC will rebate the Owner the Incentive Milestone amount due under this Agreement within thirty (30) days of receiving agreeable documentation from the Owner.

## 6.

### **OWNER'S COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES**

Owner makes the following covenants and warranties to the City and to BEDC, and agrees to timely and fully perform the obligations and duties provided below. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be a material Act of Default by Owner.

**6.1 Owner's Employment Obligations.** Enhancing employment opportunities in Bastrop is a vital objective of the BEDC. Therefore, in order to qualify for the incentives offered by the BEDC, pursuant to the Agreement, the Owner contractually commits to continuously employ personnel in

Bastrop, as noted in Section 6.3 below, who will assist in operating the Project facility in the Industrial Park throughout the Term of this Agreement.

**6.2 Owner's Construction Obligations.** Owner shall construct a Facility on the Land with a minimum of 3,000 sq. ft., under which a minimum of 25% will be climate controlled, and such construction shall be completed and a final Certificate of Occupancy ("CO") shall be issued by the City for same not later than 18 months after the City's approval of the construction permit for the facility, but in no event shall construction be completed later than 24 months of the Effective Date of this Agreement, (i.e., Completion of Construction Date), except for delay caused by Force Majeure.

**6.3 Incentive Milestones.** The Incentive Milestones and related reimbursements by the BEDC will be as follows:

- 1) Upon: (i) Completion of Construction of the Project Facility in the Industrial Park, and (ii) issuance of the permanent CO by the City for the Facility, and (iii) the creation of four (4) Full-Time Employees [Initial FTEs] at the Owner's Bastrop location, the BEDC will rebate to the Owner 50% of the Incentive Funds upon receipt of a copy of the Facility's CO and documentation from the Owner acceptable to the BEDC confirming that four (4) Initial FTEs are present and employed at the Bastrop Facility. [The four Initial FTEs must be continuously employed at the Bastrop Facility for the Owner to remain eligible for any subsequent Incentive Milestone Payments.]
- 2) The BEDC will rebate to the Owner an additional one-third (1/3) of 50% of the Incentive Funds for each additional New FTE that the Owner creates and maintains on its employment rolls, after the first year of operation, but before the end of the Term of the Agreement, for up to three (3) additional New FTEs. [Note: If any of the additional New FTEs are not created by the Owner and/or they are not continuously maintained on the employment rolls of the Project, at any point during the Term of the Project (in addition to the original four Initial FTEs), then any unrebated portion of the second 50% incentive reimbursement shall not be forthcoming to the Owner and any applicable reimbursement provisions in this Agreement may be triggered and applied by the BEDC.]

MILESTONE	NEW EMPLOYEES (FTEs)	TOTAL FTEs	REBATE AMT
*Certificate of Occupancy	4	4	50% (\$28,000)
12 Consecutive Months	1	5	1/3 of 50% (\$9,333)
12 Consecutive Months	1	6	1/3 of 50% (\$9,333)
12 Consecutive Months	1	7	1/3 of 50% (\$9,333)

\*The four (4) Initial FTEs must be maintained for twelve (12) consecutive months after the first rebate is issued (i.e., which will be upon receipt of CO), before the New FTEs are added and eligible for Rebate by the BEDC. Failure to continuously employ any Initial FTE at the Project, once hired by the Owner and rebate from the BEDC is paid to the Owner for same, shall trigger reimbursement of the paid Incentives Funds to BEDC as set forth in Section 8, below, entitled "Owner's Liability." Once employed, New FTEs must be continuously maintained for the full remaining Term of the Agreement. Failure to do so shall trigger reimbursement to the BEDC of the incentive paid for that New FTE, i.e., 1/3 of the 50%, per New FTE.

**6.4 Purchase of Land.** Owner shall acquire fee ownership of the Land and improvements that are located and constructed by the Owner on the Land. The Parties agree that the appraised value of the Land has been determined by a third-party appraisal obtained and paid for by the BEDC.

**6.5 Minimum Investment Amount.** After acquisition, Owner shall develop the Land and improvements thereon with a minimum investment of \$400,000.00, including FF&E, which work shall be completed on or before the end of 18 months following the City's approval of the building permit and within 24 months of the Effective Date of this Agreement, the Construction Completion Date. In the event the Owner fails to meet the required minimum investment amount, the incentive contemplated under Section 6.31 shall be prorated proportionally.

**6.6** Owner is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

**6.7** The execution of this Agreement has been duly authorized by Owner's general partner(s), if any, and the individual signing this Agreement is empowered to execute such Agreement and bind the partnership, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Owner's partnership agreement, or by-laws, or of any agreement or instrument to which Owner is a party or by which it may be bound, such authority to be evidenced by a partnership resolution, attached hereto at the time of execution.

**6.8** No litigation or governmental proceeding is pending or, to the knowledge of Owner or Owner's officers, threatened against or affecting Owner that may result in any material adverse change in Owner's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

**6.9** There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Owner has not been informed of any potential involuntary bankruptcy proceedings.

**6.10** To its current, actual knowledge, Owner has acquired and maintained all necessary rights, licenses, permits and authority necessary to carry on its business in Bastrop, Texas, and will continue to use its best efforts to acquire and maintain all necessary rights, licenses, permits and authority.

**6.11** Owner shall timely and fully comply with all of the terms and conditions of this Agreement.

**6.12** Owner shall timely acquire and provide evidence of same to the BEDC, fiscal assurance instruments and/or performance bonds in a total amount required to cover all construction obligations related to the Project.

**6.13** Owner shall diligently and faithfully, in good and workmanlike manner, pursue the completion of the Project, which shall be completed no later than the end of the 24<sup>th</sup> full calendar month following the Effective Date.

**6.14** Owner shall purchase all public utility services required for the Project offered by the City for the Term of this Agreement.



## 7.

**SUSPENSION OF PAYMENTS/CESSATION OF OPERATIONS**

**7.1** The BEDC, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement and all future incentive payment obligations shall automatically cease upon any one of the following events, which are agreed by the Parties to be material Acts of Default:

- a. The appointment of a receiver of Owner, or of all or any substantial part of its Land, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- b. The adjudication of Owner as bankrupt.
- c. The filing by Owner of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- d. Failure to complete construction of the Project on or before the end of the 24<sup>th</sup> month after the Effective date of this Agreement.
- e. Failure to create at least four (4) Initial FTEs at the Owner's Bastrop Facility location and/or a failure to continuously maintain these four (4) Initial FTE employees on the Owner's Bastrop Facility employment rolls for the Term of this Agreement.

**7.2** Cessation of Operations/BEDC's Right to Reacquire the Land and the Facility. In the event that AEI Technologies ceases its operations at the Project Facility in the Industrial Park, then the Owner will have the opportunity to assign or sell its ownership rights to the Land and Facility or lease the Land and Facility to another party. However, if the sale or assignment is not completed within 24 months of AEI Technologies' cessation of operations, then the Owner will be contractually obligated to provide the BEDC the right to purchase the Land and the Facility (not to include any equipment or inventory) from the Owner at an amount equal to the then current Fair Market Value, as determined by an independent third party appraisal. Should BEDC decline to make the purchase within six (6) months of the Parties' receipt of the FMV appraisal, then the Owner will be free to market, sell or lease the Facility to another party of its choosing.

## 8.

**OWNER'S LIABILITY**

**8.1** Should Owner fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement (except as expressly provided for in Section 4.2 herein) such failure shall be an Act of Default by Owner and, if not cured and corrected within thirty (30) days after written notice to do so, BEDC may cease making any further economic payments pursuant to this Agreement.

**8.2** In consideration of and precedent to the BEDC's grant of the economic incentives noted herein, Owner acknowledges and agrees that should Owner fail to make the improvements set forth herein, or if Owner ceases to operate the Project or hire and continuously employ four (4) Initial FTEs prior to the expiration of the Term of this Agreement, then the Owner shall be responsible for repayment of any and all economic incentive or reimbursements received from the BEDC, as of the time of the failure to perform. The Parties agree, however, that Owner's failure to continuously employ a New FTE, for the remaining Term of the Agreement, following hiring of that New FTE by

Owner, shall only require reimbursement of the incentive paid for that specific New FTE, not reimbursement of the total of all economic incentives received by the Owner from the BEDC.

**8.3** Any delay for any amount of time by BEDC in providing notice of Default to Owner shall in no event be deemed or constitute a waiver of such Default by BEDC of any of their rights and remedies available in law or in equity.

**8.4** Any waiver granted by BEDC to Owner of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Owner or of a subsequent Act of Default of the same act or event by Owner.

## 9.

### **BEDC LIABILITY LIMITATIONS**

Should the BEDC fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by BEDC and BEDC shall have ninety (90) days to cure and remove the Default upon receipt of written notice to do so from Owner. Upon curing the Default with said 90 days, BEDC will no longer be liable for the Default. Owner specifically agrees that BEDC shall only be liable to Owner for the work and the grants provided for herein, and shall not be liable to Owner for any alleged or actual consequential damages or other fees or costs, including but not limited to interest, attorney's fees, or court costs.

## 10.

### **LAND USE**

**10.1** The Parties agree that the Land shall be used in a manner that is compliant with uses consistent with medical equipment manufacturing facilities. The Parties agree that all site development standards and requirements for use of Land located within the City of Bastrop "Light Industrial" zoning classification (i.e., light manufacturing, assembling and fabrication, warehousing, etc.) shall apply to the Project and Facility located thereon unless specifically superseded by the standards and requirements of this Agreement.

## 11.

### **MISCELLANEOUS PROVISIONS**

**11.1 Complete Agreement/Amendment.** This Agreement represents a complete agreement of the Parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by written agreement by the BEDC and Owner.

**11.2 Mutual Assistance/Good Faith.** The Parties agree to act in Good Faith and to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Land.

**11.3 Representations and Warranties.** The Parties represent and warrant to one another that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

**11.4 Attorney's Fees.** If any legal action or proceeding is commenced between the BEDC and/or the Owner to enforce the provisions of this Agreement or to recover damages for its breach, the prevailing Party in the legal action will be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

**11.5 Binding Effect.** This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

**11.6 Termination.** If the Owner elects not to proceed with the acquisition of the Land or the development of the Project, as contemplated by this Agreement, the Owner will notify the BEDC in writing, and this Agreement and the obligations of all Parties will be deemed terminated and of no further force or effect as of the date of such notice, except those that expressly survive the termination hereof, if any. In the event of Termination, the Owner shall be responsible for repayment of any economic incentive received from the BEDC which was paid prior to the time of the failure to perform plus all professional costs to the BEDC in preparing any agreements or documents related to the Project, if any, with the exception of those listed in Section 5 of this Agreement.

**11.7 Notice.** Any notice and/or statement required or permitted to be delivered shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Owner: AEI Technologies, Inc.  
Attn: Phil Loeb  
201 Hunters Crossing Blvd.  
Suite 10-171  
Bastrop, TX 78602

BEDC Bastrop Economic Development Corporation  
Attn: Executive Director  
301 Hwy 71 W., Ste. 214  
Bastrop, Texas 78602  
Phone: (512) 303-9700

All Parties may designate a different address at any time by giving Notice to the other Parties.

**11.8 Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

**11.9 Relationship of the Parties.** This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the BEDC, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

**11.10 Applicable Law.** This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Bastrop County, Texas. No Party to this

Agreement waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents or representatives as a result of the approval or execution of this Agreement.

**11.11 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**11.12 Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

**11.13 No Third Party Beneficiaries.** This Agreement is not intended to nor shall it be interpreted to confer any rights, privileges or causes of action upon any third party.

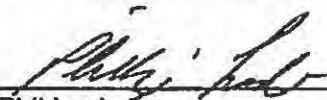
**11.14 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

**11.15 Exhibits.** All referenced Exhibits are incorporated into this Agreement for all purposes.

EXECUTED to be effective as of the 17 day of MAY, 2016.

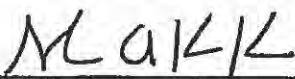
**OWNER:**

AEI TECHNOLOGIES, INC.


By:   
Name: Phil Loeb  
Title: PRESIDENT

**APPROVED BY BEDC:**

BASTROP ECONOMIC DEVELOPMENT CORPORATION

By:   
Name: Shawn Kirkpatrick  
Title: BEDC Executive Director

**Approved As To Form:**

  
Jo-Christy Brown, Attorney for BEDC



**EXHIBIT "A"**  
**Legal Description**

Bastrop EDC will replat a minimum of 1.4 acres of the Southeast corner of Lot 2 of the Replat of Lots 1 & 2, Reserve B of the Bastrop Business and Industrial Park, Phase 1 as recorded in Cabinet 5, page 122-A of the Bastrop County Plat Records.





# 5100-70 REPEAT OF LOTS 1 & 2, RESERVE B OF THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I

## FINAL PLAT

GRAPHIC SCALE  
1" = 100' 0"



ALL LOTS AND RESERVES SHOWN ON THIS PLAT ARE SUBJECT TO THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 1, 2017, AND THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 2, 2017, BOTH OF WHICH ARE ON FILE IN THE PUBLIC RECORDS OF THE CLAY COUNTY CLERK'S OFFICE, CLAY COUNTY, MISSISSIPPI.

THE TOTAL AREA OF THIS PLAT IS 68.085 ACRES.

RESERVE A - 1.015 ACRES  
RESERVE B - 4.630 ACRES  
RESERVE C - 1.818 ACRES  
LOT 1 - 5.477 ACRES  
LOT 2 - 4.238 ACRES  
LOT 3 - 6.068 ACRES  
LOT 4 - 11.391 ACRES  
STREETS - 2.163 ACRES  
RESERVE B DETENTION - 4.630 ACRES  
RESERVE C DETENTION - 1.818 ACRES

ALL LOTS AND RESERVES SHOWN ON THIS PLAT ARE SUBJECT TO THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 1, 2017, AND THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 2, 2017, BOTH OF WHICH ARE ON FILE IN THE PUBLIC RECORDS OF THE CLAY COUNTY CLERK'S OFFICE, CLAY COUNTY, MISSISSIPPI.

THIS PLAT IS A REPEAT OF LOTS 1 & 2, RESERVE B OF THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 1, 2017, AND THE BASTROP BUSINESS AND INDUSTRIAL PARK, PHASE I, SUBDIVISION, PLAT 2, 2017, BOTH OF WHICH ARE ON FILE IN THE PUBLIC RECORDS OF THE CLAY COUNTY CLERK'S OFFICE, CLAY COUNTY, MISSISSIPPI.

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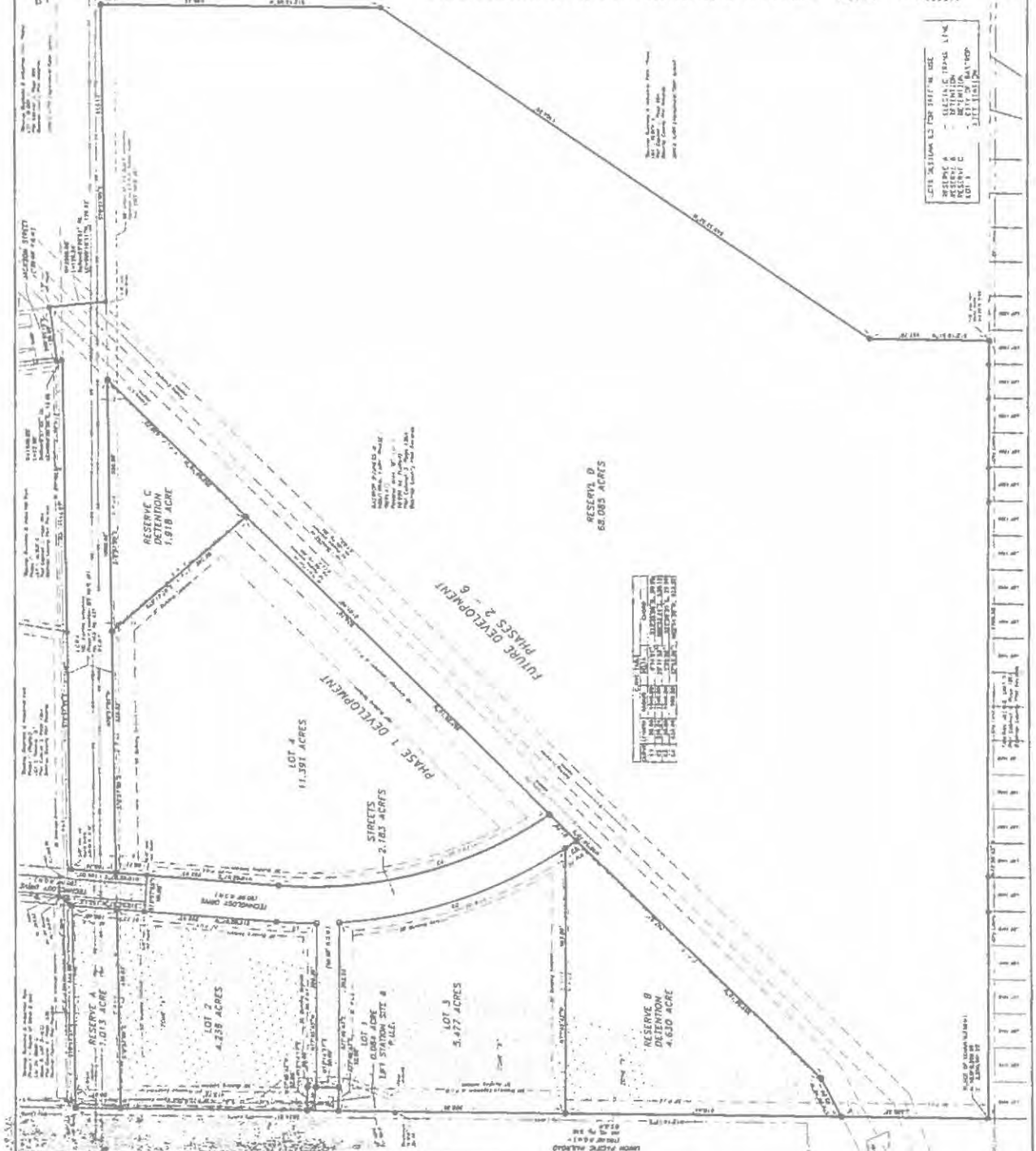
**BASTROP BUSINESS & INDUSTRIAL PARK, PHASE I**  
BASTROP ECONOMIC DEV. CORP.  
REPEAT LOTS 1 & 2, RESERVE B

DATE: 8/13/2020  
DRAWN BY: [Signature]  
CHECKED BY: [Signature]  
APPROVED BY: [Signature]



LOT 1 DESIGNATED FOR FUTURE USE

RESERVE A	1.015 ACRES
RESERVE B	4.630 ACRES
RESERVE C	1.818 ACRES
LOT 1	5.477 ACRES
LOT 2	4.238 ACRES
LOT 3	6.068 ACRES
LOT 4	11.391 ACRES
STREETS	2.163 ACRES
RESERVE B DETENTION	4.630 ACRES
RESERVE C DETENTION	1.818 ACRES
TOTAL	68.085 ACRES



MISSISSIPPI SURVEYORS ASSOCIATION

DATE OF SURVEY: 8/13/2020

EXHIBIT "B"  
Project Description

The Bastrop EDC, as part of the agreement with AEI Technologies, Inc., will replat and sell a minimum of 1.4 acres of property starting at the southeast corner of "Amended Plat of Lot 3, Reserve Area "B", and Lot 2 Block "C" of the Bastrop Business and Industrial Park, Phase 1 as recorded in Cabinet 5 page, 162-A of the Bastrop County Plat Records." AEI is planning to construct a minimum of 3,000 and up to 5,000 square foot facility to house its engineering, manufacturing and assembly operations for its medical equipment manufacturing, NAICS code 334510. To operate the facility, AEI will employ four full-time equivalents at the start of operations, anticipating growing to seven full-time equivalents during the term of the agreement.

**RESOLUTION NO. 05162016-1**

**A RESOLUTION OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE TERMS OF A SALES/PURCHASE CONTRACT FOR THE SALE OF A TRACT OF LAND LOCATED IN THE BASTROP BUSINESS & INDUSTRIAL PARK; SOLD BY THE CORPORATION TO AEI TECHNOLOGIES, INC., CONTINGENT ON EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE PARTIES; AUTHORIZING ALL NECESSARY ACTIONS, INCLUDING EXECUTION OF NECESSARY DOCUMENTATION; AND, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Bastrop Economic Development Corporation ("BEDC") is a public instrumentality and non-profit industrial development corporation duly established and operating under Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the "Act"), and is acting with the approval of the governing body of the City of Bastrop, Texas (the "City"); and

**WHEREAS**, the BEDC Board has provided the BEDC staff with full authority to take reasonable and necessary actions to incentivize economic development in the BEDC's Business and Industrial Park, including, when appropriate, by offering the incentivized or other sale of real property located therein to qualifying prospective entities; and

**WHEREAS**, after careful evaluation and consideration by the Board, it has determined that a project proposed by AEI Technologies, Inc. ("Project"), has qualified for such incentivized sale, specifically under the terms and conditions of an Economic Development Agreement by and between the BEDC and AEI Technologies, Inc., which was/will be finally executed by the Parties on May 17, 2016 ("Agreement"); and

**WHEREAS**, pursuant to the terms of the Agreement, the BEDC has approved incentivizing the proposed AEI Project by conveying a minimum of 1.4 acres of land located in the Business and Industrial Park ("Land") to AEI Technologies, Inc., at a cost of \$56,185.

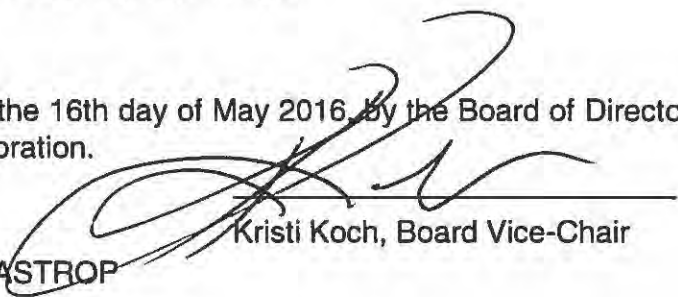
**NOW THEREFORE, BE IT RESOLVED BY THE BASTROP ECONOMIC DEVELOPMENT CORPORATION, THAT:**

**Section 1.** On this date, the 16th day of May 2016, the BEDC approved the terms of the negotiated contract of sale of the Land to AEI Technologies, Inc., which Land shall be used solely for developing and operating the proposed AEI Project, as set forth and conditioned upon the terms of the Economic Development Agreement, to be finalized between AEI and the BEDC. The contract, and related documentation related to the sale of the Land, are attached hereto as Exhibit "A."

**Section 2.** The Board authorizes Chair Steve Mills and/or Executive Director Shawn Kirkpatrick to take all necessary actions including the execution of all necessary contracts and related documentation to finalize the conveyance of the Land to AEI Technologies, Inc., for the Project, pursuant to the terms of the Agreement, and strictly contingent upon AEI's final execution of the Agreement of the terms approved by the BEDC.

Section 3. This Resolution is effective upon passage.

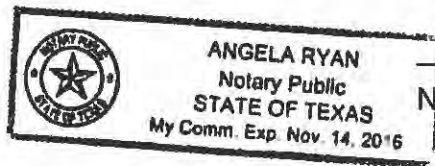
**PASSED AND APPROVED** on the 16th day of May 2016, by the Board of Directors of the Bastrop Economic Development Corporation.

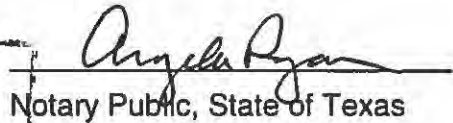
  
\_\_\_\_\_  
Kristi Koch, Board Vice-Chair

STATE OF TEXAS COUNTY OF BASTROP

§  
§

This instrument was attested before me on the 16th day of May, 2016, by Kristi Koch, Bastrop County, Texas, on behalf of the Board of Directors of the Bastrop Economic Development Corporation, of Bastrop, Texas.



  
\_\_\_\_\_  
Notary Public, State of Texas



AEI Technologies Statement of Employment

AFFIDAVIT OF PHIL LOEB

STATE OF TEXAS §
COUNTY OF BASTROP §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared PHIL LOEB, and being by me duly sworn on his oath deposed and said:

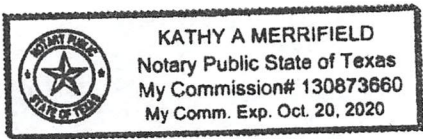
My name is PHIL LOEB. I am over the age of eighteen, have never been convicted of a felony or crime of moral turpitude, and am fully competent in all respects to make this affidavit under penalty of perjury.

I am the President of AEI Technologies, Inc. ("AEI"). I am familiar with the employment policies of AEI. I am both a full-time employee and President of AEI. Pursuant to the terms of the Agreement and in accordance with the Agreement, I have been a full-time employee of AEI for the past twelve consecutive months. Therefore, I am the 6th full-time employee under Section 6.3 of the Agreement with the Bastrop EDC. For that reason and under this affirmation under oath that I am requesting the third distribution of \$9,333.00 be made to AEI under the Agreement.

Further, affiant sayeth not.

[Handwritten signature of Phil Loeb]
PHIL LOEB, President
AEI Technologies, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME by the said Phil Loeb, on this 30th of January, 2019, to certify which witness my hand and official seal and who provided me with a Texas Drivers License as identification.



[Handwritten signature of Kathy Merrifield]
NOTARY PUBLIC, STATE OF TEXAS



## Agenda Item: 3.4

# AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Consideration, discussion and possible action on a presentation by Place Designers regarding a change order for the 921 Main Street Project; approval of Resolution R-2020-0019 approving the final, guaranteed maximum amount of \$14,500 as full and final payment and amending the existing agreement with Place Designers.

Prepared by: BEDC Staff

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Place Designers was hired by the BEDC for commercial design work on the 921 Main Street Project. The original agreement was approved by Resolution R-2020-01 on January 27, 2020.

On February 24, 2020, the Board approved an amended agreement with Place Designers by Resolution R-2020-06.

Place Designers has now proposed a final Change Order in the amount of \$14,500 to cover the costs of waterproofing and changing the steel panel design, and all remaining RFIs.

Attachments:

Draft Resolution R-2020-0019

Agreement between BEDC and Place Designers

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**Recommendation** – CEO recommends approval.

[**RECOMMENDED MOTION**] – I move to approve Resolution R-2020-0019.



**A RESOLUTION OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING A CHANGE ORDER WITH PLACE DESIGNERS, INC., FOR THE 921 MAIN STREET PROJECT; AMENDING THE EXISTING AGREEMENT BETWEEN THE BEDC AND PLACE DESIGNERS WITH A GUARANTEED MAXIMUM FINAL AMOUNT OF \$14,500; AUTHORIZING THE CEO TO EXECUTE ALL NECESSARY DOCUMENTATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Local Government Code, Chapters 501 and 505, et seq., as amended, known as the Development Corporation Act of 1979 (the “Act”), and is acting with the approval of the governing body of the City of Bastrop, Texas (the “City”); and

**WHEREAS**, after careful evaluation and consideration by the Board, it was determined that a project (“Project”) proposed by Place Designers, Inc. (“Company”) would: (i) improve infrastructure upon a dilapidated and previously abandoned City lot; (ii) promote and develop new and expanded business enterprises; (iii) create primary jobs and full-time employees; and, (iv) facilitate the remediation of and build improvements upon the property located at 921 Main Street, Bastrop, Texas, and owned by the BEDC; and

**WHEREAS**, the Board approved the terms and conditions of a Commercial Design Contract (“Original Contract”) with Place Designers, Inc., by Resolution R-2020-01 on January 27, 2020; and

**WHEREAS**, the Board reviewed the terms and conditions of an amended Commercial Design Contract (“Amended Contract”) by and between the BEDC and Place Designers, Inc., and determined it would replace the original contract by approving Resolution R-2020-06 on February 24, 2020; and

**WHEREAS**, Place Designers has proposed a Change Order in the amount of \$14,500 to cover the final design costs and architectural fees associated with the project through completion; and

**WHEREAS**, the Board has reviewed the terms and conditions of the proposed Change Order by Place Designers and determined it fully complies with the statutory requirements that govern the BEDC and is in the best interest of the BEDC to approve such Change Order.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:**

**SECTION 1.** The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

**SECTION 2.** The terms and conditions of the proposed Change Order attached hereto as Exhibit “A,” are approved.



**SECTION 3.** The Board authorizes BEDC’s Chief Executive Officer to execute the Change Order in substantial form with Exhibit “A” and take any necessary actions, including the execution of all other agreements, instruments or documents reasonably necessary to facilitate the purpose of this Resolution, and amending the contract to reflect said Change Order.

**SECTION 4.** This Resolution is effective upon passage.

**PASSED AND APPROVED** on the \_\_\_\_ day of \_\_\_\_\_ 2020, by the Board of Directors of the Bastrop Economic Development Corporation.

BASTROP ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Kathryn Nash, Board Chair

ATTEST:

\_\_\_\_\_  
Sam Kier, Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Denton, Navarro, Rocha, Bernal & Zech, P.C.  
Board Counsel

**Exhibit "A"**

Change Order with Place Designers, Inc., in a final amount of \$14,500.00.

DRAFT

**Angela Ryan**

---

**Subject:** FW: 921 MAIN - Annotated RFI LIST

**From:** Steven Biegel <[sbiegel@placedesigners.com](mailto:sbiegel@placedesigners.com)>

**Sent:** Monday, August 10, 2020 11:51:10 AM

**To:** Cameron Cox <[cameron@bastropedc.org](mailto:cameron@bastropedc.org)>

**Cc:** Jimmy Crouch <[jimmy@crouch-consulting.com](mailto:jimmy@crouch-consulting.com)>; Ashley Patton <[apatton@placedesigners.com](mailto:apatton@placedesigners.com)>; Laura Cordova <[lcordova@placedesigners.com](mailto:lcordova@placedesigners.com)>; Naomi Aldape <[naldape@placedesigners.com](mailto:naldape@placedesigners.com)>; Corey Maxon <[cmaxon@placedesigners.com](mailto:cmaxon@placedesigners.com)>; David Rothenberg <[drothenberg@placedesigners.com](mailto:drothenberg@placedesigners.com)>

**Subject:** 921 MAIN - Annotated RFI LIST

Cameron:

We just completed our weekly staff call.

Our project at 921 Main Street can be completed for an additional CA Phase lump sum fee of **\$14,500 (GMP)**.

We spent considerable time today discussing the details and additional time based on time sheets.

Our budget above is based on a remaining 14-week schedule (which includes this week).

With this email, I will guarantee that we can complete all remaining CA phase tasks, punch lists, etc., for this final AS fee of **\$14,500**.

I hope this is good news to you and your Board. This revised proposal is down from \$20,000 which we had estimated earlier.

Remember, we have not charged for any of my time since the beginning of the Construction Phase.

This was our contribution to the project when we realized the BEDC's heartburn associated with terminating Stone and shifting over to Sabre.

If you have further questions, please call: 301-404-6290

Best,

Steven

**STEVEN LAWRENCE BIEGEL**, AIA, Architect, LEED, NCARB

Architecture Department Director

PLACE designers, inc.

304 East Main Street | Round Rock, TX 78664

O: [512] 238 8912 x 207 | M: [301] 404-6290

[www.PLACEdesigners.com](http://www.PLACEdesigners.com)



We design great places.

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**CITY OF BASTROP ECONOMIC DEVELOPMENT  
CORPORATION**

**STANDARD PROFESSIONAL SERVICES AGREEMENT**

THE STATE OF TEXAS     §  
  §  
BASTROP COUNTY         §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Bastrop Economic Development Corporation (the “BEDC”), a Texas non-profit industrial development corporation, and Place Designers, Inc., a professional design company in Texas (“Professional”).

**Section 1. Duration.**

This Agreement shall become effective upon execution by the BEDC and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

**Section 2. Scope of Work.**

- (A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.
- (B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.
- (C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by the BEDC except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

**Section 3. Compensation.**

- (A) The Professional shall be paid in the manner set forth in Exhibit “B” and as provided herein.
- (B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty

(30) days of the BEDC's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

- (C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be accounted for in Exhibit "B".

#### **Section 4. Changes to the Project Work; Additional Work.**

- (A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the BEDC finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the BEDC and such services will be considered as additional work and paid for as specified under the following paragraph.
- (B) *Additional Work:* The BEDC retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the BEDC by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the BEDC of that opinion, in writing. If the BEDC agrees that such work does constitute additional work, then the BEDC and the Professional shall execute a supplemental agreement for the additional work and the BEDC shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

#### **Section 5. Time of Completion.**

The prompt completion of the services under the Scope of Work is critical to the BEDC. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the BEDC other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

#### **Section 6. Insurance.**

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit "C" throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit "C", Professional shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

**General Liability Insurance:** The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

**Automobile Liability Insurance:** Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

**Subcontractor:** In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

**Qualifying Insurance:** The insurance required by this Agreement shall be written by a non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "D".

#### **Section 7. Miscellaneous Provisions.**

- (A) ***Subletting.*** The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the BEDC, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the BEDC in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.
- (B) ***Ownership of Documents.*** Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the BEDC shall be delivered to and become the property of the BEDC. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement, shall be made available, upon request, to the BEDC without restriction or limitation on the further use of such materials; PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE BEDC OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE BEDC'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the BEDC but shall grant to the BEDC a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the BEDC under or pursuant to this Agreement.

- (C) *Professional's Seal.* To the extent that the Professional has a professional seal, it shall be placed on all documents and data furnished by the Professional to the BEDC. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the BEDC and Professional. The BEDC acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.
- (D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, workers compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the BEDC with satisfactory proof of compliance.
- (E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the BEDC and is not an employee, agent, official or representative of the BEDC. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the BEDC. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.
- (F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the BEDC under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the BEDC pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the BEDC and, at the sole option of the BEDC, the BEDC may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.
- (G) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

- (H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

**Section 8. Termination.**

- (A) This Agreement may be terminated:
- (1) By the mutual agreement and consent of both Professional and BEDC;
  - (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
  - (3) By the BEDC, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
  - (4) By the BEDC, at will and without cause upon not less than thirty (30) days written notice to the Professional.
- (B) If the BEDC terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the BEDC, the cost to the BEDC of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the BEDC of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

**Section 9. Indemnification.** Professional shall indemnify and hold harmless the City of Bastrop, Texas, Economic Development Corporation and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as "Professional"), (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional's liability to such employee or former employee would otherwise be limited to payments under State Workers Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or



hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

**Section 10. Notices.** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**Section 11. No Assignment.** Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

**Section 12. Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**Section 13. Waiver.** Either BEDC or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 14. Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bastrop County, Texas, such that exclusive venue for any action arising out of this Agreement shall be in Bastrop County, Texas.

**Section 15. Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

**Section 16. Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**Section 17. Gender.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

**Section 18. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 19. Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**Section 20. Entire Agreement.** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.


**Section 21. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 22. Dispute Resolution.** The parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

**Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.** Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, Conflicts of Interest Questionnaire and Chapter 2252 of the Texas Government Code, Form 1295 Certificate of Interested Parties online filing with the Texas Ethics Commission.

EXECUTED on this the 4 day of February 2020.

**BEDC:**

By:   
Name: Cameron Cox  
Title: Chief Executive Officer

**PROFESSIONAL:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**BEDC:**

City of Bastrop Economic Development Corporation  
Attn: Cameron Cox, Chief Executive Officer  
301 Highway 71 West, Suite 214  
Bastrop, Texas 78602

**PROFESSIONAL:**

Name  
Address  
City, State Zip  
[Click here to enter text.](#)

**With a copy to:**

BEDC Attorney  
City of Bastrop Economic Development Corporation  
Attn: Robyn Katz  
2500 W. William Cannon, Suite 609  
Austin, Texas 78745

## Exhibit "A"

### SCOPE OF WORK

**Approach Statement** The purpose is to provide professional design services for architectural and building design for a two (2) story infill main street building to be approximately 9,000 s.f. The building will include tenant improvement for the Art Institute. Architect shall coordinate with the engineers. The work will be based on the plans previously provided for Stone Development Group, Inc.

#### **Basic Services**

Given the above-stated approach, we will provide the following basic services:

**CONSTRUCTION PHASE:** After the receipt of bids/proposals, the Consultant shall render the following limited services in connection with the Project for which a construction contract is awarded:

1. The Consultant's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Client of the final Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work.
2. The Consultant, as a representative of the Client, shall visit the site at intervals appropriate to the stage of the Contractor's operations or as otherwise agreed by the Client and the Consultant in the EXECUTION section, (1) to become generally familiar with and to keep the Client informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Client against defects and deficiencies in the Work and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
3. The Consultant shall at all times have access to the Work wherever it is in preparation or progress.
4. Communications by and with the Consultant's consultants shall be through the Consultant.
5. **Certificates For Payment:** The Consultant shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Consultant's certification for payment shall constitute a representation to the Client, based on the Consultant's evaluation of the Work as provided in this Section and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion and (4) to specific qualifications expressed by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed

in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Client, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

7. The Consultant shall prepare Change Orders and Construction Change Directives, with supporting documentation and data, if deemed necessary by the Consultant, for the Client's approval and execution in accordance with the Contract Documents, and may, with the concurrence of the Client, authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; shall receive from the Contractor and forward to the Client, for the Client's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. The Consultant shall interpret and decide matters concerning performance of the Client and Contractor under, and requirements of, the Contract Documents on written request of either the Client or Contractor. The Consultant's response to such requests (RFI's – Requests For Information) shall be made in writing within seven (7) days or otherwise with reasonable promptness.

8. Reimbursable Expenses: Six (6) trips to project site in Bastrop, Texas, for Core and Shell; three (3) trips to project site in Bastrop, Texas for Tenant Improvements.

9. EXCLUSIONS TO BASIC SERVICES (SUPPLEMENTAL SERVICES): The following items are specifically excluded from the Scope of Services. Should Consultant be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Supplemental Services and listed separately from the Basic Services. Consultant assumes no responsibilities for the accuracy of such information or services provided by others. The Consultant may rely on the accuracy of such information, and shall not be liable for errors or omissions therein. Planning; Subdivision, re-zoning or platting; Provide updated survey information for plat preparation and submittal; Prepare subdivision plat in accordance with current City Codes; Prepare supporting engineering documents as required by current City Codes & Manuals; Prepare Subdivision application and submit to the City; Attend City Board and Council meeting(s) as required/authorized by Client (per diem); TCEQ Stormwater pollution prevention plan application and approval; Flood Study; Detention; Water Quality; Private Fire Protection Systems; Special Use Permits; Future Land Use Plan Amendments; FEMA map revisions; Landscape Compliance Plan; Surveying; Septic (On-site-sewer-facility) Design & Permitting; Any Landscape Architecture; Structural Engineering; Foundation Plan; Mechanical/Electrical/Plumbing Engineering; Environmental and/or archeological studies; Backflow prevention; Off-site Utilities, Improvements or roads; Irrigation Design; Signage Design; Written (Book Format) Specifications; Permit Expediting; Project Phasing; Traffic Impact Analysis; Platting; Environmental and/or archeological studies; Geological assessments;

Geotechnical report; Revisions to Owner provided concepts will be billed on an hourly basis pursuant to a separately written lump sum agreement; Regulatory Agency Fees; Neighborhood Meetings and Public Hearings not described above; Any Legal Land Entitlement Documentation, Easement Documentation Preparation or negotiations, license agreements, etc.; Dry utilities including electrical, telephone, cable, data, fiber, etc.; Postage, deliveries and overnight mail services; Plotting, printing, scanning, or other expenses; Any items not included in the scope of services of this agreement; Any legal documents; In the event that the design process is put on hold by the Client/Contractor in excess of ninety (90) days, when the design process is reinitiated, the Consultant will invoice for remobilization time at a rate equal to ten percent (10%) of the phase of services currently in progress.

10. Final Deliverables: Digital PDF copies of deliverables including renderings, construction documents and specifications.

11. "Meetings" are defined as a physical meeting at a physical location, telephone conference call in lieu of a meeting, web conference meeting, or any other medium where two or more persons review and discuss design decisions for the project. This does not include telephone conversations or emails for the purpose of data and information gathering through the process.

**Exhibit "B"**  
**COMPENSATION & FEE SCHEDULE**

Phase 1 (to be paid immediately for services rendered with Stone Development)  
Professional A/E Fees to Complete Core, Shell, and Tenant Improvement Documents:

Past-due invoices to Stone Development Group, Inc.....	\$38,814.75
MEP To be provided for a fixed fee of.....	\$13,491.50
Civil Engineering To be provided for a fixed fee of.....	\$3,300.50
Redesign – Tenant Improvements To be provided for a fixed fee of.....	\$7,200.00
Permit Processing Hourly as Required.....	\$TBD
<b>Sub-Total .....</b>	<b>\$62,806.75</b>

Phase 2

Construction Phase:

Structural construction phase services.....	\$2,805.00
Core and Shell Hourly Not To Exceed.....	\$10,000.00
Based upon an anticipated 6-month construction period	
Tenant Improvements Hourly Not To Exceed.....	\$6,000.00
Based upon an anticipated 6-month construction period	
<b>Sub-Total for Construction Phase .....</b>	<b>\$18,805.00</b>

**Total Basic Services .....** **\$81,611.75**

The fees quoted assume no change in scope of the project or basic services.

Hourly Rates: These apply to hourly budgets and supplemental services beyond the scope of services description.

Principal: .....	\$210.00/hr.
Department Director: .....	\$195.00/hr.
Professional (Engineer/Architect/Landscape Architect): .....	\$165.00/hr.
Senior Project Manager/EIT: .....	\$145.00/hr.
Project Manager: .....	\$135.00/hr.
Staff CAD Technician/Designer: .....	\$110.00/hr.
Administrative: .....	\$85.00/hr.

## Exhibit "C"

### REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the BEDC. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of Bastrop Economic Development Corporation 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, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of Bastrop Economic Development Corporation shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement.
2. A waiver of subrogation in favor of The City of Bastrop Economic Development Corporation shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
3. All insurance policies shall be endorsed to the effect that The City of Bastrop Economic Development Corporation will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Bastrop Economic Development Corporation as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **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.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop Economic Development Corporation of any material change in the insurance coverage.
7. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Professional may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop Economic Development Corporation.
10. Insurance must be purchased from insurers having a minimum A.M. Best rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professional's 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.
13. Upon request, Professional shall furnish The City of Bastrop Economic Development Corporation with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop Economic Development Corporation within ten (10) business days after contract award and prior to starting any work by the successful Professional'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 Economic Development



Corporation, all required endorsements identified in the sections above shall be sent to the City of Bastrop Economic Development Corporation. The certificate of insurance and endorsements shall be sent to:

**City of Bastrop Economic Development Corporation**

Attn: Cameron Cox, Chief Executive Officer

301 Highway 71 West, Suite 214

Bastrop, Texas 78602

**Exhibit "D"**  
**EVIDENCE OF INSURANCE**

## AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Update on 921 Main Street Project by Project Manager Jimmy Crouch.

Prepared by: BEDC Staff

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All workers onsite are using correct PPE, which includes both masks and gloves for protection against COVID-19. Sabre has touchless thermometer onsite and is screening subs daily.

### WORK COMPLETED:

- Underground plumbing
- Pour first floor slab
- Pour second floor slab
- Pour balcony slab
- Pour stairs and landings
- Electrician to site
- Underground plumbing inspection

WORK IN PROGRESS: Electrical rough-in

### WORK SCHEDULED TO BEGIN IN THE NEXT 3 WEEKS:

- Roof penetrations
- Roof curbs
- Roofing of main structure
- Fire sprinkler system
- TPO roofing
- Roof drain piping
- Kingspan structural framing
- Interior wall layout
- Interior wall construction
- Cast stone and brick install
- Underground utilities
- Kingspan delivery
- Fire riser flushing and install
- Concrete removal u/g sewer
- Gutter and roof removal relics

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**Recommendation** – None; item for informational purposes only.



## AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Consideration, discussion and possible action on Resolution R-2020-0020 approving a proposal by Garner Economics (“Addendum to the Economic Development Action Plan presented on January 15, 2020”) to conduct a study to: 1) explore the possibility of automotive and related suppliers as a new target industry for the Bastrop EDC as they relate to the Tesla Gigafactory; and 2) conduct an economic impact analysis of film production and sound stage development in the Bastrop area, in a total amount not to exceed \$18,500.

Prepared by: BEDC Staff

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The Tesla Gigafactory is already moving dirt about twenty miles west of us and hiring local construction companies to build their multi-million square foot facility, employing over 5,000 workers in the next twelve to eighteen months. Therefore, we need to be “supercharged” and ready to move at the speed of Elon.

Jay Garner is proposing to amend his study to include tier 2 and 3 suppliers, manufacturers, and vendors for Tesla’s plant and supporting industries. He has experience in these studies with Toyota and plans to locate and target Tesla specific markets for Bastrop County.

In addition, Jay has experience and knowledge about sound studios and movie industry development. This study would coincide with our Film Bastrop initiative approved by the BEDC Board earlier this year and the newly acquired “Film Hospitality Capital of Texas” designation for Bastrop County. This study will determine the demand for such a studio, if any, and would also help establish the interest in a sound studio by regional and/or national film companies.

Both of these projects and studies are a continuation of the current strategic plan presented on January 15, 2020, and currently being implemented by the BEDC.

Attachments:

Draft Resolution R-2020-0020

Garner Economics’ Addendum to the Economic Development Action Plan

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**Recommendation** – Approve the resolution as submitted.

**[RECOMMENDED MOTION]** – I move to approve Resolution R-2020-0020.



**RESOLUTION NO. R-2020-0020****A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN GARNER ECONOMICS LLC AND THE BEDC TO CONDUCT AN ADDENDUM TO THE EXISTING BEDC STRATEGIC PLAN IN A TOTAL AMOUNT NOT TO EXCEED \$18,500; AUTHORIZING ALL NECESSARY ACTIONS, INCLUDING EXECUTION OF NECESSARY DOCUMENTATION; AND, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”), and is acting with the approval of the governing body of the City of Bastrop, Texas (the “City”); and

**WHEREAS**, to fulfill its public purpose in advancing qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, the BEDC requires certain professional services, including without limitation, the contracting with and hiring of a consulting firm that specializes in the area of strategic planning for economic development organizations; and

**WHEREAS**, in 2019 the BEDC entered into a professional services agreement with Garner Economics LLC to complete a Strategic Plan of the Bastrop area for the BEDC; and

**WHEREAS**, the results of the Strategic Plan were presented at a joint meeting of the City of Bastrop City Council and the BEDC Board of Directors on January 15, 2020; and

**WHEREAS**, the BEDC is now a partner in the Film Bastrop initiative with the City of Bastrop, Bastrop County, Bastrop Chamber of Commerce, and Visit Bastrop and since the time of the release of the results of the Strategic Plan, there has been an increased interest in the film industry and sound studios in the Bastrop area; and

**WHEREAS**, on July 22, 2020, an announcement was made that Tesla has chosen an area in east Austin to build a new Tesla Gigafactory; and

**WHEREAS**, Garner Economics has proposed conducting a study that would: 1) explore the possibility of automotive and related suppliers as a new target industry for the BEDC as they relate to the Tesla Gigafactory; and 2) conduct an economic impact analysis of film production and sound stage development in the Bastrop area; and

**WHEREAS**, after careful evaluation and consideration by the Board, it has determined that this service can be completed most beneficially, efficiently and economically by approving a professional services agreement between the BEDC and Garner Economics LLC, in an amount not to exceed \$18,500.

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place and

**RESOLUTION NO. R-2020-0020**

purpose at which it was read was given in accordance with Chapter 551, Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:**

**SECTION 1.** The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

**SECTION 2.** The Board hereby finds that the provision of certain professional services is necessary for the BEDC's proper advancement of qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, and hereby approves the Chief Executive Officer to enter into a professional services agreement by and between the BEDC and Garner Economics LLC to develop an addendum to the Strategic Plan.

**SECTION 3.** The Board authorizes the Chief Executive Officer to take all necessary actions, including the execution of a Bastrop Economic Development Corporation Professional Services Agreement with attachments consistent with the addendum proposed by Garner Economics LLC and related documentation.

**SECTION 4.** This Resolution is effective upon passage.

**PASSED AND APPROVED** on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by the Board of Directors of the Bastrop Economic Development Corporation.

BASTROP ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Kathryn Nash, Board Chair

ATTEST:

\_\_\_\_\_  
Sam Kier, Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Denton, Navarro, Rocha, Bernal & Zech, P.C.  
Board Counsel

**Garner** | **Economics LLC**  
solutions that work

# Elevating Bastrop: An Addendum to the Economic Development Action Plan

Requested Addendum prepared July 30, 2020 for

**bastrop**  
EDC





## Elevating Bastrop Addendum

Garner Economics, LLC is pleased to have the opportunity to work with Bastrop Economic Development to review several new dynamics in Bastrop and the Austin Metro and construct an addendum to the report completed in 2019 “Elevating Bastrop: An Economic Development Action Plan to Attract Talent and Investment.”

The announcement of the new Tesla Gigafactory to be located near the Austin-Bergstrom International Airport creates new opportunities for Bastrop in terms of automotive suppliers. Secondly, the continued success and growth of the New Republic Studios has created the potential for more new investment. Garner Economics will use its deep knowledge obtained during the report completed in 2019 and study the opportunities for adding an automotive supplier target to its list of business groups to recruit to the area. Additionally, the economic impact of film production to Bastrop and the surrounding area will be examined. Findings from these efforts will be crafted into an addendum to the original report, Elevating Bastrop: An Economic Development Action Plan to Attract Talent and Investment” dated September 2019.



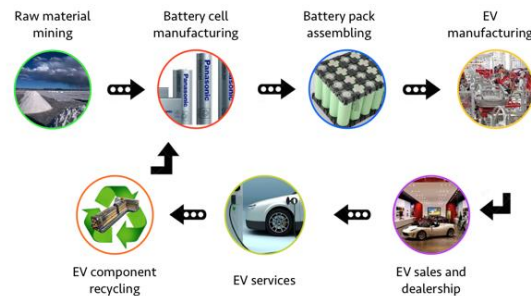
### Automotive Suppliers as a New Target

Texas has three, soon to be four vehicle assembly plants — GM, Peterbilt, Toyota and the recently announced Tesla Gigafactory. Tesla will build its Cybertruck, Semi truck and Model Y at the 2,000-acre site near the Austin International Airport. GM’s facility is located in Arlington, and Peterbilt builds its trucks in Denton, where its headquarters is located. Toyota began production of pickup trucks in San Antonio in 2006, only 100 miles from Bastrop.

While existing facilities may have established supply chains, the new Tesla factory will create a surge of automotive supplier location movement. The supply chain model Tesla began with included more vertical integration with the main components made by them. Tesla is a comparatively young mass-production company and has not yet built the models slated for the Austin facility. Their supply chain will continue to evolve. Tier 1 suppliers will likely locate on the same campus as the assembly facility while Tier 2 & 3 suppliers, in particular, will likely want to locate in the area surrounding the plant. Bastrop stands to benefit from high-value automotive part manufacturers serving Tesla.

Areas to study:

- Tesla’s supply chain history for existing models
- Explore possible supply chain models for new facility
- National trends for automotive parts manufacturing
- Existing assets in Bastrop for auto suppliers



Sample of EV Supply Chain Model





### Economic Impact of Film Studio

Designated as the “Film Hospitality Capital of Texas,” Bastrop is no stranger to film production. Garner Economics identified Film and Creative Services as an optimal target for Bastrop in 2019’s strategy. The continued success of New Republic Studios has put this industry in the spotlight for growth. Bastrop’s proximity to Austin, which is well-known as a film and music hub, is a major asset for this target. Garner Economics will undertake an economic impact analysis of film production in Bastrop resulting in direct benefits along with multiplier effects of this activity. Garner Economics will work with Bastrop EDC staff and film executives to capture the essential inputs such as staffing, vendors and suppliers. This will be a part of the addendum and address the potential for this industry. We will do this by using IMPLAN as a subcontractor to Garner Economics. The final economic impact report is usually 4 to 5 pages long and includes definitions of terms, the direct input data that we used, and the methodology for the report. One of the great things about this service is that you get a certified IMPLAN report that is done by one of IMPLAN’s PhD. economists.

These reports generally take about 4 weeks from when we get a signed statement of work in place, to delivery of the final report.

As far as what data is required to run the report, IMPLAN would need,

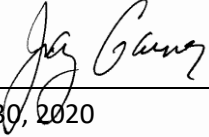
- Where is this business operating?
- What type of businesses is operating? If you can tell us the NAICS code, that would be best. If not, we can figure it out. For example, NAICS code 512110 covers Motion Picture and Video Production
- We will need at least 1 of the 4 following points for the operating businesses
  - Annual total revenue
  - Annual employment
  - Annual employee compensation (this includes benefits so this is the payroll cost to the employer)
  - Annual proprietor income (if the business is a sole proprietorship, how much does the sole proprietor plan to pay himself or herself)

### Project Timing

Garner Economics anticipates a 6-7 week schedule to perform the project as currently described beginning as soon as Bastrop EDC approves the addendum project.

**Fees**

Garner Economics will conduct the work associated with this scope of work for an all-inclusive project fee of \$18,500. This includes the economic impact model from IMPLAN. This proposal will remain in effect for 30 days.

Garner Economics, LLC	Client: Bastrop EDC
Garner Economics, LLC 715 Birkdale Dr. Atlanta (Fayetteville), GA 30215 Federal ID Number: 01-0777742 (P) 770-716-9544   (F) 770-719-8911 jay@garnereconomics.com	
By: Jay A. Garner, President 	By:
Date: July 30, 2020	Date:

It is agreed by the client that payment for the services of Garner Economics is due immediately upon receipt of the invoice and that Garner Economics retains the option to halt work pending the receipt of payment; that all payments will be in US dollars; that full payment is due prior to receipt of the completed report; and that Garner Economics has the right to withhold delivery of the final report pending receipt of any overdue payments.

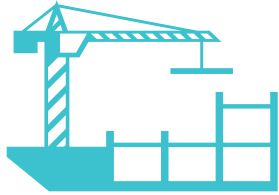
In the event that any invoice is not paid within 30 days after rendering of the invoice, it shall commence bearing interest on the date the invoice was rendered at the rate of 1.5 percent per month and the client agrees to pay all accrued interest, together with the charges for services rendered as provided for in this agreement. In addition, should an unpaid invoice be referred to Garner Economics' attorneys for collection, the client agrees to pay their reasonable fee for such work, as well as any costs of suit which may be incurred.

It is further agreed by the client that the report will be presented to third parties in its entirety and that no abstracting of the report will be made without first obtaining the permission of Garner Economics.

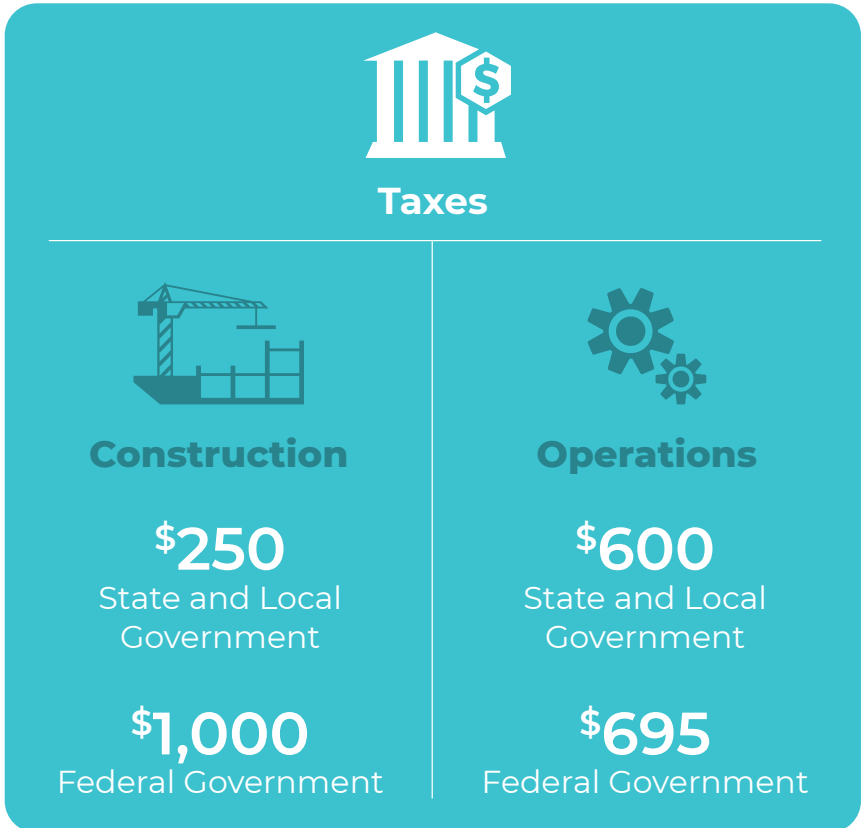
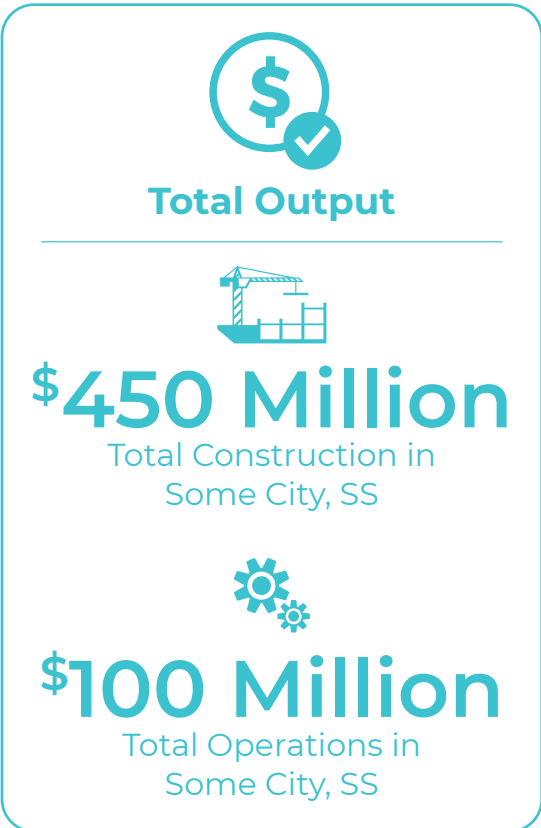
Certifications: Garner Economics, LLC is an Equal Opportunity Employer and our firm and subcontractors do not discriminate on the basis of race, color, national origin, or sex in the performance of this or any contract.

# IMPLAN Co. Name Impact Summary

## Construction & Operations Impact



Co. Name provides exceptional widgets to local markets. Not only are they positively impacting their communities through their amazing widgets, they also have an economic impact. This analysis examines the 2020 construction impact and the 2021 operations impact of the new widget factory built by Co. Name in Some City, Some State.





## Agenda Item: 3.7

# AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Consideration, discussion and possible action on Resolution R-2020-0021 of the Bastrop Economic Development Corporation approving the distribution of a third round of funds to City of Bastrop businesses to assist with the retention of employees, training of employees and the expansion of their business enterprise back to the levels sustained prior to the COVID-19 Pandemic and National Disaster, and in an amount not to exceed \$10,000 per project and per business.

Prepared by: BEDC Staff

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The BEDC has thus far issued approximately \$400,000 to 124 businesses within the City of Bastrop through two rounds of Disaster Relief Grants. With recent increases in COVID-19 cases, the BEDC staff feel another round of Relief Grants would be beneficial to our City's businesses.

The BEDC Board approved a third round of grant funding by Resolution R-2020-0017 at the board meeting on July 20, 2020. They approved a budget amendment in the amount of \$320,000, which will require two separate readings by City Council for approval, with the second reading expected to take place on August 24, 2020.

Attachments:

Draft Resolution R-2020-0021

Performance Agreement

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**Recommendation** – Approve the Resolution as presented.

**[RECOMMENDED MOTION]** – I move to approve Resolution R-2020-0021.



**A RESOLUTION OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE DISTRIBUTION OF FUNDS TO BASTROP BUSINESSES TO ASSIST WITH THE RETENTION AND TRAINING OF EMPLOYEES DURING THE COVID-19 PANDEMIC AND NATIONAL DISASTER, IN AN AMOUNT NOT TO EXCEED \$10,000 PER PROJECT AND PER BUSINESS; AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE ALL NECESSARY PAPERWORK; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

**WHEREAS**, the COVID-19 National Disaster has caused businesses in Bastrop, Texas, to temporarily close and/or experience reductions in sales, workforce, capital development and/or business enterprise retractions for all size businesses located within the City of Bastrop; and

**WHEREAS**, businesses in the City of Bastrop experienced a retraction brought on by the COVID-19 pandemic; and

**WHEREAS**, businesses desire to expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the retraction brought on by the National Disaster declaration and COVID-19 pandemic crisis; and

**WHEREAS**, the BEDC desires to offer a third round of “Relief Grants” as an incentive to City of Bastrop businesses to enable them to expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the National Disaster declaration and COVID-19 pandemic crisis, which promotes or develops new or expanded business enterprise that create or retain primary jobs in substantial conformity with the Act; and

**WHEREAS**, the BEDC provided Bastrop businesses with funds in Resolution-2020-0011 (the first round of Relief Grants approved April 13, 2020); and

**WHEREAS**, the BEDC provided Bastrop businesses with funds in Resolution-2020-0013 (the second round of Relief Grants approved May 11, 2020); and

**WHEREAS**, this third round of Relief Grants will contribute to the City of Bastrop by helping businesses expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the National Disaster declaration, creating a direct overall improvement/stimulus in the local economy; and

**WHEREAS**, the Board considers each business applying for Relief Grants (under all rounds of Relief Grants) a separate Project under the Act and is requiring each Project enter into a Performance Agreement (Exhibit “A”) in accordance with Section 501.158 of the Texas Local Government Code and in a total award amount through the three rounds not to exceed TEN THOUSAND DOLLARS (\$10,000); and

**WHEREAS**, the Board considers each factor and metric used to evaluate the amounts to be awarded to each Project in each of the three rounds of grants and believes these awards are being fairly and objectively decided and distributed; and

**WHEREAS**, the Board is not awarding more than \$10,000 per Project and per business, collectively, under these three rounds of COVID-19 Relief Grants under this Resolution; and

**WHEREAS**, the BEDC Board of Directors approved a budget amendment in the amount of \$320,000 on July 20, 2020, with Resolution R-2020-17, which is to be presented to the City of Bastrop City Council with two readings on August 11<sup>th</sup> and 24<sup>th</sup>, 2020; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place and purpose at which it was read was given in accordance with Chapter 551, Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:**

**SECTION 1.** The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

**SECTION 2.** The Board approves an expenditure to fund COVID-19 Relief Grants in an amount not to exceed \$10,000.00 per Project and business.

**SECTION 3.** The Board approves of the Performance Agreement attached to this Resolution as Exhibit "A" and authorizes BEDC's Chief Executive Officer to execute this Exhibit "A", with any amendments for grant amounts with each business that is an authorized Project under Exhibit "B".

**SECTION 4.** The Board approves of each Project listed in Exhibit "B" and the distribution amounts awarded for each Project's allowed COVID-19 Relief Grant under this Resolution.

**SECTION 5.** The Board authorizes BEDC's Chief Executive Officer to take all necessary actions and to execute all necessary documents to ensure the Relief Grants awarded in Exhibit "B" are distributed in accordance with this Resolution.

**SECTION 6.** This Resolution is effective upon passage.

**PASSED AND APPROVED** on the \_\_\_\_\_ day of \_\_\_\_\_ 2020 by the Board of Directors of the Bastrop Economic Development Corporation.

**[SIGNATURE PAGE FOLLOWS]**

BASTROP ECONOMIC  
DEVELOPMENT CORPORATION

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Kathryn Nash, Board Chair

ATTEST:

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Sam Kier, Board Secretary

APPROVED AS TO FORM:

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Denton, Navarro, Rocha, Bernal & Zech, P.C  
Board Counsel

DRAFT



## ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Performance Agreement (“Agreement”) is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Bastrop Economic Development Corporation, located in Bastrop County, Texas (hereinafter called “Corporation”), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and \_\_\_\_\_ (hereinafter called “Business”), otherwise known as the “Parties” to this Agreement.

### RECITALS

**WHEREAS**, the Development Corporation Act of 1979, as amended (Section 501.001 et seq., Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”) authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

**WHEREAS**, Section 501.158 of the Act requires a performance agreement to provide, at a minimum, for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement, and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

**WHEREAS**, the COVID-19 National Disaster has caused Business in Bastrop, Texas, to temporarily close and/or experience reductions in sales, workforce, capital development and/or development; and

**WHEREAS**, Business desires to retain its number of employees and payroll, as well as its capital investment, to the numbers and amounts prior to the National Disaster declaration and COVID-19 pandemic crisis; and

**WHEREAS**, providing Business with the funds under this Agreement will contribute to the City of Bastrop by helping retain jobs and increase employment back to the numbers prior to the COVID-19 National Disaster, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Bastrop, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

**WHEREAS**, the Corporation desires to offer an incentive to Business to enable Business to retain and increase its employees and payroll to the numbers prior to the COVID-19 National Disaster declaration and to train its employees on how to conduct business during such a National Disaster and pandemic pursuant to this Agreement in substantial conformity with the Act; and

**WHEREAS**, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

**WHEREAS**, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

**WHEREAS**, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings, if any, have been conducted in accordance with Texas law; and

**WHEREAS**, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

#### **ARTICLE I RECITALS**

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

#### **ARTICLE II AUTHORITY AND TERM**

1. Authority. The Corporation's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the Corporation. The Corporation acknowledges that Business is acting in reliance upon the Corporation's performance of its obligations under this Agreement in making the decision to commit substantial resources to the establishment of the "Project" in the above recitals.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Business and the Corporation for the granting of property and funds to cover certain costs associated with the Project and specifically state the covenants, representations of the Parties, and the incentives associated with Business's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement, which has been approved by the Corporation and the Business as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Business

may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the Corporation unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the Corporation delegates the administration and oversight of this Agreement to the Executive Director of the Corporation, or its designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the Corporation.

### **ARTICLE III DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Anniversary/Year” - Performance and incentive calculations based upon years and anniversaries as used in this Agreement shall be calculated with the year and date zero beginning on the date the last party signs this agreement and first anniversary is twelve (12) months from that date, and so on with each year and anniversary from that date forward.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Default”, unless otherwise specifically defined or limited by this Agreement, shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant.

“Effective Date” shall be the date of the last signing by a party to the agreement.

“Expiration Date” shall mean the earlier of:

1. The first anniversary of the Effective Date; or
2. The date of termination, provided for under Article VI of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Job Creation Incentive” means that money provided to the Business as an incentive for the creation and retention of workers and labor force in Bastrop, Texas.

“Project” shall mean the Business’s promise and agreement herein to use the COVID-19 relief funds awarded by the Corporation to contribute to the City of Bastrop by helping retain jobs and increase employment back to the numbers prior to the COVID-19 National Disaster, as well as to train its employees on how to conduct business safely and in accordance with Center for Disease Control standards during this and any future similar National Disaster declaration.

#### **ARTICLE IV CORPORATION OBLIGATION**

1. COVID-19 Relief Award.

Corporation shall pay a one-time payment of \$\_\_\_\_\_ (“Incentive”) to Business as its COVID-19 relief funds in accordance with the Project, which shall be made available via direct deposit or mailed by check by the City of Bastrop.

2. Job Creation Incentive.

This Incentive is being awarded to Business for it to expand to the size, enterprise and/or revenue levels experienced by the Business prior to the National Disaster declaration and COVID-19 pandemic crisis that caused economic and business retraction. This Incentive is being provided to promote or develop new or expanded business enterprise that create or retain primary jobs in substantial conformity with the Act. Business is obligated to retain jobs or increase its employment or payroll back or business enterprise back to the numbers prior to the COVID-19 National Disaster, as well as to train its employees on how to conduct business safely and in accordance with Center for Disease Control standards during this and any future similar National Disaster declaration.

Business further agrees to provide Corporation with the following information on or before the Expiration Date:

- (a) 2020 ad valorem tax receipt showing Business’s personal property taxes paid for 2020 (should be available February 2021 at latest);
- (b) February 2021 Texas Comptroller of Public Accounts sales tax receipt; and,
- (c) Texas Workforce Commission’s Unemployment Tax Services Employer’s Quarterly Report filed January 2021 (or comparable TWC statement or receipt showing payroll numbers for January 2021).

3. Confidentiality. The Corporation agrees to the extent allowed by law to keep all tax information and documentation received, pursuant to this Agreement hereof, confidential. In the event a request is made for such information, Corporation will not disclose the information unless required to do so by the Attorney General of Texas.

4. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the Corporation. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

**ARTICLE V**  
**COVENANTS AND DUTIES**

1. Business's Covenants and Duties. Business makes the following covenants and warranties to the Corporation, and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Business.
  - (a) Business is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
  - (b) The execution of this Agreement has been duly authorized by Business's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Business's by-laws, or of any agreement or instrument to which Business is a party to or by which it may be bound.
  - (c) Business is not a party to any Bankruptcy proceedings currently pending or contemplated, and Business has not been informed of any potential involuntary Bankruptcy proceedings.
  - (d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Business has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Bastrop and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
  - (e) Business shall timely and fully comply with all of the terms and conditions of this Agreement.
  - (f) Business shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.
  - (g) During the term of this Agreement, Business agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Business shall be in Default (subject to the obligations in Article IV and the remedies in Article VII). Business is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Business or by a person with whom Business contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Business enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.

- (h) Business shall not be in arrears and shall be current in the payment of all City taxes and fees.
  - (i) Corporation has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement.
  - (j) Business shall repay all relief funds should a Chapter 501-505, *et seq.*, Section 505.160 petition be filed within the sixty (60) day publication and protest period, and Business agrees that these funds are being distributed prior to the sixty (60) day publication period ending.
2. Compliance and Default. Failure by Business to timely comply with any performance requirement, duty, or covenant shall be considered an act of Default and shall give the Corporation the right to terminate this Agreement and collect the Recapture Amount, as determined by the Board of Directors of the Corporation.

#### **ARTICLE VI TERMINATION**

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:
- (a) The written agreement of the Parties;
  - (b) The Agreement's Expiration Date;
  - (c) Default by Business (at the option of the Corporation).

#### **ARTICLE VII DEFAULT**

1. Business Events of Default.
- (a) Failure of Business to perform under this Agreement.
  - (b) Corporation determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to Corporation in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
  - (c) Any judgment is assessed against Business or any attachment or other levy against the property of Business with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of thirty (30) days; or
  - (d) Business makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee

of Business or any substantial part of its property, commences any action relating to Business under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against Business any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or Business by any act indicates its consent to or approval of any trustee of Business or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or

- (e) Business substantially changes its present ownership without written notification to Corporation within thirty (30) days of such change; or
- (f) Business changes the general character of business as conducted at the date hereof, or engages in any type of business not reasonably related to its business as presently and normally conducted.

2. Remedies for Default.

- (a) In the event of Default by the Business, the Corporation shall, as its sole and exclusive remedy for Default hereunder, have the right to terminate this Agreement and to recapture one hundred percent (100%) of the Job Creation Incentive (the "Recapture Amount") if the Default occurs on or prior to the termination date.
- (b) Business agrees a remedy for Default is the Corporation seeking a mandamus from a court of competent jurisdiction; or the appointment of a receiver in equity with the power to charge and collect rents, purchase price payments, and loan payments; and, apply the revenue from the Project in accordance with this Agreement.

**ARTICLE VIII  
MISCELLANEOUS**

- 1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director or Board Chair of the Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the Corporation, on behalf of the Parties related thereto.
- 2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
- 3. Representations and Warranties. The Corporation represents and warrants to Business that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Business represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement.



4. Assignment. Business shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the Corporation. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Business of any liability to the Corporation, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The Corporation may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.
5. Independent Contractors.
- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Business at no time will be acting as an agent of the Corporation and that all consultants or contractors engaged by Business respectively will be independent contractors of Business; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the Corporation will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Business respectively under this Agreement, unless any such claims are due to the fault of the Corporation.
- (b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (c) No employee of the Corporation, or any board member, or agent of the Corporation, shall be personally responsible for any liability arising under or growing out of this Agreement.
6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If intended for BEDC:

Bastrop Economic Development Corporation  
Attention: Executive Director  
301 Highway 71 W, Suite 214  
Bastrop, TX 78602

With a copy to:

Denton, Navarro, Rocha, Bernal, & Zech PC  
Attention: Charles E. Zech  
2517 North Main Avenue  
San Antonio, TX 78212

If to the Business:



Any Party may designate a different address at any time upon written notice to the other Parties.

7. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

(a) Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VII above) shall be in the Courts of Bastrop County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

(b) Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation and paid for by the Business.

8. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except Corporation Board approved amendments to this Agreement.

10. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

11. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

12. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

13. Indemnification.

**BUSINESS AGREES TO DEFEND, INDEMNIFY AND HOLD THE CORPORATION AND THE CITY OF BASTROP (“CITY”), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CORPORATION HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF BUSINESS TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF BASTROP, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY BUSINESS UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CORPORATION OR CITY. THE PROVISIONS OF THIS SECTION 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, IT BEING THE INTENTION OF THE PARTIES THAT BUSINESS SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID AND PROPERTY GRANTED TO BUSINESS HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE CORPORATION.**

14. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

15. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Business, the Business shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_ 2020

**Business:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

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

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

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**BASTROP ECONOMIC  
DEVELOPMENT CORPORATION**

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

**Name:** Cameron Cox

**Title:** CEO Bastrop EDC



## Agenda Item: 3.8

# AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: Consideration, discussion and possible action on Resolution R-2020-0022 of the Bastrop Economic Development Corporation approving the distribution of funds to City of Bastrop businesses to assist with the retention of employees, training of employees and the expansion of their business enterprise back to the levels sustained prior to the COVID-19 Pandemic and National Disaster, and in an amount exceeding \$10,000.00 per project and per business.

Prepared by: BEDC Staff

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The BEDC has thus far issued approximately \$400,000 to 124 businesses within the City of Bastrop through two rounds of Disaster Relief Grants. With recent increases in COVID-19 cases, the BEDC staff feel another round of Relief Grants would be beneficial to our City's businesses.

The BEDC Board approved a third round of grant funding by Resolution R-2020-0017 at the board meeting on July 20, 2020. They approved a budget amendment in the amount of \$320,000, which will require two separate readings by City Council for approval, with the second reading expected to take place on August 24, 2020.

A small number of our larger employers in Bastrop require more than the allotted maximum of \$10,000 in Relief Grants due to the fact their operating costs and expenses exceed \$10,000 a month, with lost revenues in excess of 25% for the months of May, June and/or July 2020, and expect to continue to experience losses in the upcoming months, as well. These businesses have been the hardest hit by the COVID-19 pandemic – tourism, restaurant, accommodations and entertainment businesses. If approved by the BEDC Board, these projects would require two separate readings by City Council for approval of a project over \$10,000.

Attachments:

Draft Resolution R-2020-0022

(Same Performance Agreement used under item 3.7)

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**Recommendation** – Approve the Resolution as presented.

**[RECOMMENDED MOTION]** – I move to approve Resolution R-2020-0022.



**A RESOLUTION OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE DISTRIBUTION OF FUNDS TO BASTROP BUSINESSES TO ASSIST WITH THE RETENTION AND TRAINING OF EMPLOYEES DURING THE COVID-19 PANDEMIC AND NATIONAL DISASTER, IN AN AMOUNT EXCEEDING \$10,000 PER PROJECT AND PER BUSINESS; AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE ALL NECESSARY PAPERWORK; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

**WHEREAS**, the COVID-19 National Disaster has caused businesses in Bastrop, Texas, to temporarily close and/or experience reductions in sales, workforce, capital development and/or business enterprise retractions for all size businesses located within the City of Bastrop; and

**WHEREAS**, businesses in the City of Bastrop experienced a retraction brought on by the COVID-19 pandemic; and

**WHEREAS**, businesses desire to expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the retraction brought on by the National Disaster declaration and COVID-19 pandemic crisis; and

**WHEREAS**, the BEDC desires to offer a third round of “Relief Grants” as an incentive to City of Bastrop businesses to enable them to expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the National Disaster declaration and COVID-19 pandemic crisis, which promotes or develops new or expanded business enterprise that create or retain primary jobs in substantial conformity with the Act; and

**WHEREAS**, the BEDC provided Bastrop businesses with funds in Resolution-2020-0011 (the first round of Relief Grants approved April 13, 2020); and

**WHEREAS**, the BEDC provided Bastrop businesses with funds in Resolution-2020-0013 (the second round of Relief Grants approved May 11, 2020); and

**WHEREAS**, this third round of Relief Grants will contribute to the City of Bastrop by helping businesses expand to the size, employment, enterprise and/or revenue levels experienced by those businesses prior to the National Disaster declaration, creating a direct overall improvement/stimulus in the local economy; and

**WHEREAS**, the Board considers each business applying for Relief Grants (under all rounds of Relief Grants) a separate Project under the Act and is requiring each Project enter into a Performance Agreement (Exhibit “A”) in accordance with Section 501.158 of the Texas Local Government Code; and

**WHEREAS**, the Board considers each factor and metric used to evaluate the amounts to be awarded to each Project and believes these awards are being fairly and objectively decided and distributed; and

**WHEREAS**, a small number of local businesses require more than the allotted maximum \$10,000 in COVID-19 grant funds because their operating costs and expenses exceed approximately \$10,000 per month, with revenue losses in excess of 25% for the months of May, June and/or July 2020, and expected continued losses in revenues for the months of August, September and October 2020; and

**WHEREAS**, these businesses are the larger employers within the City of Bastrop and represent the hardest hit of the industries in our city, which are the restaurant, hotel, tourism and entertainment industries; and

**WHEREAS**, in order to enable these businesses to survive the pandemic and expand back to the size, employment and revenue levels experienced prior to March 2020, these funds are necessary to expand these businesses back to those levels they experienced before this economic disaster; and

**WHEREAS**, a Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings; and

**WHEREAS**, the BEDC Board of Directors approved a budget amendment in the amount of \$320,000 on July 20, 2020, with Resolution R-2020-0017, which is expected to be approved by the City of Bastrop City Council on August 24, 2020; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place and purpose at which it was read was given in accordance with Chapter 551, Texas Government Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:**

**SECTION 1.** The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

**SECTION 2.** The Board approves an expenditure to fund COVID-19 Relief Grants in an amount exceeding \$10,000.00 per Project and business.

**SECTION 3.** The Board approves of the Performance Agreement attached to this Resolution as Exhibit "A" and authorizes BEDC's Chief Executive Officer to execute this Exhibit "A" with each business that is an authorized Project under Exhibit "B".

**SECTION 4.** The Board approves of each Project listed in Exhibit “B” and the distribution amounts awarded for each Project’s allowed COVID-19 Relief Grant under this Resolution.

**SECTION 5.** The Board authorizes BEDC’s Chief Executive Officer to take all necessary actions and to execute all necessary documents to ensure the Relief Grants awarded in Exhibit “B” are distributed in accordance with this Resolution.

**SECTION 6.** This Resolution is effective upon passage.

**PASSED AND APPROVED** on the \_\_\_\_\_ day of \_\_\_\_\_ 2020 by the Board of Directors of the Bastrop Economic Development Corporation.

BASTROP ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Kathryn Nash, Board Chair

ATTEST:

\_\_\_\_\_  
Sam Kier, Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Denton, Navarro, Rocha, Bernal & Zech, P.C  
Board Counsel



## AGENDA MEMORANDUM

Meeting Date: August 17, 2020

Agenda Item: CEO updates on Downtown Trail Project; BEDC website analytics; COVID-19 grant help around the state; and election of Board officers at the regular board meeting on September 21, 2020.

Prepared by: BEDC Staff

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TxDOT has approved Bowman Consulting's project design for our Downtown Trail Project, and we are moving forward with the construction phase. The total cost of the project provided by Bowman in their Opinion of Probable Cost (OPC) is \$610,909.76. The next step will be for Bowman Consulting to bid out the project for construction; our contract with Bowman has them overseeing this bidding and construction phase.

Our website is now able to do forensic analytics and I'll explain what all that means at our meeting.

The BEDC has helped 34 different organizations, mainly cities and EDCs from around the state, with its COVID-19 Grant Relief packet. The packet was sent to these organizations containing "fill in the blank" documents: (1) a COVID grant news release; (2) a statutory performance agreement; (3) business application spreadsheets; (4) online and pdf form applications to fill out by each business applying; (5) internal policies and tasks delegation; and (6) the general "road map" to start and finish the grant process legally in Texas for cities and EDCs.

The CEO also presented a webinar entitled "Tales from the Front Line," and provided a Q&A session with EDCs from around the state on how to implement grant programs through the TEDC. He is also being invited to present on the same topic at TEDC's Annual Conference October 5-9, 2020.

Board Officers are required to be elected at our meeting on September 21, 2020. If you would like to be considered for officer and/or are an officer already and would like to continue (or not), then please let our Board Chair know and the Board can discuss and vote next month.

Attachments:

OPC from Bowman Consulting for Downtown Trail Project

Examples of analytics from new website

List of cities and other organizations assisted

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**Recommendation** – No recommendation; item for informational purposes only.





July 21, 2020

Bastrop River Loop Sidewalk

Engineers Opinion of Probable Cost

## Preparation and Demolition

Item Number	Description Code	Quantity	Unit	Description	Unit Price	Amount
1	B	33	STA	Preparing Right of Way	\$1,281.63	\$42,165.63
2	A	328	SY	Removing Concrete (Pavement)	\$8.20	\$2,689.60
2	B	145	SY	Remove Concrete (Sidewalks)	\$10.41	\$1,509.45
2	C	753	SY	Removing Concrete (Driveways)	\$16.79	\$12,642.87
2	D	65	LF	Remove Concrete (Curb and Gutter)	\$7.66	\$497.90
2	E	1	SY	Removing Concrete Ramp	\$105.00	\$105.00
3	A	116	SY	Removing Stab Base and Asphalt Pavement (2"-6")	\$2.52	\$292.32
4	A	311	CY	Excavation (Channel)	\$13.74	\$4,273.14
14	A	189	CY	Embankment (Final, Ord Comp, Type B)	\$6.83	\$1,290.87
<b>SUBTOTAL</b>						<b>\$65,466.78</b>

## Construction

Item Number	Description Code	Quantity	Unit	Description	Unit Price	Amount
15	A	1	LS	Mobilization (8% of Total)	\$411,497.33	\$32,919.79
16	A	1	EA	Survey and Stake Right of Ways	\$35,000.00	\$35,000.00
17	A	6	MO	Barricades, Signs, and Traffic Handling	\$8,869.25	\$53,215.50
9	A	109	LF	Concrete Curb & Gutter (TY II)	\$16.24	\$1,770.16
10	A	606	SY	Concrete Driveways	\$87.61	\$53,091.66
5	A	372	SY	HMAC (TY-D PG70-22)	\$107.50	\$39,990.00
11	A	2,360	SY	Concrete Sidewalks 5"	\$48.89	\$115,380.40
6	A	5	EA	Concrete Bridge	\$2,500.00	\$12,500.00
7	A	958	LF	Cut or Fill Wall (6" to 36" Height)	\$20.00	\$19,160.00
8	A	266	LF	Handrail Type	\$97.98	\$26,062.68
11	A	6	EA	Curb Ramps (Type 7)	\$1,654.76	\$9,928.56
<b>SUBTOTAL</b>						<b>\$399,018.75</b>

## Signing &amp; Markings

Item Number	Description Code	Quantity	Unit	Description	Unit Price	Amount
12	A	2	EA	Relocate Sign	\$437.50	\$875.00
12	B	2	EA	Relocate Sign	\$403.42	\$806.84
13	A	380	LF	Reflective Pavement Marking Type I	\$1.00	\$380.00
13	B	1	EA	Reflective Pavement Type I (Symbol Only)	\$1,500.00	\$1,500.00
<b>SUBTOTAL</b>						<b>\$3,561.84</b>



**Bastrop River Loop Sidewalk  
Engineers Opinion of Probable Cost**

**Erosion & Sedimentation Control**

Item Number	Description Code	Quantity	Unit	Description	Unit Price	Amount
18	A	3,771	SY	Block Sodding	\$3.00	\$11,313.00
19	A	1,908	LF	Temp Sediment Control Fence Install	\$2.58	\$4,922.64
19	B	1,907	LF	Temp Sediment Control Fence Remove	\$0.67	\$1,277.69
19	C	326	LF	Inlet Protection	\$5.00	\$1,630.00
<b>SUBTOTAL</b>						<b>\$19,143.33</b>

**Summary**

Preparation and Demolition	\$65,466.78
Construction	\$399,018.75
Signing & Markings	\$3,561.84
Erosion & Sedimentation Control	\$19,143.33
<b>Sub-Total:</b>	<b>\$487,190.69</b>
<b>Allowance for Field Eng./ Field Changes</b>	<b>\$75,000.00</b>
<b>Cost Contingency (10%)</b>	<b>\$48,719.07</b>
<b>TOTAL :</b>	<b>\$610,909.76</b>

Notes:

1. All cost estimates presented in this opinion of probable cost are Bowman Consultants' opinion of probable project, construction, and/or operation and maintenance cost. Cost estimates are made on basis of our experience and represent our best judgment.
2. Bowman cannot guarantee that proposal, bids, or actual construction cost will not vary from estimates of project cost, construction, and/or operation and maintenance costs presented. The construction cost are based on TXDOT average low bid prices.
3. The quantities shown in this cost estimate are approximate and were delineated in order to prepare as thorough an estimate as possible. Final quantities may vary from these after revision of construction plans per City/TXDOT comments for the project and field changes.

Website Page Name	Number of Visits
Bastrop EDC	489
COVID 19 Relief Grants	117
Oops! 404 Page Not Found.	102
Bastrop Community History	40
Bastrop Edcs Covid19 Relief Grants Round Three Announcement	40
Bastrop County Opens Applications For Small Business Grants	24
New Developments in Bastrop, TX	20
Bastrop, TX Workforce	20
Contact Bastrop EDC	20
Arts and Culture in Bastrop, TX	14
Bastrop EDC COVID-19 Relief Grants	12
Bastrop EDC Board of Directors	12
Bastrop, TX Housing	12
Bastrop, TX Healthcare	11
Bastrop, TX Sites and Buildings	10
Bastrop EDC Board Materials	9
Bastrop, TX Education	9
Bastrop EDC Staff	9
Bastrop, TX Incentives	8
Bastrop Edc Awards 185000 In Relief Grants To 62 Bastrop Businesses Amid Coronavirus	7
Oops! 404 Page Not Found.	7

Bastrop EDC News and Resources	7
Bluebonnet Electric Cooperative	6
Bastrop, TX Traffic Counts	6
Bastrop, TX Major Employers	6
Bastrop, TX Higher Education	6
Oops! 404 Page Not Found.	6
Cameron Cox	5
Film Bastroportunities	5
About Bastrop EDC	5
Recreation in Bastrop, TX	5
Oops! 404 Page Not Found.	5
Youth Career Day 2019 In Bastrop Video	5
Bastrop EDC Community History	5
Bastrop is Austin's Next Frontier	4
Centerpoint Energy	4
2017 Update To The Housing Study	4
Oops! 404 Page Not Found.	4
Business in Bastrop, TX	4
Ron Spencer	3
Bastrop, TX Community Profile	3
Bastrop, TX Target Industries	3
Oops! 404 Page Not Found.	3
Capital Area Rural Transportation System Carts	3

Agilent Technologies	3
Oops! 404 Page Not Found.	3
Jean Riemenschneider Graduates From Ou Edi	3
Oops! 404 Page Not Found.	3
Oops! 404 Page Not Found.	3
Oops! 404 Page Not Found.	3
Bastrop's Central Location	3
Site Selection in Bastrop, TX	3
Oops! 404 Page Not Found.	3
Bastrop Brochure	3
Oops! 404 Page Not Found.	2
Bastrop EDC	2
Oops! 404 Page Not Found.	2
Deep In The Heart Art Foundry	2
Bastrop Crafting Permanent Food Truck Ordinance	2
Kevin Plunkett	2
Lost Pines Center For Cancer Care	2
Bastrop Business and Industrial Park	2
**Page title not available**	2
Buy Bastrop	2
Bedc Cash A Life Raft To Bastrop Businesses Most Expected To Survive	2
Oops! 404 Page Not Found.	2
Oops! 404 Page Not Found.	2

Bastrop EDC Success Stories	2
Oops! 404 Page Not Found.	2
Bastrop EDC Economic Development Partners	2
Sba Economic Injury Disaster Declaration Information	2
Oops! 404 Page Not Found.	1
Bastrop EDC Governing Documents	1
Oops! 404 Page Not Found.	1
**Page title not available**	1
Oops! 404 Page Not Found.	1
Downloaded - /media/userfiles/subsite_157/files/board/01_27_20_Board_Retreat_Agenda.pdf	1
Opportunity Austin	1
Bastrop EDC Site Map	1
Oops! 404 Page Not Found.	1
The Art Institute Of Austin Selects Bastrop As New Central Texas Location	1
Oops! 404 Page Not Found.	1
Youth Career Day 2019 In Bastrop Video	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Bastrop EDC	1
Bastrop EDC Workforce Programs	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Entertainment in Bastrop, TX	1

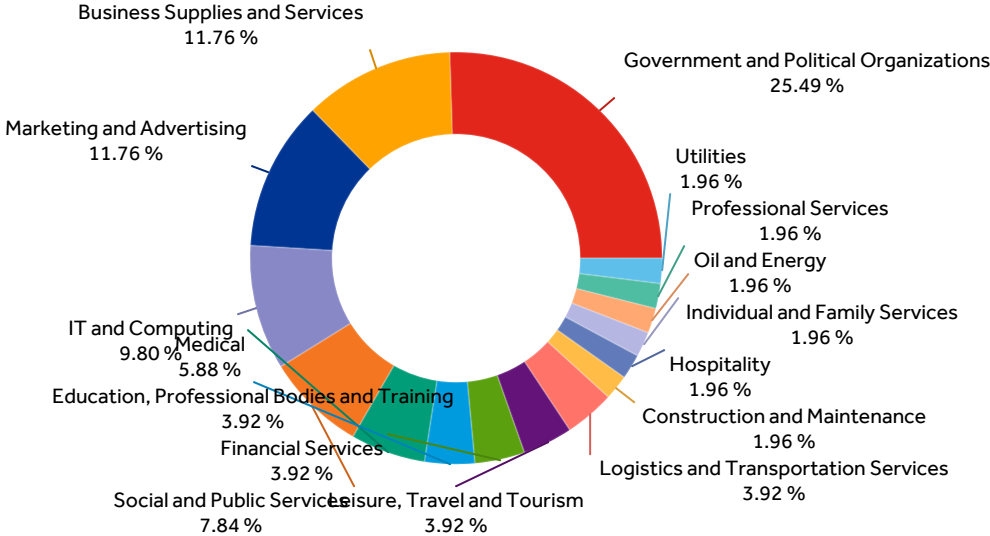
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Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Texas Economic Development & Tourism	1
Bastrop Power & Light	1
Bastrop Breaks Ground On Main Street Rehab Project	1
Workintexas.com	1
Oops! 404 Page Not Found.	1
Cameron Cox	1
Jean Riemenschneider	1
Jean Riemenschneider	1
Bastrop EDC Business Resources	1
Oops! 404 Page Not Found.	1
Bastrop Independent School District Bisd	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Bastrop Edcs Covid19 Relief Grants Round Three Announcement	1
Bastrop Edcs Covid19 Relief Grants Round Three Announcement	1
Seton Opens 30m Neighborhood Hospital In Bastrop	1
Oops! 404 Page Not Found.	1



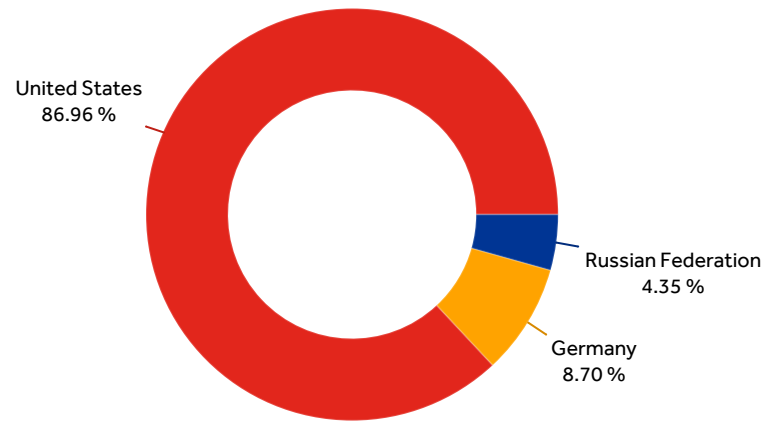
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Oops! 404 Page Not Found.	1
Bastrop Edcs Covid19 Relief Grants Round Three Announcement	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
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Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Jean Riemenschneider	1
Oops! 404 Page Not Found.	1
Bastrop, TX Location Advantages	1
Bastrop Chamber Of Commerce	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Bastrop, TX Area Talent	1
Compare Communities with Bastrop, TX	1
Bastrop EDC Workforce Programs	1
Bastrop Central Appraisal District Bcad	1
Oops! 404 Page Not Found.	1
Governors Office Small Business Handbook	1
Virtual Youth Career Expo	1

Bastrop EDC Economic Development Partners	1
Ascension Seton Bastrop Hospital Marks Construction Milestone	1
Building a Better Bastrop	1
At&t	1
Oops! 404 Page Not Found.	1
Bastrop County Opens Applications For Small Business Grants	1
Bastrop, TX Community	1
Oops! 404 Page Not Found.	1
Oops! 404 Page Not Found.	1
Bastrop EDC Workforce Programs	1

Industry	% of Visits	Number of Visits
Government and Political Organizations	25.49 %	13
Marketing and Advertising	11.76 %	6
Business Supplies and Services	11.76 %	6
IT and Computing	9.80 %	5
Social and Public Services	7.84 %	4
Medical	5.88 %	3
Logistics and Transportation Services	3.92 %	2
Leisure, Travel and Tourism	3.92 %	2
Financial Services	3.92 %	2
Education, Professional Bodies and Training	3.92 %	2
Utilities	1.96 %	1
Professional Services	1.96 %	1
Oil and Energy	1.96 %	1
Individual and Family Services	1.96 %	1
Hospitality	1.96 %	1
Construction and Maintenance	1.96 %	1



Country	% of Visits	Number of Visits
United States	86.96 %	20
Germany	8.70 %	2
Russian Federation	4.35 %	1



**CITIES, TOWNS AND ORGANIZATIONS HELPED BY BEDC COVID-19 RELIEF  
GRANT PACKET**

1. Kerrville
2. Hondo
3. Grand Prairie
4. Texas Municipal League (TML)
5. Texas Economic Development Council (TEDC) Webinar & TEDC Annual Meeting presenter
6. Texas Downtown Association
7. Cibolo
8. Schertz
9. San Antonio
10. Crowley
11. Mineral Wells
12. Sweeny
13. Navasota
14. Sugarland
15. Prairie View
16. Luling
17. Canton
18. Universal City
19. The Colony
20. Burnet
21. University of Texas
22. Texas A&M
23. Beeville
24. Bee Cave
25. Yoakum
26. Winfree EDC
27. Cuero EDC
28. Bowie
29. New Braunfels
30. Sequin
31. Smithville
32. Slaton
33. Gonzales
34. Big Spring