

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



March 26, 2024

Joint Meeting with BEDC at 5:30 PM

Regular City Council Meeting at 6:30 PM

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

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

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

1. 5:30 PM - CALL TO ORDER JOINT MEETING

2. JOINT MEETING WITH BASTROP CITY COUNCIL AND BASTROP ECONOMIC DEVELOPMENT CORPORATION

2A. Joint Meeting with the Bastrop Economic Development Corporation (BEDC) regarding a Sports Complex and a potential Qualified Hotel Project (QHP) and action to potentially create a project for BEDC.

Submitted by: Sylvia Carrillo-Trevino, ICMA-CM, CPM, Interim Executive Director of the BEDC and City Manager

3. 6:30 PM - CALL TO ORDER REGULAR MEETING

4. **PLEDGE OF ALLEGIANCE** - Alyvia Tamayo and Kynleigh Whitworth, Mina Elementary Gifted and Talented Program

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

5. **INVOCATION** - Bob Long, Police Chaplain

6. **PRESENTATIONS**

6A. Mayor's Report

6B. Council Members' Report

6C. City Manager's Report

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

8. **STAFF AND BOARD REPORTS**

8A. Receive Annual Racial Profiling Report from the City of Bastrop Police Department.

Submitted by: Vicky Steffanic, Chief of Police

9. **CITIZEN COMMENTS**

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

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

10. **APPROVAL OF MINUTES**

10A. Consider action to approve City Council minutes from the March 12, 2024, Regular meeting.

Submitted by: Ann Franklin, City Secretary

11. ITEMS FOR INDIVIDUAL CONSIDERATION

[11A.](#) Consider action to approve Resolution No. R-2024-33 of the City Council of the City of Bastrop, Texas, approving Amendment #6 to the Task Authorization #2, of the original Professional Services Agreement with Freese and Nichols, Inc. (FNI) to provide additional construction phase services for the Simsboro Water Treatment Plant, Well Field, and Transmission Facilities project for a not to exceed amount of Five Hundred Sixteen Thousand, Nine Hundred Seventy-Five Dollars (\$516,975.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Fabiola de Carvalho, CFM, AMP MIAM, Executive Director of Engineering and Construction Management

[11B.](#) Consider action to approve Resolution No. R-2024-37 of the City Council of the City of Bastrop, Texas, approving and ratifying the execution of a Wholesale Wastewater Services Agreement and a Wastewater Facility Payment Contribution Agreement between the City and Corix Utilities Inc., as attached as Exhibits A and B respectively; providing for a repealing clause; and establishing an effective date.

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

[11C.](#) Consider action to approve Resolution No. R-2024-34 of the City Council of the City of Bastrop, Texas, approving a Wastewater Easement Acquisition Agreement between the City and Corix Utilities Inc., as attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

[11D.](#) Consider action to approve Resolution No. R-2024-35 of the City Council of the City of Bastrop, Texas, approving an Agreement between the City, 7Arrows Land Staff, LLC, and Corix Utilities Inc., for 7Arrows Land Staff, LLC, to provide professional land rights acquisition services in the amount not to exceed Five Hundred Thousand Five Hundred Dollars (\$500,500.00), as attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

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

[11E.](#) Consider action to approve the first reading of Ordinance No. 2024-08 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 14, The Bastrop Building Block (B3) Code, Article 9.2 Categories Of Preservation establishing standards and procedures; as attached in Exhibit A; and providing for findings of fact, repealer, severability, codification, effective date, proper notice, and meeting and move to include on the April 9, 2024, Consent Agenda for the second reading.

Submitted by: Kennedy Higgins, Senior Planner, Development Services Department

[11F.](#) Consider action to approve the first reading of Ordinance No. 2024-10 authorizing the amendment of the City of Bastrop FY2024 budget with a reduction of \$25,000 in revenue received from the Bastrop Economic Development Corporation allocated to the Main Street program; providing for severability; repealing conflicting ordinances; providing an

effective date; providing for proper meeting and notice; and move to include on the April 9, 2024, Consent Agenda for second reading.

Submitted by: Sylvia Carrillo-Trevino, ICMA-CM, CPM, City Manager, and Interim Director of the BEDC

- [11G.](#) Consider action to approve Resolution No. R-2024-36 of the City Council of the City of Bastrop, Texas confirming appointments by the Mayor of Richard Smarzik to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board as required in Section 3.08 of the City's Charter; and establishing an effective date.

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

- [11H.](#) Consider action to approve Resolution No. R-2024-39 of the City Council of the City of Bastrop, Texas, approving an Interlocal Agreement with the Bastrop County Water Control and Improvement District No. 2 for the maintenance and improvement of certain streets, as attached in Exhibit A; authorizing the execution of all necessary documents; providing for repealer; and providing an effective date.

Submitted by: Andres Rosales, Interim Assistant City Manager

- [11I.](#) Consider action to approve Resolution No. R-2024-40 of the City Council of the City of Bastrop, Texas, approving an interlocal agreement with the Bastrop County for the maintenance and improvement of certain streets, as attached in Exhibit A; authorizing the execution of all necessary documents; providing for repealer; and providing an effective date.

Submitted by: Andres Rosales, Interim Assistant City Manager

- [11J.](#) Consider action to approve Resolution No. R-2024-38 of the City Council of the City of Bastrop, Texas adopting the previously accepted 2023 City of Bastrop Parks, Recreation and Open Space Master Plan.

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

- [11K.](#) Consider action to approve Resolution No. R-2024-29 regarding a petition filed by Eron R. Smith to remove approximately 128.563 acres of land, as described in the petition, from the City of Bastrop's extraterritorial jurisdiction pursuant to Local Government Code Chapter 42.

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

12. EXECUTIVE SESSION

- 12A. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding Visit Bastrop's Destination and Marketing Services Agreement and related policies, procedures, and practices.

- 12B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding the plans for the potential annexation of certain county roads as related to future development projects.

- 12C. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding current laws and procedures for the creation of a Municipal Utility District.
- 12D. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding current laws and procedures for creation of a Public Improvement District.
- 12E. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding a Mutual Release and Termination of Development Agreement with Bastrop Colorado Bend, LLC, including de-annexation of Bastrop 552 Project property.
- 13. TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION**
- 14. ADJOURNMENT**

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

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

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City's website, www.cityofbastrop.org and said Notice was posted on the following date and time: Friday, March 22, 2024 at 2:00 p.m. and remained posted for at least two hours after said meeting was convened.

/s/Victoria Psencik
Victoria Psencik, Assistant City Secretary



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Joint Meeting with the Bastrop Economic Development Corporation (BEDC) regarding a Sports Complex and a potential Qualified Hotel Project (QHP) and action to potentially create a project for BEDC.

AGENDA ITEM SUBMITTED BY:

Sylvia Carrillo-Trevino, ICMA-CM, CPM, Interim Executive Director of the BEDC and City Manager

BACKGROUND/HISTORY:

A discussion of a proposed regional sports facility in the remaining undeveloped land in the Industrial Park.

The City Manager has engaged Luck Designs to create:

- 1) Base model development with sports facilities, roadways, walks, to include basic architectural building/garage structures. (Sketch-up)
- 2) Create some topo relief/terracing to accommodate facilities. (Sketch-up/Lumion)
- 3) Generate up to six (6) birds-eye views of complex; two (2) detailed eye views of 2 areas (Lumion/Photoshop)
- 4) Two (2) rounds of general revisions.

The proposed cost for the above is \$26,200 and it will be paid by the BEDC.

The proposed schedule is a joint meeting for visioning and expectations, followed by another joint meeting after the layout has been completed. Finally, the proposed plan includes a P3 partnership (Public Private Partnership).

FISCAL IMPACT:

\$0 City

\$26,200 BEDC FY 2024 Budget

RECOMMENDATION:

Approve the project as a BEDC project.

ATTACHMENTS:

1. Luck Designs Proposal



March 22, 2024

Sylvia Carrillo, ICMA-CM, CPM
City Manager
City of Bastrop
1311 Chestnut Street
Bastrop, Texas 78602

Re: Master Planning Design Services for the Bastrop Sports Complex Master Plan -
located in the Bastrop, Texas.

Dear Ms. Carrillo,

LUCK Design Team, LLC is pleased to submit the following proposal for conceptual design preparation services for the Bastrop Sports Complex Master Plan Improvements. To complement our services, we have teamed with Freeland Turk Engineering Group (civil engineering) for site due diligence and cost estimation services.

We propose the following services:

I. SCOPE OF SERVICES

A. Sports Complex Concept Plan Development

The consultant will gather existing data associated with the proposed 90-acre sports complex site located on land owned by the Bastrop Economic Development Corporation in Bastrop, Texas. The consultant will provide a base map upon which to design the site improvements. Existing available aerial and LIDAR information will be used for the Master Planning Phase of this project. The data will include any topographic and boundary information that can be located, as well as any other documented and recorded information that can be recovered for the site. The consultant understands that the exact project boundary of the sports complex within the Bastrop Economic Development Corporation owned lands has yet to be determined and the consultant will work with the Client to determine the appropriate acreage and potential future boundary of the sports complex.

Ms. Sylvia Carrillo
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After review of the existing conditions at the project site, the consultant will meet with the Client to review the programming goals and objectives of the project. The consultant will work with the client to prepare the overall design for the Bastrop Sports Complex Master Plan Improvements by determining user requirements and design objectives, project budget, and operations and maintenance standards.

The consultant will then provide a preliminary black and white master plan alternative layout for the Bastrop Sports Complex Master Plan Improvements. The main purpose of this concept plan development will be to take Client comments regarding the improvements at the park and capture these comments in plan form. The master plan will identify types and size requirements of site elements, including type, number and size of sports fields, site grading, access and circulation routes, utilities, pedestrian circulation routes, pond circulation, and landscape and park amenity improvements. Project phasing will be indicated on these plans, if applicable.

An estimate of probable will be conducted during this phase for the concept and reviewed by the Client. The consultant will present these design concept plans to the client at one (1) meeting.

If applicable, the consultant will attend a pre-development meeting with members of the Bastrop Economic Development Corporation as organized by the Client to review the proposed site plan, development issues and project procedures.

The design team will take the input from the review meeting with the Client and distill the comments and information into a preferred alternative concept master plan. The plan will be prepared for Client review and comment and finalize the locations and configurations of the site and recreational facility improvements.

The consultant will then prepare one (1) rendered final concept master plan of the preferred alternative concept for City use and an opinion of probable construction costs (with phasing options if applicable) for the preferred alternative concept master plan for Client review and comment.

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B. Conceptual 3D Modeling and Perspective Rendering

The consultant will prepare a 3D digital model of the proposed improvements at the Sports Complex based on the preferred Conceptual Plan developed as part of the scope above. The model will be digitally constructed in Sketchup and rendered to illustrate the general locations, sizes and relationships of improvements, materials and forms of construction, and proposed equipment for use in development of the park facilities sports facilities, roadways, walks, etc. (with basic architectural components for the building/garage structures). These will be shown within the context of the surrounding environment and will illustrate design characteristics of the proposed equipment and finishes of the Sports Complex improvements.

The final deliverable to the City will be a series of generated birds-eye view perspectives PDFs developed from the 3D modeling of the complex (up to six (6) perspectives including two (2) detailed ground plane views of areas to be determined (Lumion/Photoshop). Two (2) rounds of general revisions rendered perspective is included in this scope of services.

II. CLIENT RESPONSIBILTIES AND PROJECT ASSUMPTIONS

The site is approximately 90-acres +/- and is located east of Technology Drive and South Jackson Street.

The Client will be responsible for providing accurate project information, which may include a topographic surveyor base mapping, geotechnical report, existing site feature survey (vegetation, existing buildings, etc.), or proposed site features from other consultants (architectural, engineering, mechanical, etc.). The Client agrees to provide this information and render decisions expeditiously for the orderly progress of the landscape architect's services.

The Client shall retain the services of specialized consultants (structural engineers, civil engineers, etc.) when such services are deemed necessary by the landscape architect and the Client.

Ms. Sylvia Carrillo
March 22, 2024
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Modeling limits will focus on the proposed improvements internal to the Sports Park and excludes modeling of existing/ proposed structures on adjacent Bastrop EDC lands.

III. BASIS OF COMPENSATION

The fees for services stated will be as follows:

Item	Fee Basis	Fee
A. Sports Complex Concept Plan Development	Lump Sum	\$10,000
B. Conceptual 3D Modeling and Perspective Rendering	Lump Sum	\$16,000
C. Reimbursable Expense	Estimated at cost plus 10%	\$200
	Total Fee:	\$26,200

Billings will be on a monthly basis as work progresses.

Reimbursable expenses (billed at cost) will be billed in addition to the total design fee as reimbursable expenses are accrued.

Additional services (all services not shown on Scope of Services) will be billed on an agreed upon lump sum fee. This proposal does not include services performed prior to the execution of this agreement or services not specifically addressed in "The Scope of Services".

We appreciate the opportunity to be of service and look forward to assisting you in the development of this project. Upon your review of this proposal, please call if you have any questions.

Respectfully submitted,

Brent Luck, PLA
Park Planner / Landscape Architect

LUCK DESIGN TEAM, LLC

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement between the Client and the Consultant provides for the Professional Services described under Section 2 of this Agreement.

Client:
City of Bastrop
1311 Chestnut Street
Bastrop, Texas 78602

Consultant:
LUCK Design Team, LLC
9600 Escarpment Blvd.,745-4
Austin, Texas 78749

PROJECT NAME: Master Planning Design Services for the Bastrop Sports Complex Master Plan

LOCATED IN: Bastrop, Texas

SECTION 1

Client agrees to employ Consultant on the terms and conditions set forth in this Agreement for Professional Services (the "Agreement") in consideration of the stated fee and payment terms.

SECTION 2

BASIC SERVICES: Consultant agrees to perform Basic Services in conformance with the following descriptions, definitions, terms and conditions: basic services shall be defined as those services specifically described and set forth in the attached letter proposal (the "Proposal") dated **March 22, 2024**, from Consultant to Client. It is understood and agreed that Consultant's services and compensation under this agreement are limited to consulting services to the client and do not include participation in or control over the operation of any aspect of the project.

SECTION 3

ADDITIONAL SERVICES: All work performed by Consultant not specifically described in the Proposal and other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted practice in the Bastrop County area shall constitute Additional Services.

SECTION 4

COMPENSATION OF CONSULTANT: Client agrees to pay Consultant for the above described services in accordance with the following descriptions, definitions, terms and conditions.

- A. Basic Services: Compensation will be lump sum amount of: **\$26,200.00**
- B. Additional Services: Compensation will be charged based on the actual hours expended by Consultant's personnel and billed at Consultant's Standard Hourly Rates in effect at the time of invoice plus Reimbursable Expenses, both defined as follows:
1. Standard Hourly Rates are defined as the rates established from time to time by Consultant for its personnel and rate charged based on salaries paid to Consultant's personnel plus payroll burden (Social Security contributions, Federal and State unemployment taxes, Workers' Compensation, health and retirement benefits, incentive pay, sick leave, vacation and holiday pay applicable thereto) and a factor for overhead and profit.
 2. Reimbursable Expenses are defined as any and all expenses incurred by Consultant in connection with Additional Services and shall include transportation and subsistence, reproduction, subcontracts and similar items. Reimbursable Expenses shall be charged at the following rates:
 - a. Out-of-town transportation by Consultant's vehicles: at IRS's standard rates at time of occurrence.
 - b. All other Reimbursable Expenses: actual cost to Consultant plus a ten (10) percent service charge.

SECTION 5

INVOICE PROCEDURES AND PAYMENT: Consultant will invoice Client monthly for amounts earned under this Agreement. Client agrees to promptly pay Consultant at his office in Travis County, Texas, the full amount of each such invoice upon receipt. For services provided on a Lump Sum basis, the amount of each monthly invoice shall be determined on the "percentage of completion method" whereby Consultant will estimate the percentage of the total work (provided on a Lump Sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for Professional Associates and reimbursable costs. Receipt of invoices shall be presumed and Client shall be deemed to be in default if payment is not made within thirty days of the date of the invoice.

SECTION 6

USE AND REUSE OF CONSULTANT'S WORK PRODUCTS: All documents, including drawings, tracings, sketches, computations and specifications, prepared by Consultant pursuant to this Agreement, are instruments of service in respect of the Project. No one other than Client is entitled to rely on such documents without the previous written consent of Consultant. They are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse in this respect without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant and Client shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from. Any such verification or adaptation will entitle Consultant to further compensation as an Additional Service.

SECTION 7

CONSULTANT'S RELIANCE ON CLIENT AND THIRD PARTIES: Client agrees that Consultant may rely on the accuracy and validity of all information provided by Client, the work of third parties, and public records, and Consultant is not expected or required by Client to check them.

SECTION 8

CONSULTANT NOT SUPERVISOR: Unless specifically stated in the letter proposal defining the Basic Services provided in this Agreement, Consultant has no responsibility or authority for the supervision of any phase of the work at the site of the Project.

SECTION 9

PERMITTING: In cases where the scope of services requires Consultant to submit, on behalf of the Client, a permit application and/or approval by a third party of this contract, Consultant does not make any warranties, guarantees or representations as to the success of our effort on behalf of the Client. Payment for services rendered by Consultant is not contingent upon the successful acquisition of these permits.

SECTION 10

COST ESTIMATES: Client hereby acknowledges that Consultant cannot warrant that any cost estimate provided by Consultant will not vary from actual costs incurred by the Client.

SECTION 11

ACCESS TO SITE: Unless otherwise stated, the Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take reasonable precautions to minimize site impact due to these activities, but has not included in the fee the cost of restoration of any damage and will not be responsible for such costs.

SECTION 12

TERMINATION, SUSPENSION OR CANCELLATION: This Agreement may be terminated by Consultant or Client in accordance with the following terms:

- A. This Agreement may be terminated, suspended or canceled without cause at any time prior to completion of Consultant's services either by Client or by Consultant, upon seven (7) days' written notice to the other at the address of record set out above. Such termination shall release Consultant from any

further obligation to provide Basic or Additional Services to Client on this Agreement, but all obligations of Client shall continue.

- B. Client understands that Consultant's ability to work is predicated upon its ability to collect payment of invoices when due. If Client does not make timely payment of invoices related to this Agreement or any other contract in which Client has retained the services of Consultant, then Client authorizes Consultant, at its sole discretion, to terminate this Agreement and any other contract in which Client has retained the services of Consultant upon seven (7) days' notice to Client at its address of record set out above. Such termination shall release Consultant from any further obligation to provide Basic or Additional Services to Client on this Agreement and any other contract in which Client has retained the services of Consultant, but all obligations of Client shall continue.
- C. Client waives any and all claims it has against Consultant arising out of termination of this Agreement by Consultant. Client agrees that Consultant has no duty to perform further services for Client if Client has not timely paid all amounts due Consultant for previous services on this or any other Agreement. Client waives any and all claims, causes of action, or damages that it has or may have against Consultant for failure to perform further services under this or any other Agreement when Consultant has not been timely paid for previous services under this or any other Agreement with Client. Client agrees to indemnify and hold Consultant harmless for any and all claims made against Consultant by any person, firm, or corporation arising out of termination, suspension or cancellation of this or any other Agreement between Consultant and Client.
- D. On termination, suspension or cancellation either by Client or Consultant, Client shall pay Consultant all unpaid sums listed above as compensation for Basic Services and all unpaid sums for any Additional Services that have been performed by Consultant.

SECTION 13

LIMITATION OF LIABILITY: The owner agrees to limit the Consultant's liability to the Owner and to all construction Contractors and Subcontractors on the project, due to the Consultant's negligent acts, errors or omissions, such that the total aggregate liability of the Consultant's to all those named shall not exceed \$50,000 or the Consultant's total fee for services rendered on this project, whichever is greater.

SECTION 14

DISPUTE RESOLUTION: If a dispute arises between the parties as to the rights and obligations of the parties pursuant to this Agreement, the parties shall make a good faith effort to resolve the dispute before either party is declared in default or breach of the Agreement. Such effort shall include, if necessary, the appointment of an independent mediator to mediate the dispute between the parties. If the mediation is not successful, then either party may pursue remedies available to it under the law.

SECTION 15

IDEMNIFICATION: Consultant agrees to and shall indemnify and hold harmless the Owner, its officers, agents and employees (herein after referred to as the "Owner") from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury of death of any person, for damage to any property, or for any breach of contract arising out of, or in connection with the work done by the Architect under this contract and caused by the sole or joint negligence of the Consultant. It is the expressed intention of the parties, hereto, both Consultant and Owner, that the indemnity provided for in the paragraph is indemnity by Consultant to indemnify and protect the Owner from the consequences of Architect's own negligence, whether that negligence is the sole of concurring cause of the resulting injury, death or damage. Such indemnity shall not apply however, to the liability arising from the personal injury, death of property damage of persons that is caused by or results from the negligence of the Owner. The indemnity provided in this section shall survive the termination or expiration of this Agreement. Nothing herein shall be construed so as to limit or waive Owner's sovereign immunity.

Consultant assumes full responsibility for its work performed hereunder and hereby releases, relinquishes and discharges Owner from all claims, demands, and causes of action of every kind and character for any injury to or death of any persons and/or any loss of or damage to any property, to the extent caused by and arising out of, or in connection with Consultant's negligent performance of services hereunder. This release shall apply with respect to Consultant's work regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance.

SECTION 16

INSURANCE: Architect shall maintain during the life of the Agreement the following minimum coverage:

1. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The limit shall be not less than \$1,000,000.
2. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
3. Statutory workers' compensation and employers' liability insurance as required by law.
4. Professional liability insurance.

SECTION 17

GOVERNING LAW AND PLACE OF PERFORMANCE: This Agreement shall be construed and enforced in accordance with the laws of Texas. This Agreement is performable by all parties in Bastrop County, Texas.

SECTION 18

BINDING AGREEMENT: Client, for himself and partners, if any, and Consultant, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Consultant shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Consultant. Client's representative signing below warrants that he has full authority to bind Client to this Agreement and further warrants that Client has an ownership interest in the real property that is part of the Project. Client's representative signing below agrees to indemnify, save, and hold Consultant harmless for any and all claims, causes of action, and damages that may arise against Consultant if the representations contained in this section are not correct.

SECTION 18

ACCEPTANCE OF AGREEMENT: If this Agreement is not executed by Client within 60 days of the date tendered, it shall become invalid unless: (1) Consultant extends the time in writing; or (2) Client orally authorizes Consultant to proceed with the work, in which event the terms of the oral authorization shall be presumed to include all the terms of this agreement. Consultant's performance of work under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.

SECTION 20

ENTIRE AGREEMENT: This Agreement and the Proposal defining the Basic Services provided in this Agreement contain the entire contract between Client and Consultant.

CLIENT:

CONSULTANT:

Luck Design Team, LLC

By:

By:



Brent Luck

Title:

Title:

President

Date

:

Date:

March 22, 2024

The Texas Board of Architectural Examiners, PO Box 12337, Austin, TX 78711-2337, (512) 305-9000, www.tbae.state.tx.us, has jurisdiction over complaints regarding the professional practices of persons registered as Landscape Architects in Texas.



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Mayor's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

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

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

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

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



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Council Members' Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

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

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

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



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

City Manager's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

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

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

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

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



STAFF REPORT

MEETING DATE: March 26th, 2024

TITLE:

Receive Annual Racial Profiling Report from the Bastrop Police Department.

AGENDA ITEM SUBMITTED BY:

Vicky Steffanic, Chief of Police

BACKGROUND/HISTORY:

The City of Bastrop Police Department has contracted with Dr. Alex del Carman Ph.D. of Del Carmen Consulting to assist in the preparation of the department's annual racial profiling report.

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001, the Texas Racial Profiling Law. During the past year, the city of Bastrop Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified, and additional requirements were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All these requirements have been met by the city of Bastrop Police Department and are included in this report.

This report includes statistical data relevant to contacts (as defined by the law) which were made during motor vehicle stops that took place between 1/1/23 and 12/31/23.

FISCAL IMPACT:

N/A

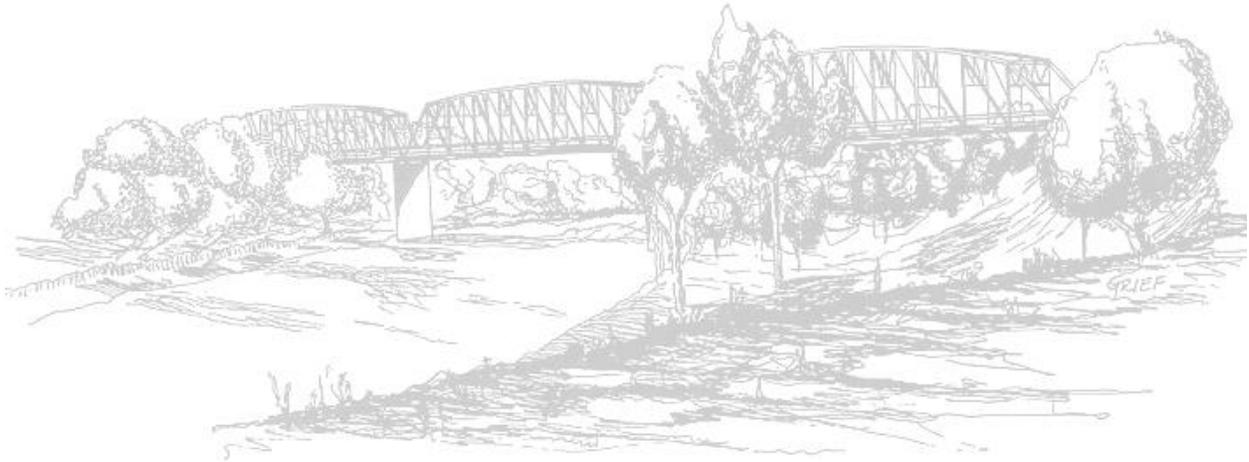
RECOMMENDATION:

In accordance with Texas Code of Criminal Procedure, Article 2.134 "Compilation and Analysis of Information Collected", the chief administrator of a local law enforcement agency shall submit a Racial Profiling Report to the State by March 1st, of each year. The same report shall be submitted to municipal governing body for the incident-based data compiled during the previous year no later than March 1st of each year. The presentation may occur after March 1st.

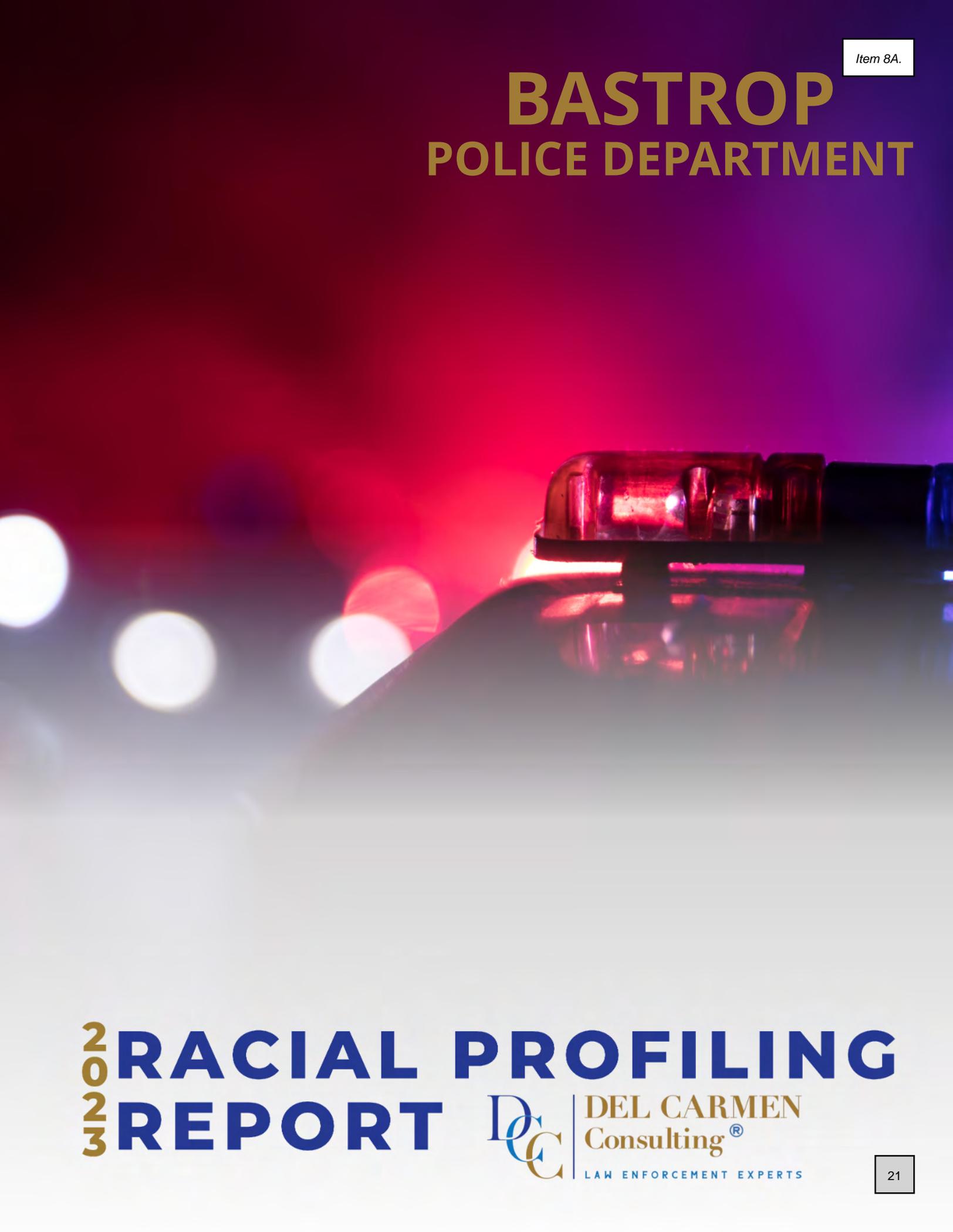
The city of Bastrop Police Department Policy & Procedure Manual, Section 2.2 “Bias Based Policing” also requires that a Racial Profiling Report is reported to the City Council annually.

ATTACHMENTS:

- PowerPoint Presentation
- 2023 Bastrop Police Department Racial Profiling Report (Del Carmen Consulting), to include a copy of our department’s current policy.



BASTROP POLICE DEPARTMENT



2023 RACIAL PROFILING REPORT



"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

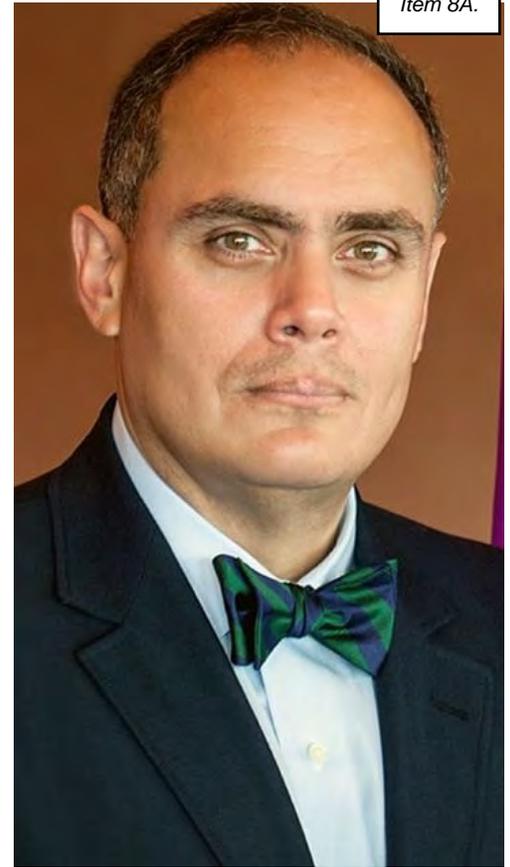
-Quote by Geneva Reed (Mother of Sandra Bland)

January 28, 2024

Bastrop City Council
1311 Chestnut St.
Bastrop, TX 78602

Dear Distinguished Members of the City Council,

In 2001 the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. During the last calendar year, the Bastrop Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Bastrop Police Department and are included in this report.



In this report, you will find three sections with information on motor vehicle-related contacts. In addition, when appropriate, documentation is included which demonstrates the manner in which the Bastrop Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Bastrop Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Finally, section three contains statistical data relevant to contacts (as defined by the law) which were made during the course of motor vehicle stops that took place between 1/1/23 and 12/31/23. Further, this section contains the Tier 2 form, which is required to be submitted to this particular organization and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

In the last section of the report, you will find the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE (Texas Commission on Law Enforcement), is included. The findings in this report support the Bastrop Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Bastrop Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Bastrop Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Bastrop Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Bastrop Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Bastrop Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Bastrop has been included in this report.

It is important to recognize that the Chief of the Bastrop Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Bastrop Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling Course 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074



1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

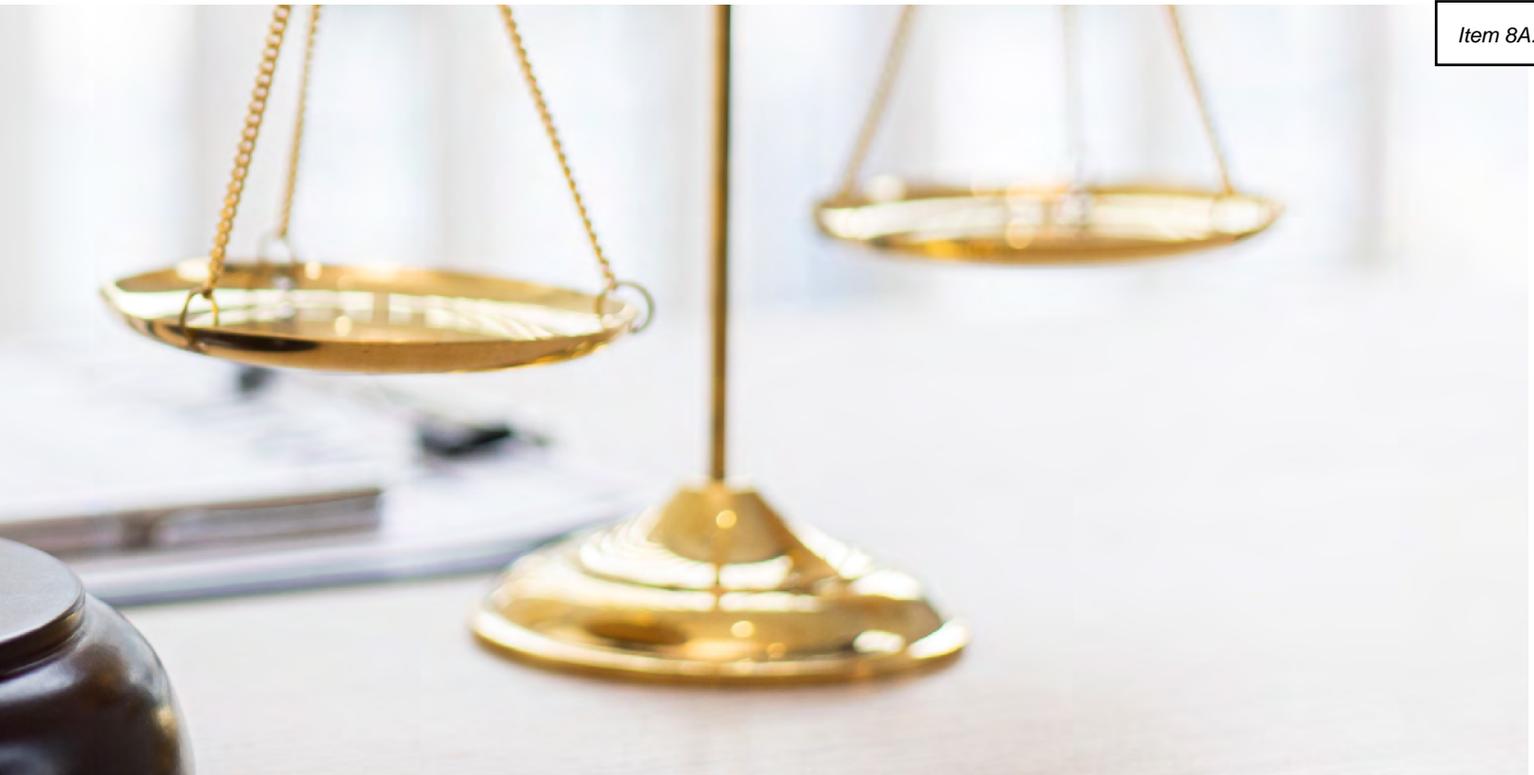
1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole.
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)
- C. A typical traffic stop resulting from racial profiling
1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
 2. The driver and passengers are questioned about things that do not relate to the traffic violation
 3. The driver and passengers are ordered out of the vehicle
 4. The officers visually check all observable parts of the vehicle
 5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
 6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators
1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
- D. Vehicle interior
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
 2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Report on Compliments and Racial Profiling Complaints



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/23-12/31/23 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.



A check above indicates that the Bastrop Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/23-12/31/23.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case

Additional Comments:
-

Tables Illustrating Motor Vehicle-Related Contacts

TIER 2 DATA

TOTAL STOPS: 3,694

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	1,893
US Highway	0
State Highway	1,772
County Road	6
Private Property	23

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	9
No	3,685

RACE OR ETHNICITY

Alaska Native/American Indian	18
Asian/Pacific Islander	63
Black	387
White	1,926
Hispanic/Latino	1,300

GENDER

Female Total: 1,487

Alaska Native/American Indian	3
Asian/Pacific Islander	17
Black	137
White	880
Hispanic/Latino	450

Male Total: 2,207

Alaska Native/American Indian	15
Asian/Pacific Islander	46
Black	250
White	1,046
Hispanic/Latino	850

REASON FOR STOP?

Violation of Law Total: 96

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	6
White	60
Hispanic/Latino	29

Pre-existing Knowledge Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	0
White	2
Hispanic/Latino	3

Moving Traffic Violation Total: 2,427

Alaska Native/American Indian	13
Asian/Pacific Islander	48
Black	258
White	1,240
Hispanic/Latino	868

TIER 2 DATA

Vehicle Traffic Violation Total: 1,165

Alaska Native/American Indian	5
Asian/Pacific Islander	13
Black	123
White	624
Hispanic/Latino	400

Contraband (in plain view) Total: 3

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	1

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	0	18
Asian/Pacific Islander	0	63
Black	23	364
White	42	1,884
Hispanic/Latino	43	1,257
TOTAL	108	3,586

Probable Cause Total: 69

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	16
White	23
Hispanic/Latino	30

Inventory Total: 21

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	3
White	9
Hispanic/Latino	9

REASON FOR SEARCH?**Consent Total: 7**

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	3
White	2
Hispanic/Latino	2

Incident to Arrest Total: 8

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	7
Hispanic/Latino	1

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	0	0
Asian/Pacific Islander	0	0
Black	16	7
White	28	14
Hispanic/Latino	32	11
TOTAL	76	32

Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	0	0
Asian/Pacific Islander	0	0
Black	4	12
White	7	21
Hispanic/Latino	6	26
TOTAL	17	59

DESCRIPTION OF CONTRABAND

Drugs Total: 60

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	14
White	24
Hispanic/Latino	22

Currency Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	2
Hispanic/Latino	0

Weapons Total: 5

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	3
Hispanic/Latino	2

Alcohol Total: 25

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	7
Hispanic/Latino	13

TIER 2 DATA

Stolen Property Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	0

Other Total: 3

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	2
Hispanic/Latino	1

RESULT OF THE STOP**Verbal Warning Total: 0**

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Written Warning Total: 2,033

Alaska Native/American Indian	12
Asian/Pacific Islander	38
Black	190
White	1,214
Hispanic/Latino	579

Citation Total: 1,573

Alaska Native/American Indian	6
Asian/Pacific Islander	25
Black	182
White	671
Hispanic/Latino	689

Written Warning and Arrest Total: 19

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	10
Hispanic/Latino	9

Citation and Arrest Total: 69

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	15
White	31
Hispanic/Latino	23

Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

TIER 2 DATA

ARREST BASED ON

Violation of Penal Code Total: 41

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	18
Hispanic/Latino	19

Violation of Traffic Law Total: 7

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	3
Hispanic/Latino	4

Violation of City Ordinance Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Outstanding Warrant Total: 40

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	11
White	20
Hispanic/Latino	9

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	18
Asian/Pacific Islander	0	63
Black	0	387
White	0	1,926
Hispanic/Latino	0	1,300
TOTAL	0	3,694

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	18	6	0	12	0%	0%	0%	1%
Asian/ Pacific Islander	63	25	0	38	2%	2%	0%	2%
Black	387	197	0	190	10%	12%	0%	9%
White	1,926	702	0	1,214	52%	43%	0%	60%
Hispanic/ Latino	1,300	712	0	579	35%	43%	0%	28%
TOTAL	3,694	1,642	0	2,033	100%	100%	0%	100%



Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	0%	1%
Asian/Pacific Islander	2%	4%
Black	10%	7%
White	52%	65%
Hispanic/Latino	35%	23%
TOTAL	100%	100%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	0	0	0
Asian/Pacific Islander	0	0	0
Black	23	3	15
White	42	2	41
Hispanic/Latino	43	2	32
TOTAL	108	7	88

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop

Table 5. Search Data

Race/Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/American Indian	0	0	0	0	0%	0%	0%	0%
Asian/Pacific Islander	0	0	0	0	0%	0%	0%	0%
Black	23	16	7	15	21%	21%	22%	17%
White	42	28	14	41	39%	37%	44%	47%
Hispanic/Latino	43	32	11	32	40%	42%	34%	36%
TOTAL	108	76	32	88	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/23-12/31/23.

Audit Data	Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	1	03/01/23	Data was valid and reliable
2	1	06/01/23	Data was valid and reliable
3	1	09/01/23	Data was valid and reliable
4	1	12/01/23	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	0	0%
Hispanic/Latino	0	0%
TOTAL	0	0%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	0	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	0	0	0	0	0%	0%	0%	0%
Black	4	0	0	11	10%	0%	0%	28%
White	18	3	0	20	44%	43%	0%	50%
Hispanic/ Latino	19	4	0	9	46%	57%	0%	23%
TOTAL	41	7	0	40	100%	100%	0%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	0	0	0%	0%	0%
Asian/ Pacific Islander	0	0	0%	0%	0%
Black	23	16	70%	21%	21%
White	42	28	67%	39%	37%
Hispanic/Latino	43	32	74%	40%	42%

Analysis and Interpretation of Data

In 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the central requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As previously noted, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

In 2017, the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

As part of their effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Bastrop Police Department commissioned the analysis of its 2023 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2023 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The analysis on the data performed in this report, was based on a comparison of the 2023 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Bastrop Police Department accepted our recommendation to rely, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Bastrop Police Department in 2023 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, some civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Bastrop Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the city of Bastrop.

Tier 2 (2023) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2023, it was evident that most motor vehicle-related contacts were made with Whites, followed by Hispanics. Of those who came in contact with police, most tickets or citations were issued to Hispanics and Whites; this was followed by Blacks. However, in terms of written warnings, most of these were issued to Whites, followed by Hispanics.

While reviewing searches and arrests, the data showed that most searches took place among Hispanics. When considering all searches, most were consented by Blacks, while most custody arrests were of Whites. Overall, most searches resulted in contraband; of those that produced contraband, most were of Hispanics; this was followed by Whites. Of the searches that did not produce contraband, most were of Whites. Most arrests were made of Whites. Most of the arrests that originated from a violation of the penal code involved Hispanics. Overall, the police department does not report any instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts made in 2023 to the census data relevant to the number of “households” in Bastrop who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites, Asians, and American Indians who came in contact with police was the same or lower than the percentage of White, Asian, and American Indian households in Bastrop that claimed in the last census to have access to vehicles. The opposite was true of Blacks and Hispanics. That is, a higher percentage of Blacks and Hispanics came in contact with police than the percentage of Black and Hispanic households in Bastrop that claimed in the last census to have access to vehicles. It should be noted that the percentage difference among Black contacts with households is of 3%; thus, deemed by some as statistically insignificant.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of Hispanics. This was followed by Blacks and Whites. This means that among all searches performed in 2023, the most significant percentage of these that resulted in contraband was among Hispanics. The lowest contraband hit rate was among Whites.

Summary of Findings

As referenced earlier, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Bastrop Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Bastrop Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Bastrop Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in the upcoming year.
- 2) Commission data audits in 2024 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive data analysis performed serves as evidence that the Bastrop Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be tolerated.

Checklist

The following requirements were met by the Bastrop Police Department in accordance with The Texas Racial Profiling Law:

- ✔ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✔ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Bastrop Police Department from engaging in racial profiling.
- ✔ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✔ Provide public education related to the complaint and complaint process.
- ✔ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✔ Collect, report and analyze motor vehicle data (Tier 2).
- ✔ Commission Data Audits and a Search Analysis.
- ✔ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✔ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2024.
- ✔ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

Legislative & Administrative *Addendum*

TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and
(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~7~~] the date of conviction; and

(9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law

(H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

- (A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);
- (B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);
- (C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);
- (D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:
 - (A) the race or ethnicity of the individual detained; and
 - (B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race ~~[:~~

~~[(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency];~~ and

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

- (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
 - (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino ~~[, Native American, or Middle Eastern descent]~~.

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino ~~[, or Native American descent]~~.

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules

and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

- (1) appropriations of money to the fund by the legislature; and
- (2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

- (1) a suicide;
- (2) an attempted suicide;
- (3) a death;
- (4) a serious bodily injury, as that term is defined by

Section 1.07, Penal Code;

- (5) an assault;
- (6) an escape;
- (7) a sexual assault; and
- (8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

- (1) topics selected by the agency; and
- (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:
 - (A) civil rights, racial sensitivity, and cultural diversity;
 - (B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]
 - (C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and
 - (D) unless determined by the agency head to be inconsistent with the officer's assigned duties:
 - (i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and
 - (ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

President of the

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

Date

Governor

Chief Clerk of the House

**BASTROP
POLICE DEPARTMENT
RACIAL PROFILING POLICY**

CITY OF BASTROP POLICE DEPARTMENT

Item 8A.

Policy 2.2 Biased Based Policing

Effective Date: 08.01.2023 Replaces 02.15.2017

APPROVED: *VJ* Vicky Steffanic Chief of Police

REFERENCE: TBP 2.01



I. POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. All people carry biases: in law enforcement, however, the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Officers shall base all such actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and the public.

II. PURPOSE

The purpose of this order is to provide general guidance on red the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- i. Bias:
Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- ii. Biased Policing:
Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- iii. Ethnicity:
A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.
- iv. Gender:
Refers to the socially constructed differences between men and women, as distinct from "sex", which refers to their biological differences.
- v. Probable Cause:
Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- vi. Race:
A category of people of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- vii. Racial Profiling:
A law-enforcement initiated action based on an individual's race, ethnicity, religion, or national origin rather than on

the individual's behavior or on information identifying individual as having engaged in criminal activity.

viii. Reasonable Suspicion:

Articulable, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or maybe about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."

ix. Sex:

A biological classification, male or female, based on physical and genetic characteristics.

x. Stop:

The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.

IV. PROCEDURES

A. General Responsibilities

- i. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)
- ii. Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall only be subjected to stops, seizures, or detention upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
- iii. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a traffic stop may be crucial to a person's perception of fairness or discrimination.

- b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
- iv. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate an individual's access to other governmental services whenever possible and shall actively provide referrals to other appropriate agencies.
 - b. All personnel shall courteously accept, document, and forward to the Chief of Police any complaints made by an individual against the department. Further, officers shall provide information on the complaints process and shall give copies of "How to Make a Complaint" when appropriate. This information can be found on the department website or by coming to the police department.
- v. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter, personnel may thank him or her for cooperating.
- vi. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
- vii. All personnel are accountable for their actions. Personnel shall justify their actions when required.

B. Supervisory Responsibilities

- i. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
- ii. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
- iii. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement.

of the laws, and shall ensure that personnel, by their act maintain the community's trust in law enforcement.

- iv. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement but increases safety risks to personnel. Lack of control over bias also exposes the department to liability consequences. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
- v. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
- vi. Supervisors shall facilitate the filing of any complaints about law enforcement service.

C. Disciplinary Consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

D. Training (TBP: 2.01)

Officers shall complete all training required by state law regarding bias-based profiling.

V. COMPLAINTS

- A. The department shall publish "How to Make a Complaint" folders and make them available at the police department. The department's complaint process and its bias based profiling policy will be posted on the department's website. Whenever possible, the media will be used to inform the public of the department's policy and complaint process.
- B. Complaints alleging incidents of bias based profiling will be fully investigated as described under Policy 2.4.
- C. Complainants will be notified of the results of the investigations when such an investigation is completed.

VI. RECORD KEEPING

- A. The department will maintain all required records on traffic stops where a citation is issued or where an arrest is made subsequent to a traffic stop pursuant to state law.
- B. The information collected above will be reported to the city council annually.

C. The information will also be reported to TCOLE in the req
format.

Item 8A.

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting©
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

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2023 Annual City of Bastrop Police Department Racial Profiling Report



*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*



Overview

On September 1st, 2001, Senate Bill 1074 was enacted and created what has become to be known as the Racial Profiling Law.

Each year, the chief administrator of a law enforcement agency is required to submit an annual report, as outlined by state law, to the Texas Commission on Law Enforcement and to our City Council.

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*



Overview

In 2023, the City of Bastrop Police Department conducted **3694** traffic stops. This presentation depicts the contacts as they relate to:

- Driver's Gender
- Driver's Race / Ethnicity
- Reason for & location of the Stop
- Search conducted
- Contraband discovered during search

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*



Overview

The **3,694** traffic stops resulted in either:

- a warning being issued
- a citation being issued
- a warning being issued / with arrest
- a citation being issued / with arrest

Traffic Stops

- Gender -

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Number of Stops	Gender	Percentage of Stops
1487	Female	40.25%
2207	Male	59.75%

3,694 Total Traffic Stops
Conducted in 2023

Traffic Stops

- Race -

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Number of Stops	Race / Ethnicity	Percentage of Stops
18	Alaska Native Native American	0.487%
63	Asian Pacific Islander	1.705%
387	Black	10.476%
1300	Hispanic / Latino	35.19%
1926	White	52.138%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Race / Ethnicity Known -

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Number of Stops	Race / Ethnicity Known Prior to Stop	Percentage of Stops
9	Yes	0.24%
3685	No	99.756%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Reasons -

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Number of Stops	Reason for the Stop	Percentage of Stops
2427	Moving Traffic Violation	65.701%
6	Pre-Existing Knowledge	0.162%
1165	Vehicle Traffic Violation	31.537%
96	Violation of Law	2.598%

3,694 Total Traffic Stops conducted in 2023

Residential versus non-residential

Yes - 1582 42.82%
 No - 2112 57.17%

Traffic Stops

- Location -

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Number of Stops	Location of Stop	Percentage of Stops
1893	City Street	51.245%
6	County Road	0.162%
23	Private Property or Other	0.622%
1772	State Highway	47.969%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Searches -

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Number of Stops	Search Conducted	Percentage of Stops
108	Yes	2.92%
3586	No	97.07%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Search type -

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Item 8A.

Number of Stops	Reason for Search	Percentage of Searches
7	Consent	6.48%
3	Contraband in Plain View	2.77%
8	Incident to Arrest	7.407%
21	Inventory	19.44%
69	Probable Cause	63.88%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Search / Contraband-

"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"



Number of Stops	Contraband Discovered	Percentage of Searches
76	Yes	70.37%
32	No	29.63%

3,694 Total Traffic Stops conducted in 2023

Traffic Stops

- Searches types of contraband

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Number	Description of Contraband
25	Alcohol
60	Drugs
3	Other
2	Currency
7	Weapons / Stolen Property

3,694 Total Traffic Stops conducted in
2023. 108 Searches conducted

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*



Of the 3694 traffic stops conducted the city of Bastrop Police Department had **zero** uses of physical force that resulted in bodily injury.

Our department received **zero** traffic stop complaints in 2023.

3,694 Total Traffic Stops conducted in 2023

Compliments / Complaints

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*



Compliments or Complaints can be made:

online : cityofbastrop.org/page/police.home

in person: at the City of Bastrop Police Department

All feedback on our customer service is welcomed!

3,694 Total Traffic Stops conducted in 2023



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve City Council minutes from the March 12, 2024, Regular meeting.

AGENDA ITEM SUBMITTED BY:

Ann Franklin, City Secretary

BACKGROUND/HISTORY:

N/A

FISCAL IMPACT:

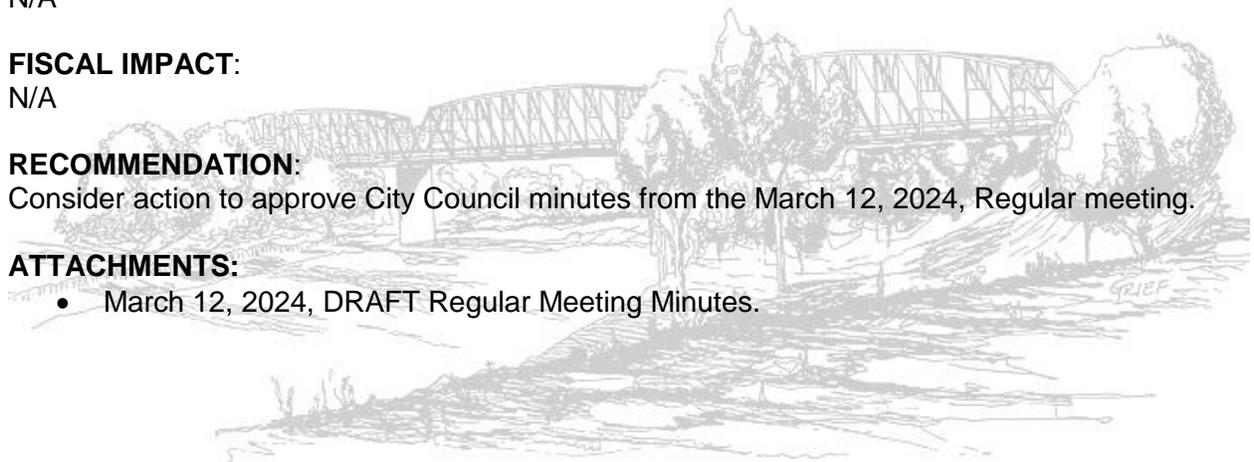
N/A

RECOMMENDATION:

Consider action to approve City Council minutes from the March 12, 2024, Regular meeting.

ATTACHMENTS:

- March 12, 2024, DRAFT Regular Meeting Minutes.



MARCH 12, 2024

The Bastrop City Council met in a regular meeting on Tuesday, March 12, 2024, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Nelson and Mayor Pro Tem Kirkland and Council Members Lee, Meyer, Crouch, and Plunkett. Officers present were: City Manager, Sylvia Carrillo; City Secretary, Ann Franklin; and City Attorney, Alan Bojorquez.

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

Robert Conrad and Micah McDonald, Bi-District Basketball Champs, Cedar Creek High School led the pledges.

INVOCATION

Robert Oliver, Police Chaplain, gave the invocation.

PRESENTATIONS

4A. Mayor's Report

4B. Council Members' Report

4D. Proclamation of the City Council of the City of Bastrop, recognizing Evangeline Parish, Louisiana for their partnership with the City of Bastrop, Texas, in Bastrop's first inaugural Mardi Gras celebration.

Submitted by: Ann Franklin, City of Secretary

Proclamation was read into record by Mayor Nelson and accepted by Members of the Evangeline Parish, Louisiana via Zoom.

4C. City Manager's Report

WORK SESSIONS/BRIEFINGS - NONE

STAFF AND BOARD REPORTS

6A. Receive presentation on the unaudited Monthly Financial Report for the period ending January 31, 2024.

Submitted by: Edi McIlwain, Chief Financial Officer

Presentation was made by Edi McIlwain, Chief Financial Officer.

CITIZEN COMMENTS

SPEAKER(S)

Stacy Neef
1253 Hwy 304
Bastrop, Texas 78602
512-773-8794

CONSENT AGENDA

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

- 8A. Consider action to approve City Council minutes from the February 27, 2024, Regular meeting.
Submitted by: Ann Franklin, City Secretary
- 8B. Consider action to approve Resolution No. R-2024-28 of the City Council of the City of Bastrop, Texas, approving a Joint Agreement between the City of Bastrop (City) and Bastrop Central Appraisal District, Bastrop Independent School District, The City of Smithville, Smithville Independent School District, The City of Elgin, Elgin Independent School District, Lexington Independent School District, McDade Independent School District and Bastrop County Municipal Utility District No. 1 for the May 4, 2024, General Election for Bastrop, Texas, attached as Exhibit A; authorizing the City Manager to execute all necessary documents; and providing an effective date.
Submitted by: Ann Franklin, City Secretary
- 8C. Consider action to approve the second reading of Ordinance No. 2024-07, of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Chapter 1 General Provisions, Article 1.10 Parks, Section 1.10.001 Parks Board, (Parks Board name change); and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.
Submitted by: Terry Moore, Parks & Recreation Director

ITEMS FOR INDIVIDUAL CONSIDERATION

- 9A. Hold a public hearing and consider action to approve Resolution No. R-2024-25 of the City Council of the City of Bastrop, Texas, granting Historic Landmark status for 0.4670 acres of Farm Lot 1 West of Main Street, also known as 1301 Church Street, within the city limits of the City of Bastrop, Texas, as attached in Exhibit A; providing for findings of fact; providing for a repealing clause; and establishing an effective date.
Submitted by: Kennedy Higgins, Senior Planner, Development Services Department
Presentation was made by Kennedy Higgins, Senior Planner, Development Services Department

Public hearing was opened.

Public hearing was closed.

A motion was made by Council Member Meyer to approve Resolution No. R-2024-25, seconded by Council Member Lee, motion was approved on a 5-0 vote.

- 9B. Consider action to approve Resolution No. R-2024-24 of the City Council of the City of Bastrop, Texas, accepting a donation from the McCall Family of an ornamental iron fence valued at a To Be Determined Amount (to be determined by the 3.12.24 council meeting) for use at Fairview Cemetery, authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Edi McIlwain, Chief Financial Officer

Presentation was made by Edi McIlwain, Chief Financial Officer.

A motion was made by Council Member Meyer to approve Resolution No. R-2024-24 accepting a donation from the McCall Family of an ornament iron fence valued at \$7,000, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

- 9C. Hold a public hearing and consider action to approve Resolution No. R-2024-26 of the City Council of the City of Bastrop, Texas, granting Historic Landmark status for 0.531 acres out of Farm Lot Block 36 East of Main Street within the City Limits of the City of Bastrop, Texas, commonly known as the Willis O Miley House, as attached in Exhibit A; providing for findings of fact; providing for a repealing clause; and establishing an effective date.

Submitted by: Kennedy Higgins, Senior Planner, Development Services Department

Presentation was made by Kennedy Higgins, Senior Planner, Development Services Department

Public hearing was opened.

Public hearing was closed.

A motion was made by Council Member Lee to approve Resolution No. R-2024-26, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

- 9D. Consider and act on an application from Bastrop Old Town Visitor Center for an event known as Yesterfest for \$20,000 for a grant from the Hotel Occupancy Tax Fund to fund a uniquely Bastrop event.

Submitted by: Sylvia Carrillo-Trevino, ICMA-CM, CPM

Presentation was made by Sylvia Carrillo-Trevino, ICMA-CM, CPM

SPEAKER(S)

Shawn Pletsch

1010 Pecan

Bastrop, TX

A motion was made by Council Member Meyer to approve Resolution No. R-2024-29, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

- 9E. Consider and act on an application from SRE Promotions, LLC for an event known as Corvette Invasion for \$1,300 for a grant from the Hotel Occupancy Tax Fund to fund a corvette car show.
Submitted by: Sylvia Carrillo, ICMA-CM, CPM, City Manager
Presentation was made by Sylvia Carrillo-Trevino, ICMA-CM, CPM

A motion was made by Council Member Plunkett to approve Resolution No. R-2024-30, seconded by Council Member Lee, motion was approved on a 5-0 vote.

EXECUTIVE SESSION

The City Council met at 8:07 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:

- 10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss the City Manager’s employment agreement regarding residency.
- 10B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding regulatory, franchise and contractual issues involving ambulance services.

Mayor Nelson recessed the Executive Session at 9:03 p.m.

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

- 10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss the City Manager’s employment agreement regarding residency.
A motion was made by Council Member Crouch to approve Addendum #2 to the employment agreement between the City of Bastrop and Sylvia Carrillo, seconded by Council Member Plunkett, motion was approved on a 5-0 vote.

Adjourned at 9:05 p.m. without objection.

APPROVED:

ATTEST:

Mayor Lyle Nelson

City Secretary Ann Franklin

The Minutes were approved on March 26, 2024, by Council Member Name’s motion, Council Member Name’s second. The motion was approved on a 5-0 vote.



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-33 of the City Council of the City of Bastrop, Texas, approving Amendment #6 to the Task Authorization #2, of the original Professional Services Agreement with Freese and Nichols, Inc. (FNI) to provide additional construction phase services for the Simsboro Water Treatment Plant, Well Field, and Transmission Facilities project for a not to exceed amount of Five Hundred Sixteen Thousand, Nine Hundred Seventy-Five Dollars (\$516,975.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Fabiola de Carvalho, CFM, AMP MIAM, Executive Director of Engineering and Construction Management.

BACKGROUND/HISTORY:

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

The engineering services agreement was developed between the City and FNI in early 2020, but because of the disruptions related to COVID 19 was not executed until July 2020. At the time the agreement was developed, FNI estimated the duration of the construction phase services that included construction administration and inspection services was 16 months (69 weeks). When the agreement was executed, the City was still considering whether to utilize Construction Manager at Risk (CMAR) or design-bid-build. In September, the City made the decision to use CMAR and the engineering services agreement was amended to include CMAR procurement assistance.

Usually, an estimate of construction timeline is provided when a project is between 60-90% design completion. In this case, construction estimate was provided after the preliminary design phase, but before the 30% design submittal. The reason why an estimate of construction timeline is usually provided after 60% design completion, is because then the project alignment and construction scope, including constraints that may affect the construction timeline are better defined. When the agreement was developed and executed, the impacts of COVID and resulting labor and supply chain issues could not be anticipated. As the labor and supply chain issues worsened during the COVID 19 shut-down, project durations extended significantly, a situation which persists today.

The Construction Manager at Risk contract was executed in March 2021.

This amendment includes continuation of the construction administration and inspection services FNI has been providing to this project. The amendment will add 11 months (48 weeks) required to complete the construction of this project. The contracted construction duration is 27 months (117) weeks. Currently, the construction contract is on budget and on schedule.

As you are aware, the whole Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project was split into different work packages within each GMP. GMP1 includes two work packages: the well drilling and the clearwell. The GMP2 includes four work packages: the water treatment plant equipment, the water treatment plant construction, electrical and instrumentation, and the filter and chemical buildings. The GMP3 includes four work packages: the access roads, transmission line, force main and lift station, well field piping and final grading and paving. The reason to split the project into multiple bid packages was so that bid and construction of the parts of the project needed to be completed first could be started, while the design of the rest of the project components were being finalized. The arrangement also gave the City much more control over the selection of subcontractors that specialize in the various types of construction rather than leaving those decisions to a general contractor.

Engineering and Capital Project Management and Public Works Departments are seeking your consideration and approval of this amendment so we can proceed with the construction of the Simsboro Water Treatment Plant, Well Field, and Transmission Facilities.

FISCAL IMPACT:

- Certificate of Obligation (CO) Bond Series 2021

RECOMMENDATION:

Consider action to approve Resolution No. R-2024-33 of the City Council of the City of Bastrop, Texas, approving Amendment #6 to the Task Authorization #2, of the original Professional Services Agreement with Freese and Nichols, Inc. (FNI) to provide additional construction phase services for the Simsboro Water Treatment Plant, Well Field, and Transmission Facilities project for a not to exceed amount of Five Hundred Sixteen Thousand, Nine Hundred Seventy-Five Dollars (\$516,975.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Exhibit A: Resolution No. R-2024-33
- Exhibit B: Task Order #2, Amendment #6 for additional Construction Phase Services with FNI for the Simsboro WTP

RESOLUTION NO. R-2024-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AMENDMENT #6 TO TASK AUTHORIZATION #2 OF THE PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. (FNI) TO PROVIDE ADDITIONAL CONSTRUCTION PHASE SERVICES FOR THE SIMSBORO WATER TREATMENT PLANT, WELL FIELD, AND TRANSMISSION FACILITIES PROJECT FOR A NOT TO EXCEED AMOUNT OF FIVE HUNDRED SIXTEEN THOUSAND, NINE HUNDRED SEVENTY-FIVE DOLLARS (\$516,975.00); AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop City Council understands the importance to public safety providing quality water for its citizen; and

WHEREAS, the City of Bastrop has chosen Freese and Nichols, Inc. (FNI) from a list of qualified consulting firms to provide professional engineering services for the study, design and construction phase services of the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities; and

WHEREAS, the City requested FNI to provide additional construction phase services for the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project; and

WHEREAS, City of Bastrop City Council understands the importance of ensuring the construction administration and inspection services of the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project are of the quality as required in the construction contract documents.

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

Section 1. The City Council of the City of Bastrop, Texas has determined FNI to be a subject matter expert in the fields of water/wastewater, streets, drainage, construction management and inspection, etc.

Section 2. The City Manager is hereby authorized to execute an amendment to the Task Authorization #2 of the Professional Services Agreement with FNI to provide additional construction phase services in an amount not to exceed of Five Hundred Sixteen Thousand, Nine Hundred Seventy-Five Dollars (\$516,975.00), as well as all other necessary documents.

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

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 26th day of March 2024.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



City of Bastrop
P.O. Box 427
Bastrop, TX 78602

FNI PROJECT NO. BAS18658
CLIENT CONTRACT REFERENCE
DATE: 3/21/2024

Project Name: Final Design, Bid Phase, and Construction Phase Services for Simsboro Aquifer Water Treatment Plant, Well Field, and Transmission Facilities

Description of Services: This Amendment to Task Authorization (TA) No. 2 includes additional construction phase services to account for the longer construction time period than assumed when Task Authorization (TA) No. 2 was developed.

Amended Deliverables: N/A

Amended Schedule: No Change in Schedule

Compensation shall be amended as follows: Compensation shall be on a Time and Materials basis up to a maximum amount of five hundred sixteen thousand nine hundred seventy five dollars (\$516,975.00).

Current Contract Amount:	\$5,116,000.00
Amount of this Amendment:	\$516,975.00
Revised Total Amount Authorized:	\$5,632,975.00

The above described services shall proceed upon execution of this amendment. All other provisions, terms and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.

FREESE AND NICHOLS, INC.

City of Bastrop

BY: 
Kendall King, PE
Print Name

BY: _____

Print Name

TITLE: Vice President

TITLE: _____

DATE: 3/21/2024

DATE: _____

EXHIBIT A
TASK AUTHORIZATION NO. 2
AMENDMENT NO. 6
CITY OF BASTROP
EXTENSION OF CONSTRUCTION PHASE SERVICES
SCOPE OF SERVICES

PROJECT DESCRIPTION:

This Amendment to Task Authorization (TA) No. 2 includes additional construction phase services to account for the longer construction time period than assumed when Task Authorization (TA) No. 2 was developed.

ASSUMPTIONS:

When TA No. 2 was developed it was anticipated that the overall construction duration would be 16 months, or 69 weeks. The current construction schedule shows 117 weeks of active construction from November 2022 through January 2025. That is an increase of 48 weeks to the construction schedule.

PROJECT SCOPE:

The following effort is anticipated as part of this scope of work:

- A. Extension of Construction Phases Services – Basic Services
 - 1. Bi-weekly Construction Progress Meetings: An additional 24 bi-weekly construction progress meetings will be attended by engineering staff. Time is included for the Project Manager to attend these meetings in person and perform a site visit either immediately prior to or afterwards and for the Senior Advisor and Project Engineer to call in virtually.
 - 2. Additional Project Management and Coordination: Due to the extension of the construction schedule, additional project management effort will be required to continue management of the project and coordination with the City, CMAR, internal team and additional project stakeholders.

- B. Extension of Construction Phases Services – Special Services
 - 1. Resident Project Representative (RPR) Services: The original TA No. 2 contract included time for 50 weeks of full time (50 hours/week) and 19 weeks of part-time (25 hours/week). An additional 48 weeks of full-time RPR services will be performed.
 - 2. Construction Management (CM) Services: The original TA No. 2 contract included time for 69 weeks of part-time (8 hours/week) CM services. In order to more efficiently use the project budget, FNI has assigned an RPR that is also performing CM tasks. A senior CM is still involved on the project, but is using less time than originally anticipated. This extension of services will include an additional 48 weeks of CM services for 4 hours/week.

COMPENSATION:

Compensation to FNI shall be Cost Plus to a Maximum amount of five hundred sixteen thousand nine hundred seventy-five dollars (\$516,975.00). If FNI sees the Scope of Services changing so that additional services are needed, FNI will notify CITY for CITY's approval before proceeding.

A breakdown of major task items and their associated costs are as follows:

Fee Summary	
Basic Services	\$ 65,806.00
Special Services	<u>\$ 451,168.00</u>
Total	\$ 516,975.00

TIME OF COMPLETION:

FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

- Services will be provided through January 2025.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in CITY or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc.

Additional Construction Phase Effort Bastrop WTP 3/6/2024 Detailed Cost Breakdown	Project Fee Summary	
	Basic Services	\$ 65,806
	Special Services	\$ 451,168
	Total Project	\$ 516,975

Project Fee Summary	
Basic Services	
Special Services	
Total Project	

Tasks			Labor					Expenses			Total	
Services	Task Description	Kira Iles	Kendall King	Thomas Jackson	Patrick Garnett	Kenneth Barnes	Total Hours	Total Labor Effort	Tech Charge	Miles	Total Expense Effort	Total Effort
		Project Manager	Senior Advisor	Project Engineer	Construction manager	RPR						
Basic	Construction Phase Engineering	\$210	\$281	\$160	\$281	\$144						
Basic	Additional PM/Coordination time	96		48			144	\$ 27,840	144		\$ 1,224	\$ 29,064
Basic	Additional biweekly meetings/site visits	104	26	26			156	\$ 33,306	156	3,221	\$ 3,436	\$ 36,742
								\$ -			\$ -	\$ -
Special	Construction Management and Inspection				192	2,400	2,592	\$ 399,552	2,592	45,167	\$ 51,616	\$ 451,168
								\$ -			\$ -	\$ -
Total Hours / Quantity		200	26	74	192	2,400	2,892		2,892	48,389		
Total Effort		\$ 42,000	\$ 7,306	\$ 11,840	\$ 53,952	\$ 345,600		\$ 460,698	\$ 24,582	\$ 31,695	\$ 56,277	\$ 516,975



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-37 of the City Council of the City of Bastrop, Texas, approving and ratifying the execution of a Wholesale Wastewater Services Agreement and a Wastewater Facility Payment Contribution Agreement between the City and Corix Utilities Inc., as attached as Exhibits A and B respectively; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

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

BACKGROUND/HISTORY:

The City of Bastrop and CORIX have entered into an agreement that would allow the wastewater expansion along FM 969 to serve SpaceX.

The contribution agreement requires the city of pay \$3.5M, SpaceX \$3M, and CORIX the remainder.

Additionally, the City and CORIX will partner on land acquisition services to be funded by CORIX.

Finally, the partnership reviews impact fees and requires CORIX to also pay it's proportionate share of the plant operations and future expansions as the need arises.

FISCAL IMPACT:

\$3.5M

RECOMMENDATION:

Approve the agreement.

ATTACHMENTS:

1. Resolution
2. Agreement and Attachments

CITY OF BASTROP

RESOLUTION NO. R-2024 - 37

RESOLUTION APPROVING AND RATIFYING THE EXECUTION OF CERTAIN WASTEWATER-RELATED AGREEMENTS WITH CORIX UTILITIES INC.

A RESOLUTION OF THE CITY OF BASTROP, TEXAS, APPROVING AND RATIFYING THE EXECUTION OF A WHOLESALE WASTEWATER SERVICES AGREEMENT AND A WASTEWATER FACILITY PAYMENT CONTRIBUTION AGREEMENT WITH CORIX UTILITIES INC., AS ATTACHED AS EXHIBITS “A” AND “B” RESPECTIVELY; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bastrop (“City”) desires that the City enter into a certain Wholesale Wastewater Services Agreement with Corix Utilities, Inc. (“Corix”), as attached as Exhibit “A”, which sets forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to certain lands located within its certificated service territory; and

WHEREAS, the City Council desires that the City enter into a certain Wastewater Facility Payment Contribution Agreement with Corix, as attached as Exhibit “B,” setting forth the terms and conditions pursuant to which the City has agreed to advance funds to Corix as a contribution to the costs of the wastewater line improvements required to be constructed under the Wholesale Wastewater Services Agreement necessary to extend the City’s wastewater system and to receive wastewater from Corix’s retail customers; and

WHEREAS, the City Council, by motion during its January 9, 2024, meeting, authorized the City Manager to prepare the documentation for financing of the infrastructure extensions; and

WHEREAS, the City Council desires to approve, authorize, and ratify the execution of the Wholesale Wastewater Services Agreement and the Wastewater Facility Payment Contribution Agreement with Corix.

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

Section 1: The City Council hereby approves, authorizes, and ratifies the execution of the Wholesale Wastewater Services Agreement (attached and incorporated herein as Exhibit “A”) and the Wastewater Facility Payment

Contribution Agreement (attached and incorporated herein as Exhibit "B").

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

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

Section 4: This Resolution shall take effect immediately upon its passage.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, Texas, on this, the 26th day of March 2024.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**WHOLESALE WASTEWATER SERVICES AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.**

This WHOLESALE WASTEWATER SERVICES AGREEMENT (this "Agreement") is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality ("City") and CORIX UTILITIES (TEXAS) INC., a Delaware corporation ("Corix"). In this Agreement, Bastrop and Corix are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

1. City is the owner and operator of municipal water and wastewater systems that it operates to provide retail and wholesale water and wastewater services.
2. Corix is the owner and operator of multiple water and wastewater systems that it operates to provide retail water and wastewater services to its customers.
3. Corix desires to obtain wholesale wastewater treatment and disposal services from the City so that Corix may provide retail wastewater services to certain lands located within its certificated service territory (the "Wholesale Service Area," as hereinafter defined), and City desires to provide such services to Corix.
4. Corix will be responsible for construction of the wastewater line improvements necessary to collect wastewater from Corix's customers within the Wholesale Service Area, as defined herein, and to deliver such wastewater to the Point of Entry, as defined herein.
5. Subject to Corix's compliance with the provisions of this Agreement, City represents that the City System (as hereinafter defined) will be capable of providing Wholesale Wastewater Services (as hereinafter defined) to Corix, and City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Services to Corix under this Agreement and to the other customers of the City System under other agreements, with all costs of the City System, as more fully defined herein, to be recovered in a fair and equitable manner through the rates and charges of City.
6. City and Corix now desire to execute this Agreement to evidence the agreement of City to provide Wholesale Wastewater Services, as more fully defined herein, to Corix under the terms and conditions described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

**ARTICLE I
DEFINITIONS**

Section 1.01 Definition of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below:

"Agreement" means this Wholesale Wastewater Services Agreement.

“City” means the City of Bastrop.

“City Connection Facilities” means the Metering Facility and/or that portion of the Interceptor located on the City’s side of the Point of Entry.

“City Service Ordinances” means the City ordinances and rules governing wholesale wastewater service, as amended by the City Council from time to time, and applicable to Corix under the express provisions of this Agreement.

“City System” means all of the Wastewater equipment and facilities of City that are used for the collection, transportation, treatment, or disposal of Wastewater received from Corix System and any expansions thereof required to make service available at the levels established in this Agreement. The City System shall include the Connection Facilities upon completion of construction and conveyance to the City but shall not include any of the internal wastewater collection and pumping facilities, and associated connection facilities that are owned by Corix in its retail wastewater service areas.

“Connection Facilities” means the wastewater facilities to be constructed by or on behalf of Corix and conveyed to City in accordance with the terms of this Agreement. The Connection Facilities generally consist of the Interceptor and Metering Facility, together with all related facilities, equipment and appurtenances.

“Connection Facilities’ Costs” means the costs incurred by or on behalf of Corix relating to the design, permitting and construction of the Connection Facilities including acquisition of easements for the Connection Facilities, as more particularly described in Section 4.05.

“Conveyance Date” means the date on which the City Connection Facilities are conveyed by Corix to City in accordance with Section 3.11 below.

“Costs of the System” means all of City’s costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the City System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the City System in accordance with policies of the City Council. Notwithstanding the foregoing, because City is providing Wholesale Wastewater Services to Corix and retail wastewater service to other customers from City’s System, the term “Costs of the System” shall not include retail billing and customer service costs or any costs properly attributed to the provision of retail wastewater service for facilities not used by and useful by to City for the provision of wastewater service to the Wholesale Service Area from the City System, such as costs of retail collection lines, and individual retail customer service lines.

“Corix” means Corix Utilities (Texas) Inc. and its successors and permitted assigns.

“Corix System” means the facilities of Corix to be constructed for collection and transportation of Wastewater from Corix’s retail customers to the Point of Entry into the City System. Corix System shall be owned, operated, and maintained by Corix and shall not include any portion of the Connection Facilities.

“Effective Date” means the date this Agreement has been executed by both Corix and City.

“Emergency” means: a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or, a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of City. The term includes Force Majeure and acts of third

parties that cause the City System to be unable to provide the Wholesale Wastewater Services agreed to be provided herein.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than City or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

“Infiltration” means water that enters Corix System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

“Inflow” means water that enters Corix System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

“Interceptor” means the wastewater line and related appurtenances that will be constructed by Corix as a condition of Wholesale Wastewater Services. That portion of the Interceptor located on the City’s side of the Point of Entry shall be conveyed to the City and shall be owned by the City as part of the City System. That portion of the Interceptor located on Corix’s side of the Point of Entry shall be retained by Corix as part of the Corix System.

“LUE” or “Living Unit Equivalent” means an amount of Wholesale Wastewater Service sufficient for one single family residential connection or its equivalent. The number of LUEs for each retail connection in the Wholesale Service Area shall be calculated based on American Water Works Association (“AWWA”) water meter size equivalents in accordance with City Rules and Policies.

“Metering Facility” means the Wastewater flow meter, meter vault and all metering and telemetering equipment required to measure Wholesale Wastewater Service provided by City pursuant to this Agreement to be located at the Point of Entry.

“Minimum Monthly Charge” means the monthly charge by the City to Corix for the provision of Wholesale Wastewater Service by the City to the Wholesale Service Area as described in Sections 4.01 and 4.03 below.

“Peak Hour Flow Rate” means the highest metered and/or calculated flow rate delivered cumulatively from the Wholesale Service Area to the City System under any operational condition, including Inflow and Infiltration.

“Permit” means TPDES Permit No. WQ0011076002 issued by TCEQ and any future permit issued by TCEQ to City authorizing the treatment and disposal of treated wastewater effluent generated at the Plant.

“Plant” means the wastewater treatment plant or plants that is or are a part of the City System and as described in the Permit.

“Point of Entry” means the location at which all Wastewater will pass from Corix System into City’s System, which shall be the location generally identified in Exhibit “B.”

“Prohibited Wastes” means those substances and waste prohibited from being discharged into the City System as described in the City Service Ordinances and/or in the Permit.

“TCEQ” means the Texas Commission on Environmental Quality, or its successor agency.

“Volume Charges” means the monthly charge assessed by the City to Corix for the provision of Wholesale Wastewater Service to the Wholesale Service Area determined by the volume of wastewater delivered as measured by the Metering Facility and as described in Sections 4.01 and 4.03 herein.

“Waste or Wastewater” means liquid or water-borne pollutants, contaminants, solid and hazardous waste, hazardous substances, including, without limitation, sewage, domestic and industrial waste,, whether separate or commingled.

“Wastewater Impact Fee” means a charge imposed per wastewater LUE in the Wholesale Service Area pursuant to Chapter 395 of the Local Government Code for funding the City’s costs of wastewater capital improvements or facility expansions necessary to serve the Wholesale Service Area. The Wastewater Impact Fee shall include only those capital improvements that are used or useful for the provision of Wholesale Wastewater Services to Corix under this Agreement in accordance with the methodology set forth in Exhibit “C.” The Wastewater Impact Fee may be updated from time to time by the City based on capital improvement costs incurred by the City for capital improvements that are used and useful for the provision of Wholesale Wastewater Service to Corix.

“Wastewater Impact Fee Credit” means the credit against Wastewater Impact Fees granted by City to Corix under this Agreement for the Connection Facilities Costs, as more particularly described in Section 4.05.

“Wholesale Service Area” means the territory more particularly described or depicted in Exhibit “A” attached hereto.

“Wholesale Service Commitment” means the agreed upon minimum of 1 million gallons per day of Wholesale Wastewater Service to be made available by City to Corix under this Agreement for the Wholesale Service Area.

“Wholesale Wastewater Service” means the reception, transportation, treatment, and disposal of Wastewater to be provided by City to Corix under this Agreement and in accordance with applicable provisions of the City Service Ordinances.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II

PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service; Levels.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, City agrees to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment. City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Service to Corix to meet retail service demands within the Wholesale Service Area in a quantity equal to the Wholesale Service Commitment.

(b) Corix may amend the quantity of Wholesale Wastewater Service from time to time by no less than twelve (12) months’ prior written notice to City. In the event of a reduction of the Wholesale Service Commitment, City shall revise the Minimum Monthly Charge and Volume Charge effective the first month after the expiration of 12 months, at which time the Wholesale Service Commitment shall be reduced according to Corix’s notice. In the event of a requested increase in the Service Commitment, the Parties shall negotiate in good faith the terms for additional Wholesale Wastewater Service, but City shall be under no obligation to furnish the additional Wholesale Wastewater Service except as it otherwise agrees in its sole

discretion. City may obligate Corix to fund the costs of expansion of the City System as a condition of additional Wholesale Wastewater Service.

(c) In the event the provision of Wholesale Wastewater Service in a quantity equal to the Wholesale Service Commitment requires City to expand its Plant, City agrees to commence construction of the expansion when the average daily or annual average flow of wastewater into the wastewater treatment plant reaches 90% of the permitted average daily flow for three consecutive months (in accordance with current TCEQ rules at 30 Tex. Admin. Code Sec. 305.126) or as otherwise necessary to make service available as development progresses within the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment.

(d) The Wholesale Service Commitment shall be subject to the following additional limitations:

1. The Peak Hour Flow Rate shall not exceed A TO BE DETERMINED gallons per minute during dry conditions and A TO BE DETERMINED gallons per minute during wet weather conditions. (To be determined no later than March 15, 2024.)
2. The quality of Wastewater delivered to the City System shall comply with applicable provisions of the City Service Ordinances. Wastewater delivered to the City System shall not include Prohibited Wastes.

(e) The Parties agree that any increase in the agreed Peak Hour Flow Rate of Wholesale Wastewater Service that City provides to Corix under this Agreement will require a written amendment of this Agreement duly authorized by the governing bodies of the Parties. The Parties agree that the foregoing Peak Hour Flow Rate of Wholesale Wastewater Service shall apply only to Wastewater generated within the Wholesale Service Area. Under no circumstances shall Wastewater generated from other City customers that tie into the Connection Facilities be included in the calculation of the Peak Hour Flow Rate and the daily permitted biochemical oxygen demand ("BOD") of Wholesale Wastewater Service provided to the Wholesale Service Area.

(f) Discharges by Corix into the City System shall consist only of Wastewater that the City System is capable of handling:

- 1) so that the effluent and sludge from the City System meets the current legal regulatory standards of the EPA, the TCEQ, or any governmental body having legal authority to set standards for such effluent and sludge, as amended from time to time; and
- 2) that meets any applicable requirements of the EPA Pretreatment Regulations, 40 CFR Part 403.

(g) Corix agrees that it shall adopt and enforce any pretreatment requirements for its retail customers as may be necessary to ensure the quality of Wastewater Corix delivers to the City pursuant to this Agreement meets the requirements of this Section.

Section 2.02 Conditions Precedent for Wholesale Wastewater Service. The provision of Wholesale Wastewater Service to Corix is subject to the prior completion of construction by or on behalf of Corix, and acceptance by City, of the Connection Facilities.

Section 2.03 Sole Provider.

(a) For so long as the City meets its obligations under this Agreement, City will be the sole source of Wholesale Wastewater Service to Corix for the Wholesale Service Area unless City consents in writing to Corix's conversion to another wholesale provider. Under the terms and conditions set forth herein, City shall be entitled to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area from any source of treatment capacity available to City.

(b) Notwithstanding the foregoing, the Parties recognize that the provision of retail wastewater service to new connections within the Wholesale Service Area may not be economically viable in all cases due to the costs of extension of improvements required to connect the property to the Interceptor. The City agrees that interim service may be furnished by Corix to individual properties when it is economically infeasible to provide service to an applicant by connection of the applicant's property to the Interceptor but the Parties shall cooperate in good faith to cause connection of such areas to the Interceptor when economically viable.

Section 2.04 Wholesale Service Commitment Not Transferable. City's commitment to provide Wholesale Wastewater Service is solely to Corix (and its successors and permitted assigns) and solely for the Wholesale Service Area. Corix may not assign or transfer in whole or in part its right to receive Wholesale Wastewater Service without City's prior written approval.

Section 2.05 Corix Responsible for Retail Connections. Corix will be solely responsible for providing retail wastewater service within the Wholesale Service Area. Corix shall not provide wastewater services received under this Agreement to any entity, private or public, other than Corix's retail customers located within the Wholesale Service Area. Corix will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, for the applicable provisions of the City Service Ordinances, of State and federal laws and regulations, and for the proper and lawful application of Corix's policies and regulations governing connection to the Corix System.

Section 2.06 Curtailment of Service. The Parties agree that, if Wastewater Service is curtailed by City when necessary for good cause to other similarly-situated customers of the City System, City may impose a like curtailment, with notice to Corix, on Wholesale Wastewater Service delivered to Corix under this Agreement. City will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit City from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

Section 2.07 Cooperation During Maintenance or Emergency. Corix will reasonably cooperate with City during periods of Emergency or required maintenance. If necessary, upon prior notice, Corix will operate and maintain Corix System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.08 Corix Prevention of Infiltration and Inflow. It will be Corix's responsibility to undertake such measures as are reasonably necessary or prudent to minimize Infiltration and Inflow to the Corix System. Without limitation, Corix will prohibit the discharge of drainage water and stormwater run-off into the Corix System.

Section 2.09 Construction and Testing Criteria for Corix Sewer Connections.

(a) All tests required by the design criteria and specifications of the State of Texas will be at Corix's or its customer's expense.

(b) Corix agrees that the physical connection of each service line to the local Wastewater facility will be the responsibility of Corix, will be inspected, and will not be left to the discretion of the plumber or contractor. Corix may inspect the connections with its own personnel or may retain a third party inspector for such purposes. All inspection results shall be furnished to City upon request.

(c) Corix agrees that it will maintain strict supervision and maintenance of its local Wastewater facilities to prohibit unpermitted connections such as roof drains or any other means by which surface drainage, *i.e.* stormwater run-off, can enter local Wastewater facilities and then discharge to the City System.

(d) Connections made to the Corix System after the date of execution of this Agreement will be made using only materials permitted by applicable codes and development criteria manuals of the State of Texas.

Section 2.10 Liability of Corix. As between the Parties, liability for damages to third persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Corix to Point of Entry. As between the Parties, liability for damages to third persons will pass to City at the Point of Entry to City's System.

Section 2.11 Liability of City. Subject to the foregoing, City will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it at Point of Entry in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause City to have liability for damages to the City System or to third persons arising from the delivery by Corix of Prohibited Wastes. Similarly, this Agreement shall not be construed as a waiver of any governmental immunity that the City or Corix may enjoy with respect to any claims brought by third party persons or entities.

Section 2.12 City Treatment and Use of Wastewater. City may treat the Wastewater delivered by Corix pursuant to this Agreement and dispose of the effluent generated thereby in such manner as may be provided in the Permit or other applicable TCEQ authorization in its sole discretion.

Section 2.13 Right of Entry. Corix agrees to provide City the right of entry and access to the Corix System at all reasonable times upon prior notice in order to inspect those facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Wastewater Service.

Section 2.14 Confirmation of Service Availability. When requested by Corix, the City shall issue letters of service availability or other evidence of service commitment consistent with Corix's obligations under this Agreement, to a developer in the Wholesale Service Area, such developer's lenders, prospective purchasers, the applicable governing municipal jurisdiction, or any other governmental entity having jurisdiction over development in the Wholesale Service Area. The City Manager and Public Works Director of the City are each authorized to issue such letters of service availability, and shall do so within ten (10) days of receipt of a written request by Corix.

ARTICLE III DESIGN AND CONSTRUCTION OF CONNECTION FACILITIES

Section 3.01 General. Corix shall construct and install, or cause the construction and installation of, the Connection Facilities at its sole cost and expense in accordance with the terms and conditions of this Agreement. The Parties contemplate installation of the Connection Facilities generally at the location depicted in Exhibit "B." Notwithstanding the foregoing, in the event that Corix is unable to secure any of the Required Easements after utilizing good faith efforts, including eminent domain proceedings, then the Connection Facilities may be relocated into public rights-of-way at locations approved by the City.

Section 3.02 Design and Engineering of Connection Facilities.

(a) The Connection Facilities must be designed by a Texas Licensed Professional Engineer in accordance with the requirements of the Texas Commission on Environmental Quality.

(b) Corix shall submit to the City for review and approval prior to the commencement of construction of the Connection Facilities: (i) preliminary engineering report including facility layout and budgets itemized by facility ownership; (ii) final engineering report including plans, specifications, contract

documents and detailed itemized budgets by facility ownership; and (iii) documentation that all required easements, rights of way, and local, state and federal permits (if applicable) for the Connection Facilities construction have been secured.

(c) Corix shall submit all final plans and specifications for construction of the Connection Facilities to City for review and approval prior to commencement of construction of the Connection Facilities. City approval shall not be unreasonably withheld, delayed or denied provided the plans and specifications comply with all applicable requirements of TCEQ. The City agrees to review all plans and specifications and either approve the plans and specifications, or provide written comments specifically identifying the required changes, within twenty one (21) days after the submittal.

Section 3.03 Corix Payment for Construction and Installation of the Connection Facilities.

(a) Corix agrees to pay for, or cause to be paid, the costs of design and construction of the Connection Facilities. In addition, Corix agrees to pay for, or cause to be paid, the costs incurred in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, and sites required as part of the Connection Facilities as those costs become due.

(b) City will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with by Corix in connection with the construction of the Connection Facilities.

Section 3.04 Easement Acquisition.

(a) At Corix's sole discretion, the Connection Facilities may be located in private easements dedicated to Corix, or may be located within public rights-of-way.

(b) Notwithstanding the foregoing, the City shall determine whether the City Connection Facilities shall be located in easements or public rights -of-way. In the event the City elects for such facilities to be located in easements, the City shall be solely responsible for securing the easements at its sole cost and expense.

Section 3.05 Construction of Facilities.

(a) Corix agrees to provide not less than ten (10) days' prior written notice to City of the date on which construction is scheduled to begin on the Connection Facilities.

(b) Corix agrees to use its reasonable and good faith efforts to ensure that the Connection Facilities shall be constructed in a good and workmanlike manner and that all material used in such construction shall be free from defects and fit for its intended purpose.

(c) Corix shall construct the Connection Facilities in compliance with any and all applicable local, state, and federal regulations.

(d) Any variance to the requirements within this Agreement must be submitted in writing to City and is subject to City's sole discretion and approval. If the City or its designees determine that Connection Facilities as constructed by Corix are not in compliance with any specifications as approved by City, then City may pursue any remedy provided in this Agreement.

Section 3.06 Inspection of Facilities.

(a) City will have the right to inspect the construction of the City Connection Facilities at the City's sole cost and expense. Corix will, at its sole cost, provide City with documentation of third party inspections, testing and reports relating to the construction of the Connection Facilities.

(b) Upon completion of the Connection Facilities, Corix shall provide City with a certificate of completion from the project engineers certifying that the Connection Facilities have been completed substantially in accordance with the approved specifications or otherwise approved by City in response to Corix's variance request. Corix will respond to and repair any outstanding items identified in writing by City. The City shall provide written confirmation of satisfactory completion of the Connection Facilities. City's letter to Corix confirming that all outstanding project items have been completed shall be the "Completion Date."

Section 3.07 Corix Warranties, and Bonds

(a) Duty to Repair and Warranty. Except as otherwise specified, Corix agrees to repair all defects in materials, equipment or workmanship appearing within two (2) years from the Completion Date to comply with the approved specifications for the City Connection Facilities. Upon receipt of written notice from City of the discovery of any defects, Corix shall promptly and at its own cost remedy the defects and replace any property damaged therefrom, or may cause the contractor to do so. In case of Emergency where delay would cause serious risk of loss or damage to City or its customers, or if Corix, after notice, fails to proceed promptly toward such remedy within 30 days or within another period of time which has been agreed to in writing, City may have defects in the Connection Facilities corrected in compliance with the terms of this warranty and guarantee, and Corix shall be liable for all expenses incurred by City in so doing.

(b) Assignment of Warranty Obligations. In addition to Corix's duty to repair, as set forth above, Corix expressly assumes all warranty obligations under the approved plans and specifications for specific components, materials, equipment or workmanship of the Connection Facilities. Corix may satisfy its duty to repair and warranty by obtaining and assigning to City, by written instrument in a form approved by counsel for the City, a complying warranty from a manufacturer, supplier, or contractor providing the warranty for one year from the Completion Date. Where an assigned warranty is tendered and accepted by City that does not fully comply with the requirements of the approved specifications, Corix agrees that it shall remain liable to City on all elements of the required warranty that are not provided by the assigned warranty.

(c) General Requirements for Performance and Payment Bonds.

1) The Cost of the Facilities (herein "Cost of the Facilities") shall be based on the construction contract(s) issued by (or on behalf of) Corix to its contractor for the Connection Facilities (in addition to permitting and easement acquisition costs funded by Corix).

2) When Performance Bonds and/or Payment Bonds are required, each shall be issued as security for the faithful performance and/or payment of all Corix's obligations under this Agreement. Performance Bonds and Payment Bonds shall be issued by a solvent U.S. corporate surety that is authorized to do business in the State of Texas, and shall meet any other requirements established by State of Texas or Federal law. The bonds shall be executed or countersigned by a Texas resident agent.

3) If the surety on any Bond furnished by Corix is declared bankrupt or becomes insolvent or its right to do business in the State of Texas is terminated or it ceases to meet the requirements of this Agreement, Corix shall within ten (10) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Agreement.

(d) Maintenance Bond. Corix agrees to arrange for its general contractor to provide to City not later than the Completion Date a maintenance bond in a form approved by counsel for City, for an amount not less than 25% for the cost of the City Connection Facilities for the repair of all defects in materials, equipment or workmanship appearing in the Connection Facilities within two (2) years from the Completion Date.

Section 3.08 Insurance.

(a) The contract for construction of the Connection Facilities shall require the construction contractor (“*Contractor*”) to provide and maintain the types and minimum coverages of insurance specified below from the time Corix issues a notice to proceed for construction of the Connection Facilities and extending until the Completion Date.

(b) The Contractor shall be required to present Corix with a current insurance certificate showing the required coverages before any workers or materials are brought to the construction site for the Connection Facilities. City, its employees, officers, and its professional consultants, legal representatives and agents will be named as an additional insured on such insurance certificate. The insurance coverages shall include, and the certificates shall reflect, carrier’s written endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Corix.

(c) If the Contractor engages subcontractors for construction, the Contractor shall either provide coverage for subcontractors in the Contractor’s insurance policies or require each subcontractor to secure insurance of the same types and with the same coverage limits as Contractor’s.

(d) The Contractor’s insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued. Such insurance shall include, at a minimum, coverage for the following types of claims that might arise out of the construction of the Facilities:

- 1) claims under workers’ compensation, disability benefits, and other similar employee benefit laws;
- 2) claims for damages because of bodily injury, occupational sickness or disease, or death of any person;
- 3) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, wherever located, including loss of use resulting therefrom;
- 4) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle; and
- 5) the policies of insurance so required by this section to be purchased and maintained shall include at least the specific coverages for, and shall be written for not less than, the Cost of the Connection Facilities, or as required by law, whichever is greater.

Section 3.09 Conveyance of Facilities and Associated Property

(a) Upon the Completion Date, all facilities located on the City’s side of the Point of Entry shall be deemed owned by the City. Notwithstanding the foregoing, Corix agrees to provide a bill of sale or other conveyance instrument reasonably satisfactory to the City to evidence such conveyance upon request of the City.

(b) Upon the Completion Date, Corix will be responsible for ownership, operation and maintenance of the Interceptor located on its side of the Point of Entry, and City shall be responsible for ownership, operation, and maintenance of the City Connection Facilities.

ARTICLE IV
RATES AND CHARGES

(a) Wholesale Wastewater Rates, Fees and Charges. Corix will pay City for the Wholesale Wastewater Service provided under this Agreement based on rates, charges and fees for the Wholesale

Wastewater Service set by the City Council for its wholesale wastewater customers and amended from time to time. The rates, charges and fees for Wholesale Wastewater Service shall consist of the following:

- 1) Minimum Monthly Charge, which is equal to \$1.75 per wholesale service meter as of the Effective Date;
- 2) Volume Charges, which is equal to \$5.18 per 1,000 gallons as of the Effective Date; and
- 3) Wastewater Impact Fees, as adjusted by this Agreement.

(b) The Minimum Monthly and Volume Charges shall be calculated by City in accordance with standard ratemaking principles for wholesale service; shall be just, reasonable, and non-discriminatory; and shall be based on the Costs of the System at the time of adoption. Wastewater Impact Fees shall be calculated by City in accordance with the applicable provisions of Chapter 395, Texas Local Government Code, and modified in accordance with the methodology set forth in this Agreement.

(c) Corix's obligation to commence payment of the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees shall commence the first month subsequent to the Completion Date and delivery of Wastewater to the City System. The City shall have no obligation to provide Wholesale Wastewater Services prior to the Completion Date.

Section 4.02 Amendment of Wholesale Rates, Fees and Charges, Notices to and Review by Corix.

(a) City may amend the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees from time to time as approved by the City Council.

(b) City will provide Corix with at least ninety (90) days prior written notice of any increases to the Minimum Monthly and Volume Charges. Written notice shall include the proposed new rates, and a cost of service study. Notice of changes to the Wastewater Impact Fee is governed by the provisions of Section 4.04(a) below.

(c) Corix will have the right to inspect and copy, at its expense, City's books, and records to verify any statement, billing, charge, computation, or demand made to Corix by City. City agrees to make all such information available to Corix for inspection and copying with reasonable promptness during normal business hours.

Section 4.03 Volume and Minimum Monthly Charges.

(a) City will measure Wastewater flows monthly based on monthly readings of the Metering Facility. The total of these amounts multiplied by the Volume Charge will be used by City to compute the monthly bill for the Volume Charges as provided in Section 5.02 below.

(b) Upon the commencement of delivery of Wastewater to the City System, Corix will pay to the City the Minimum Monthly Charge.

Section 4.04 Wastewater Impact Fees.

(a) Except for those Wastewater Impact Fees that are credited in accordance with the terms of Section 4.05 below, Corix shall be obligated to pay City a Wastewater Impact Fee that is based upon City's most recently-approved fee for each new retail wastewater customer that connects to the Corix System and receives wastewater service provided under this Agreement. For the term of this Agreement, the Wastewater Impact Fee will be the amount established from time to time in the City Service Ordinances, provided that no increase in the Wastewater Impact Fee will become effective for Corix until the City has given at least ninety days prior written notice of the change to Corix, and any such increases shall be applied to connections

made in the Wholesale Service Area in accordance with Chapter 395, Texas Local Government Code, in order to allow Corix adequate time to make corresponding changes to its Tariff. The Wastewater Impact Fee paid for each new retail wastewater connection to the Corix System shall be due and payable to City within thirty (30) days after the end of each calendar quarterly period in which the new retail wastewater connection is made.

(b) Within thirty (30) days after the end of each calendar quarter after the Completion Date, Corix shall submit a monthly report to City, reflecting the new customer(s), service address(es), meter size(s) and number of LUE(s) for which payment of a Wastewater Impact Fee is being made and/or a credit being applied for the calendar quarter in question. The City reserves the right to audit all Corix submitted data and modify Corix's claimed LUE calculations in accordance with the City Service Ordinances. If no new connections have been made, the monthly report will still be required, but will reflect that there have been no changes from the prior reporting period. Unless changed by written notice in accordance with Section 9.09, the Wastewater Impact Fees and monthly reports required by Section 5.07 and this subsection will be submitted to the following address:

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

(c) The Wastewater Impact Fee will be designed to fund or recover all or a part of the Costs of the City System for capital improvements or facility expansions used or useful to provide Wholesale Wastewater Services in accordance with the methodology set forth in Exhibit "C". Upon payment (or credit), Corix will have a guaranteed reservation of capacity in the City System for the number of LUEs for which a Wastewater Impact Fee has been paid or credited. The Wastewater Impact Fee will be reasonable and just and established in accordance with the provisions of this Agreement.

Section 4.05 Wastewater Impact Fee Credit. As consideration for the design, construction and conveyance of the Connection Facilities, City shall credit Corix with the payment of Wastewater Impact Fees (the "Wastewater Impact Fee Credit") in an amount equal to all costs and expenses incurred by or on behalf of Corix relating to the design, construction, inspection and permitting of the Connection Facilities and acquisition of easements related thereto, including all surveying, appraisal, legal, condemnation and other costs related thereto (collectively, the "Connection Facilities Costs"), including, without limitation, all costs of design, engineering, materials, labor, construction, inspection, and testing arising in connection with the Connection Facilities; all payments arising under any contracts entered into for the construction of the Connection Facilities; all costs incurred by or on behalf of Corix in connection with obtaining governmental approvals, certificates, or permits required for the Connection Facilities; all costs and expenses incurred by or on behalf of Corix in connection with obtaining the easements, rights-of-way, or sites required as a part of the construction of the Connection Facilities. At City's request, Corix shall agree to furnish documentation in reasonable detail evidencing and supporting the Connection Facilities Costs. Commencing on the Completion Date, Corix will be credited with the payment of Wastewater Impact Fees for each new retail wastewater connection to the Corix System, and each then existing wastewater connection to the Corix System that connects to the Connection Facilities, until the Wastewater Impact Fee Credit is exhausted.

Section 4.06 Corix Wastewater Rates and Charges. Corix will determine and charge its retail Wastewater customers such rates in accordance with its tariff. During the term of this Agreement, Corix will fix and collect rates and charges for retail Wastewater service that are, in the opinion of its governing body, sufficient, together with any other revenues available to Corix, to produce the amount necessary to operate, repair, and maintain Corix System, and to pay the cost of Wholesale Wastewater Service from City. Corix will establish retail rates consistent with AWWA ratemaking principles. Corix will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

Section 4.07 Corix Fees. The Parties acknowledge that Corix has the right to the extent allowed under applicable law to assess, charge, and collect contributions in aid of construction, or other service fees, rates, taxes, or other charges. This Agreement will not be construed to require, limit, or restrict the authority of

Corix to implement the same. Corix will be solely responsible for the assessment and collection of such fees and charges and for ensuring that all fees, rates, and charges Corix elects to charge are in compliance with applicable law.

Section 4.08 Verification of Corix Connections. For verification of the Wastewater Impact Fees paid to City and for any other purpose, Corix shall make available for inspection and copying during regular business hours, at City's expense, all records for retail connections to the Corix System. In addition, City shall have the right to inspect Corix System at any time, at City's sole expense, after giving Corix written notice of its intention to inspect and allowing the opportunity for Corix to be present, to verify the type and amount of retail connections made or the condition of Corix System and Corix will provide lawful access to City for this purpose.

ARTICLE V
WHOLESALE BILLING METHODOLOGY, REPORTS
AND OTHER RELATED MATTERS

Section 5.01 Monthly Statement. For each monthly billing period, City will forward to Corix a bill providing a statement of the total Minimum Monthly Charge and Volume Charges owed by Corix for Wholesale Wastewater Service provided to Corix during the previous monthly billing period. Corix will pay City for each bill submitted by City to Corix by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to City Hall in Bastrop County, Texas, upon prior arrangement. If payments will be made by bankwire, Corix shall verify wiring instructions. Payment must be received at City Hall or bank by the due date in order not to be considered past due or late. In the event Corix or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, Corix shall pay in addition City's then-current, Council-approved wholesale wastewater contract late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations. City will compute the Minimum Monthly Charge and Volume Charges included in the monthly billing for Wholesale Wastewater Service on the basis of monthly readings of the Metering Facility. The total of these amounts multiplied by the wholesale Wastewater rate, set from time to time by the City Council, will be used to compute the monthly bill for the Volume Charge.

Section 5.03 Infiltration and Inflow; Winter Averaging. Corix acknowledges that water entering the City System from Corix System emanating from any source whatsoever must be given treatment and handling whether or not its source is revenue-producing for Corix. Therefore, Corix agrees to pay, as part of the Minimum Monthly Charge and Volume Charge, for Infiltration and Inflow originating within the Wholesale Service Area without abatement in the same manner and cost as other Wastewater entering City's System from Corix's System.

Section 5.04 Effect of Nonpayment. With respect to monthly billings, if City has not received payment from Corix by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, City will notify Corix, or its assignee responsible for payment in accordance with this Agreement, of such delinquency in writing, if Corix or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from City, then City may, at its discretion, terminate or reduce the level of Wholesale Wastewater Service to Corix until Corix or its assignee makes payment is made.

Section 5.05 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Corix to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to Corix under this Agreement.

Section 5.06 Metering Facility Accuracy; Calibration.

(a) The City shall own the Metering Facility, which Corix shall pay for, and it shall be calibrated each calendar year by the City at City’s sole cost and expense (and such costs may be included in the Costs of the System). The City shall provide not less than 48 hours’ prior written notice of each such calibration, and a representative of Corix may be present to observe each calibration.

(b) The Metering Facility may be calibrated at any reasonable time, and shall be tested at least annually, by either Party to this Agreement, provided that the party making the calibration notifies the other party in writing at least five days in advance and allows the other Party to witness the calibration. In the event any question arises at any time, but not more than a frequency of once per consecutive 12-month period without mutual consent of both Parties, as to the accuracy of the Metering Facility, then the Metering Facility shall be tested by City promptly upon demand of Corix. The expense of such test shall be borne by Corix if the Metering Facility is found to be within AWWA and manufacturer’s standards of accuracy for the type and size of meter and by City if the Metering Facility is found not to be within AWWA and manufacturer’s standards for the type and size of meter.

(c) If, as a result of any test, the Metering Facility is found to be registering inaccurately (in excess of or below AWWA and manufacturer’s standards for the type and size of meter), the readings of the Metering Facility shall be corrected at the rate of its inaccuracy for any period which is definitively known or agreed upon and City shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

- 1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- 2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

Section 5.07 Additional Required Notices. In addition to the monthly reports required by Section 4.04(b) above, Corix shall:

(a) Provide to City a copy of each final subdivision plat of property within the Wholesale Service Area.

(b) Provide to City by June 1 of every year during the term of this Agreement a report setting forth: (i) the total number of retail wastewater service connections within the Wholesale Service Area as of April 1 of the same year; and, (ii) the total number of new retail wastewater service connections to the Corix System during the prior annual period ending April 1 of the same year, which connections shall be set forth in LUES as determined by City’s Service Ordinance.

ARTICLE VI
REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, legal interpretations, policies and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 6.02 Cooperation to Assure Regulatory Compliance. Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, and any other applicable and/or relevant legal or regulatory requirements, each party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where

noncompliance or non-cooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

Section 6.03 Sewer System Overflows. Each Party shall cooperate with the other and initiate immediate response measures to abate and remediate sewer system overflows in its System in compliance with its internal directives and policies and as directed by state, federal, or other officials, and immediately notify the other Party of the sewer system overflows affecting the Wholesale Service Area. Each Party is responsible for timely providing all required equipment and personnel to remediate the sewer system overflow, and for providing any required notice to the United States Environmental Protection Agency (EPA), the TCEQ, and affected members of the public regarding any threatened or actual overflows.

ARTICLE VII TERM, TERMINATION, DEFAULT, REMEDIES

Section 7.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall extend for a term of forty (40) years unless terminated earlier as provided herein. So long as Corix provides at least 12 months' written notice to the City, it may renew this Agreement for one additional term of forty (40) years.

Section 7.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City. In the event such default remains uncured for an additional 180 days, then Corix shall, in addition to and not in lieu of any other remedies available to Corix, have the right to notify City that Corix intends to take a more limited amount of Wholesale Wastewater Services from City (which shall be at least the amount City is then able to provide to Corix) and Corix may then obtain other wastewater services from another provider or may take appropriate action to supply itself with additional wastewater services upon giving City written notice of its intent to do so. City acknowledges that the replacement of the Wholesale Wastewater Services which City has agreed to provide under this Agreement would be difficult and expensive for Corix, and agrees to use diligent good faith efforts to perform its obligations under this Agreement.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City's failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided however that City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Wastewater Service by City to Corix for the Wholesale Service Area.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

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

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 8.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 8.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 8.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.16 Exhibits. The following exhibits, attached to this Agreement, are incorporated into this Agreement as if fully set forth:

Exhibit A: Wholesale Service Area
Exhibit B: Point of Entry
Exhibit C: Wastewater Impact Fee Calculation Methodology

Section 8.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: _____ *R. Darrin Barker* _____

Name: _____ R. Darrin Barker _____

Title: _____ President _____

Date: _____ February 23, 2024 _____

CITY OF BASTROP:

By: 

Name: Sylvia Carrillo

Title: City Manager _____

Date: 02/23/2024

Attest 
City Secretary

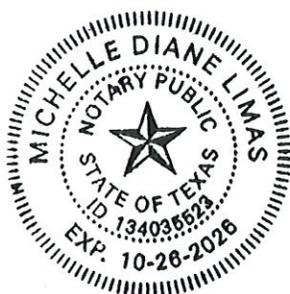
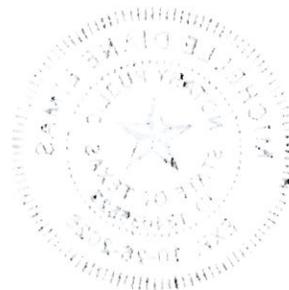


Exhibit "A"
Wholesale Service Area

A handwritten signature in dark ink, appearing to read "Michael B. ...".

City of Bastrop Corix Wholesale Agreement Boundary & Bastrop Wastewater CCN

The City of Bastrop, Texas makes no warranties regarding the accuracy or completeness of the information used to compose this map or the data from which this map was derived. The map does not purport to depict the boundaries between private and public lands. This map is general in nature and is not suitable for navigational purposes.



Current Time: 2/23/2024 1:00 PM



-  City Limit
-  Corix Wholesale Agreement Boundary
-  City of Bastrop Wastewater CCN

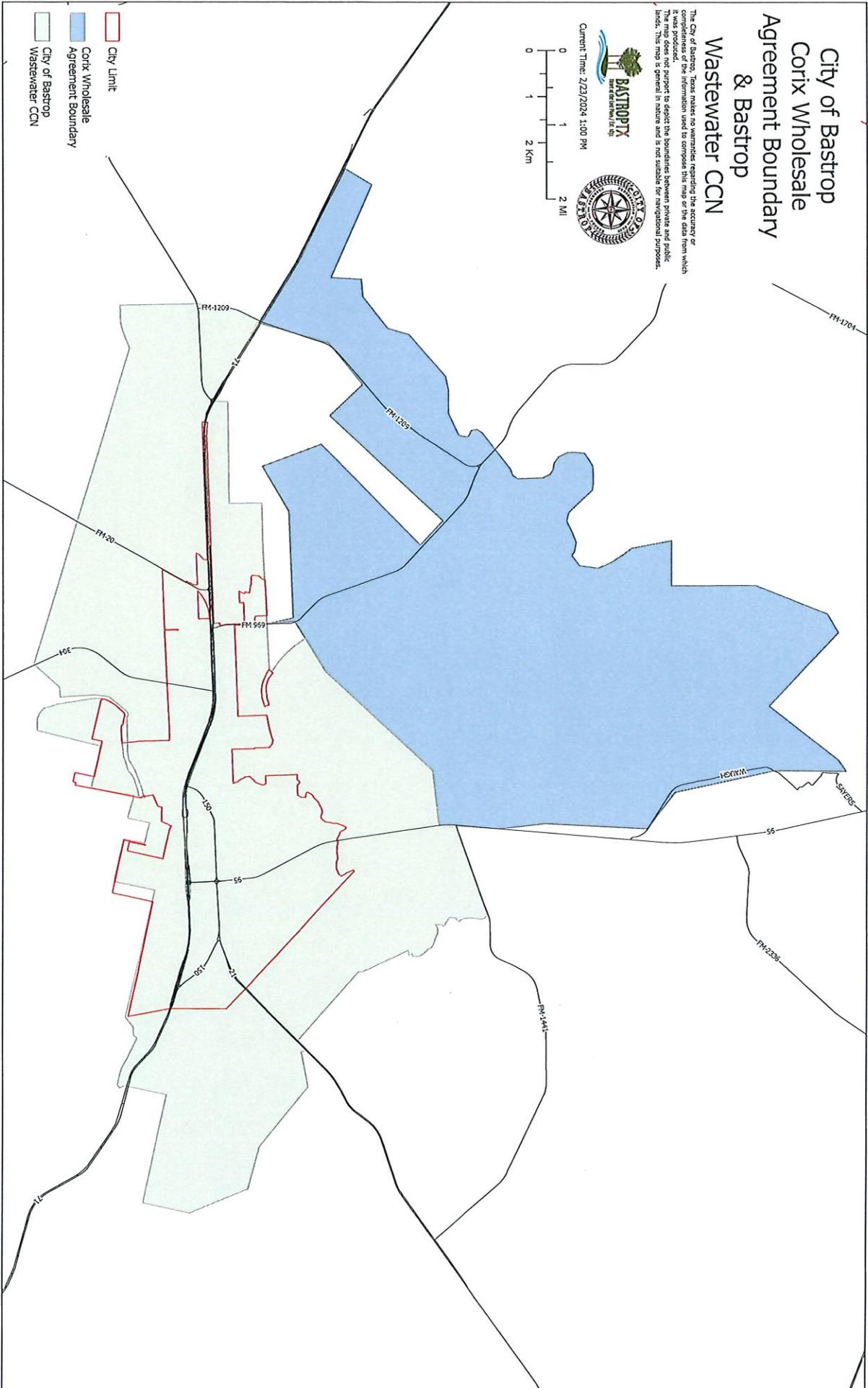
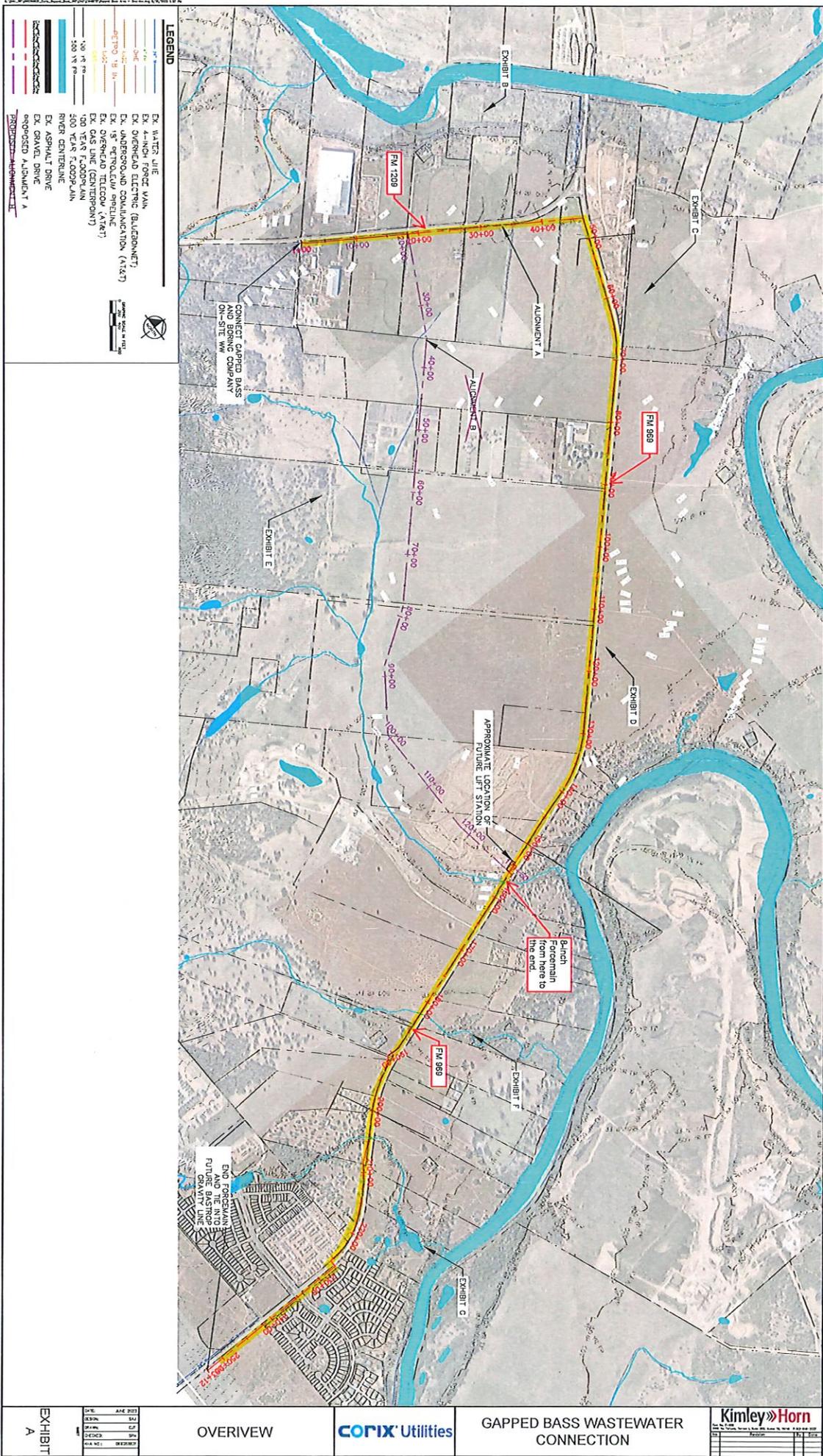


Exhibit A



DATE	DATE
DESIGN	REV
PLAN	NO.
SCALE	BY
DATE	BY

OVERVIEW

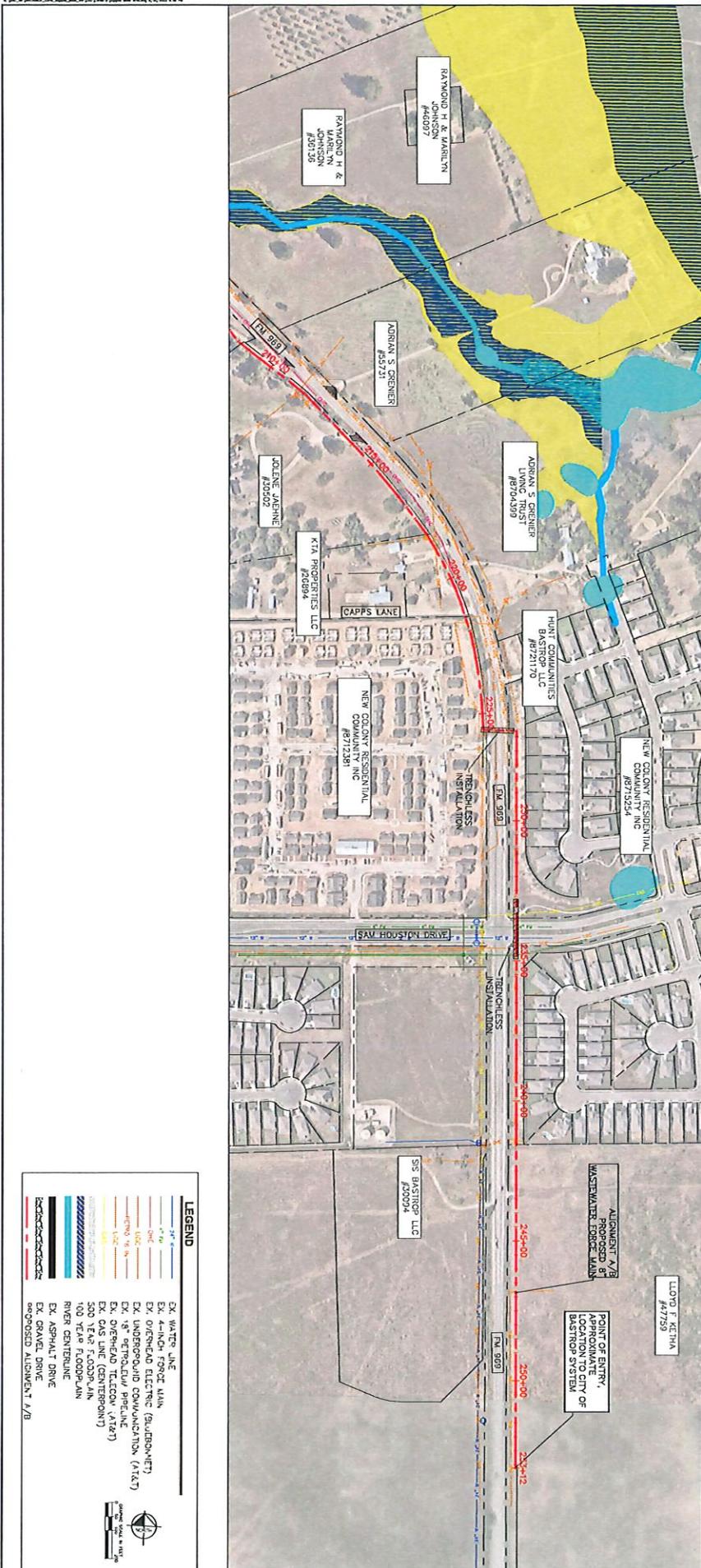


GAPPED BASS WASTEWATER CONNECTION



Exhibit B

ALIGNMENT A/B - 210+00 - END



LEGEND

	EX. WATER LINE
	EX. 4-INCH FORCE MAIN
	EX. OVERHEAD ELECTRIC (SAUBORN/ET)
	EX. UNDERGROUND ELECTRIC (71KT)
	EX. OVERHEAD COMMUNICATION (71KT)
	EX. UNDERGROUND COMMUNICATION (71KT)
	EX. 8" RETROFITTED PIPELINE
	EX. OVERHEAD TELECORD (A787)
	EX. 48" TELECORD (A787)
	500 YEAR FLOODPLAIN
	100 YEAR FLOODPLAIN
	RIVER CENTERLINE
	EX. ASPHALT DRIVE
	EX. GRAVEL DRIVE
	PROPOSED ALIGNMENT A/B

EXHIBIT G

ALIGNMENT A/B
FORCE MAIN
210+00 - END

CORIX Utilities

GAPPED BASS WASTEWATER CONNECTION

Kimley»Horn

Exhibit "C"
Wastewater Impact Fee Calculation Methodology

Chapter 395 of the Local Government Code

Impact Fee means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development" Texas Local Government Code §395.00

Impact fees may only be used to pay certain costs for: (1) constructing capital improvements or facility expansions for water supply, treatment, and distribution facilities; (2) wastewater collection and treatment facilities; (3) stormwater, drainage and flood control facilities; and (4) roadways. Id. § 395.001(1). Not all costs associated with infrastructure expansion qualify –only costs authorized under Chapter 395 are allowable. Allowable costs include the costs of facility expansion or new facility construction such as: (1) construction contract price; (2) surveying and engineering fees; and (3) land acquisition costs. Id. § 395.012(a). Fees paid to a non-city engineer or financial consultant related to preparing or updating the capital improvement plan can also be paid by impact fees. Id. § 395.012(a)(4). Additionally, certain financing charges related to permissible facilities improvements or expansions may be funded by impact fees, and impact fees may also be pledged to as security for bonds under certain circumstances. Id. § 395.012(d).

Capital Improvements Advisory Committee convened in 2021-22 and then adopted a : (1) a Capital Improvements Plan; and (2) Land Use Assumptions on July 26, 2022.

The attached ordinance and land use assumptions are in place at the time of this document execution; however, the fees are under review and subject to change each year. (see attached Ordinance 2022-18)

For simplicity,

- Financing Costs
- Revenue Credit Calculation or 50% Credit
 - Revenue Credit Calculation – a credit for the portion of ad valorem tax and/or utility service revenues generated by new service units during the program period (10-years) that is used for payment of projects included in the Impact Fee CIP
- Maximum Assessable Impact Fee

$$\text{Impact Fee} = \frac{\text{Cost of Impact Fee CIP} - \text{Credit}}{\text{New Service Units}}$$

ORDINANCE NO. 2022-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS UPDATING AND AMENDING THE BASTROP CODE OF ORDINANCES, CHAPTER 13, ARTICLE 13.12, ENTITLED "IMPACT FEES", UPDATING THE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENT PLAN AND AMENDING IMPACT FEES FOR WATER AND WASTEWATER UTILITIES, AS ATTACHED IN EXHIBITS A-E, AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, ENFORCEMENT, A REPEALER, AND SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, new residential and nonresidential development causes and imposes increased demands upon Bastrop public facilities and services, including water and wastewater facilities, that would not otherwise occur; and

WHEREAS, planning projections indicate that such development will continue and will place ever-increasing demands on the City to provide necessary public facilities; and

WHEREAS, the development potential and value of properties is strongly influenced and encouraged by City policy as expressed in the City's 2036 Comprehensive Plan and as implemented via the City zoning ordinance and map; and

WHEREAS, to the extent that such new development places demand upon the public facility infrastructure, those demands should be satisfied by more equitably assigning responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands for them; and

WHEREAS, the amount of the impact fee to be imposed shall be determined by the cost of the additional public facilities needed to support such development, which public facilities shall be identified in a capital improvements program; and

WHEREAS, the City Council, after careful consideration of the matter, hereby finds and declares that impact fees imposed upon residential and nonresidential development to finance specified major public facilities, the demand for which is created by such development, is in the best interests of the general welfare of the City and its residents, is equitable, and does not impose an unfair burden on such development;

WHEREAS, in 1987 the Texas Legislature adopted Senate Bill 336, now Chapter 395 of the Texas Local Government Code, and subsequently amended said Chapter from time to time; and

WHEREAS, the City Council finds that in all things the City has complied with said statute in the notice, adoption, promulgation and methodology necessary to adopt Impact Fees;

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

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if

expressly set forth herein.

SECTION 2. ENACTMENT

Article 13.12, "Impact Fees", of Chapter 13, "Utilities," of the Code of Ordinances of the City of Bastrop are amended to read as described and attached hereto as Exhibit "A."

SECTION 3. REPEALER

In the case of any conflict between other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

SECTION 4. SEVERABILITY

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

SECTION 5. ENFORCEMENT

The City shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

SECTION 6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

SECTION 7. OPEN MEETINGS

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ & ACKNOWLEDGED on First Reading on the 12th day of July 2022.

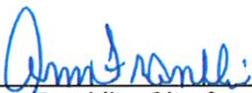
READ & APPROVED on the Second Reading on the 26th day of July 2022.

APPROVED:

by 

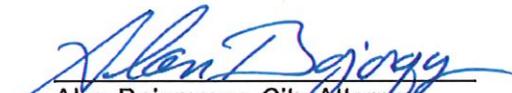
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Exhibit A

City of Bastrop Code of Ordinances

Chapter 13 – UTILITIES

Article 13.12 – Impact Fees

DIVISION 1. - GENERALLY

Sec. 13.12.001 - Short Title.

No changes.

Sec. 13.12.002 - Intent.

No changes.

Sec. 13.12.003 - Authority.

No changes.

Sec. 13.12.004 - Definitions.

No changes.

Sec. 13.12.005 - Applicability.

No changes.

Sec. 13.12.006 - Impact Fees as Conditions of Development Approval.

No changes.

Sec. 13.12.007 - Establishment of Water and Wastewater Service Areas.

No changes.

Sec. 13.12.008 - Land Use Assumptions.

Land use assumptions used in the development of the impact fees are contained in Exhibit B to Ordinance -2022-18. These assumptions may be revised by the City Council according to the procedure set forth in V.T.C.A. Local Government Code, Chapter 395 and its successors.

Sec. 13.12.009 - Service Units.

No changes.

Sec. 13.12.010 - Impact Fees Per Service Unit.

(a) The maximum impact fee per service unit for each service area shall be computed by dividing the growth-related capital construction cost of service in the service area identified in the capital improvements plan for that category of capital improvements, by the total number of projected service units anticipated within the service area which are necessitated by and attributable to new development, based on the land use assumptions for that service area, and adjusted by subtracting credits in the form of future rate or tax contributions to water and/or wastewater CIP funding and adding any additional amount as may be yielded in the inflation-escalator portion of the fee assessment formula set forth in Sec. 13.12.011. Maximum impact fees per service unit for each service area shall be established by category of capital improvements and shall be set forth in Exhibit C to Ordinance 2022-18.

(b) Exhibit C to Ordinance 2022-18 may be amended by the City Council according to the procedure set forth in Chapter 395 of the Texas Local Government Code and its successors.

(c) The effective impact fees per service unit may be amended from time to time by the City Council through ordinance amendment to any amount less than that set forth in Exhibit C to Ordinance 2022-18.

Sec. 13.12.011 - Assessment.

(a) *No changes.*

(b) Assessment of the impact fee for any new development shall be made as follows:

(1) *No changes.*

(2) For new development, which has received final plat approval prior to the effective date of this article and for which no re-platting is necessary prior to the issuance of a building permit, assessment shall be upon the issuance of a building permit, and shall be the value of the effective impact fee per service unit set forth in Exhibit C to Ordinance 2022-18.

(3) For new development, which occurs or is proposed to occur without platting, assessment shall be upon the issuance of a building permit and shall be the value of the effective impact fee per service unit set forth in Exhibit C to Ordinance 2022-18.

(4) *No changes.*

(5) *No changes.*

(c) *No changes.*

(d) *No changes.*

Sec. 13.12.012 - Calculation of Impact Fees.

No changes

Sec. 13.12.013 - Collection of Impact Fees.

No changes.

Sec. 13.12.014 - Offsets Against Impact Fees.

No changes.

Sec. 13.12.015 - Establishment of Accounts and Records.

No changes.

Sec. 13.12.016 - Use of Proceeds of Impact Fee Accounts.

No changes.

Sec. 13.12.017 – Appeals.

No changes.

Sec. 13.12.018 – Refunds.

No changes.

Sec. 13.12.019 - Updates to Plan and Revision of Fees.

No changes.

Sec. 13.12.020 - Functions of Advisory Committee.

No Changes.

Sec. 13.12.021 - Agreement for Capital Improvements.

No changes.

Sec. 13.12.022 - Use of Other Financing Mechanisms.

No changes.

Sec. 13.12.023 - Impact Fees as Additional and Supplemental Regulation.

No changes.

Sec. 13.12.024 - Relief Procedures.

No changes.

Sec. 13.12.025 - Exemptions.

No changes.

Sec. 13.12.026 - Certification of Compliance Required.

No changes.

Secs. 13.12.027 – 13.12.060 Reserved.

DIVISION 2. – WATER FACILITIES

Sec. 13.12.061 - Service Area.

No changes.

Sec. 13.12.062 - Improvements Plan.

(a) The Water Improvements Plan for the City is hereby adopted as Exhibit D to Ordinance 2022-18 and incorporated by reference herein.

(b) *No changes.*

Sec. 13.12.063 - Impact Fees.

(a) The maximum impact fee values per service unit for water facilities are hereby adopted and incorporated in Exhibit C to Ordinance 2022-18 and made a part hereof by reference.

(b) *No changes.*

Secs. 13.12.064-13.12.090 – Reserved.

DIVISION 3. - WASTEWATER FACILITIES

Sec. 13.12.091 - Service Area.

No changes.

Sec. 13.12.092 - Improvements Plan.

(a) The Wastewater Improvements Plan for the City is hereby adopted as Exhibit E to Ordinance 2022-18 hereto and incorporated by reference herein.

(b) *No changes.*

Sec. 13.12.093 - Impact Fees.

(a) The maximum impact fee values per service unit for wastewater facilities are hereby adopted and incorporated in Exhibit C to Ordinance 2022-18 and made a part hereof by reference.

(b) *No changes.*

Exhibit B
Future Land Use Assumptions

Future Land Use Assumptions (Acres Developed)

Land Use (Acres)	<u>2022</u>	<u>2032</u>	<u>Build Out</u>
Single Family Residential	2,129	2,678	3,616
Retail / Office	120	152	211
Commercial	1,481	1,825	2,274
Industrial	218	287	459
Parks and Open Space and Agriculture	748	748	748
Total Developed Acreage	4,697	5,690	7,308

Future Land Use Assumptions (Service Unit Equivalents and Population)

	<u>2022</u>	<u>2032</u>	<u>2055</u>
Population	12,299	14,359	17,700
Water Service Population	9,860	14,596	35,975
Sewer Service Population	9,671	14,315	35,283
Water SUEs	6,455	11,142	27,461
Sewer SUEs	6,455	10,208	25,159

Exhibit C
Maximum and Effective Impact Fee

<u>Meter Type</u>	<u>Meter Size</u>	<u>Multiplier</u>	<u>Maximum Impact Fee</u>				<u>Effective Impact Fee</u>			
			<u>Water - Production</u>	<u>Water - Distribution</u>	<u>Sewer</u>	<u>All</u>	<u>Water - Production</u>	<u>Water - Distribution</u>	<u>Sewer</u>	<u>All</u>
Simple	5/8" x 3/4"	1.0	\$ 1,347.00	\$ 6,835.00	\$ 5,089.00	\$ 13,271.00	\$ 1,347.00	\$ 6,835.00	\$ 5,089.00	\$ 13,271.00
Simple	3/4"	1.0	1,347.00	6,835.00	5,089.00	13,271.00	1,347.00	6,835.00	5,089.00	13,271.00
Simple	1"	2.5	3,367.50	17,087.50	12,722.50	33,177.50	3,367.50	17,087.50	12,722.50	33,177.50
Simple	1 1/2"	5.0	6,735.00	34,175.00	25,445.00	66,355.00	6,735.00	34,175.00	25,445.00	66,355.00
Simple	2"	8.0	10,776.00	54,680.00	40,712.00	106,168.00	10,776.00	54,680.00	40,712.00	106,168.00
Compound	2"	8.0	10,776.00	54,680.00	40,712.00	106,168.00	10,776.00	54,680.00	40,712.00	106,168.00
Turbine	2"	10.0	13,470.00	68,350.00	50,890.00	132,710.00	13,470.00	68,350.00	50,890.00	132,710.00
Compound	3"	16.0	21,552.00	109,360.00	81,424.00	212,336.00	21,552.00	109,360.00	81,424.00	212,336.00
Turbine	3"	24.0	32,328.00	164,040.00	122,136.00	318,504.00	32,328.00	164,040.00	122,136.00	318,504.00
Compound	4"	25.0	33,675.00	170,875.00	127,225.00	331,775.00	33,675.00	170,875.00	127,225.00	331,775.00
Turbine	4"	42.0	56,574.00	287,070.00	213,738.00	557,382.00	56,574.00	287,070.00	213,738.00	557,382.00
Compound	6"	50.0	67,350.00	341,750.00	254,450.00	663,550.00	67,350.00	341,750.00	254,450.00	663,550.00
Turbine	6"	92.0	123,924.00	628,820.00	468,188.00	1,220,932.00	123,924.00	628,820.00	468,188.00	1,220,932.00
Compound	8"	80.0	107,760.00	546,800.00	407,120.00	1,061,680.00	107,760.00	546,800.00	407,120.00	1,061,680.00
Turbine	8"	160.0	215,520.00	1,093,600.00	814,240.00	2,123,360.00	215,520.00	1,093,600.00	814,240.00	2,123,360.00
Compound	10"	115.0	154,905.00	786,025.00	585,235.00	1,526,165.00	154,905.00	786,025.00	585,235.00	1,526,165.00
Turbine	10"	250.0	336,750.00	1,708,750.00	1,272,250.00	3,317,750.00	336,750.00	1,708,750.00	1,272,250.00	3,317,750.00
Turbine	12"	330.0	444,510.00	2,255,550.00	1,679,370.00	4,379,430.00	444,510.00	2,255,550.00	1,679,370.00	4,379,430.00

Exhibit D
Water Capital Improvements Plan

<u>Facility Type</u>	<u>Impact Fee Project Name</u>	<u>Total Construction Cost</u>	<u>Capacity</u>	<u>2022-2032 Demand</u>	<u>Recoverable Cost</u>
Water Supply	Willow Street Plant (Wells C-G)	\$ 781,865	3,319,200	14.20%	\$ 110,987
Water Supply	Bob Bryan Park Site Phase I (Wells H and I)	424,853	1,224,000	14.20%	60,309
Water Supply	Bob Bryan Park Side Phase 2	1,462,720	1,152,000	14.20%	207,635
Water Supply	Initial Water Supply XS Ranch	2,000,000	2,677,808	14.20%	283,903
Water Supply	Well J & Monitoring Well	1,449,450	2,160,000	14.20%	205,752
Water Supply	Add'l Wtr Supply (16" River Crossing Wtr Line)	1,000,000	1,058,400	14.20%	141,952
Water Supply	Water Plant (XS Ranch)	31,000,000	3,600,000	14.20%	4,400,499
Water Supply	XS Ranch groundwater well construction (3 add'l wells)	6,400,000	3,600,000	14.20%	908,490
Water Pumping	Willow High Service 1	9,962	720,000	25.47%	2,538
Water Pumping	Willow High Service 2	9,962	720,000	25.47%	2,538
Water Pumping	Willow High Service 3	9,962	720,000	25.47%	2,538
Water Pumping	Willow High Service 4	19,638	768,000	25.47%	5,002
Water Pumping	Willow High Service 5	19,638	768,000	25.47%	5,002
Water Pumping	Willow High Service 6	19,638	768,000	25.47%	5,002
Water Pumping	Bob Bryant High Service 1	74,815	1,344,000	25.47%	19,057
Water Pumping	Bob Bryant High Service 2	74,815	1,344,000	25.47%	19,057
Water Pumping	Bob Bryant Transfer Pump 1	20,000	384,000	25.47%	5,094
Water Pumping	Bob Bryant Transfer Pump 2	20,000	384,000	25.47%	5,094
Water Pumping	Loop 150 Tank Yard Pump 1	4,862	384,000	25.47%	1,238
Water Pumping	Loop 150 Tank Yard Pump 2	4,862	384,000	25.47%	1,238
Water Pumping	XS Ranch Groundwater Well Construction (4 pumps)	6,400,000	6,480,000	25.47%	1,630,210
Water Pumping	XS Ranch Transmission Pump Station	6,601,000	11,282	25.47%	1,681,409
Water Pumping	Willow WTP Zone 1 Pump Station	4,900,000	720,000	25.47%	1,248,130
Ground Storage	Bob Bryant (Tank 4)	263,080	285,000	13.00%	34,207
Ground Storage	GST Re-Use at WWTP	128,762	40,000	13.00%	16,742
Ground Storage	Tank 1 at Willow Street	350,000	500,000	13.00%	45,508
Ground Storage	Tank 2 at Willow Street	350,000	500,000	13.00%	45,508
Ground Storage	Hwy 20 (along with Elev Tank)	1,142,100	280,000	13.00%	148,500
Ground Storage	Tank 1 at Willow Street (replace concrete tank)	4,000,000	750,000	13.00%	520,094
Ground Storage	Tank 2 at Willow Street (replace steel tank)	4,000,000	750,000	13.00%	520,094
Ground Storage	XS Ranch GST part of the WTP	2,200,000	500,000	13.00%	286,052
Elevated Storage	Est at Loop 150	375,000	250,000	17.20%	64,505
Elevated Storage	Standpipe at Loop 150	700,000	1,000,000	17.20%	120,409
Elevated Storage	GST at Loop 150	140,000	225,000	17.20%	24,082
Elevated Storage	Elevated tower west at Hwy 20 (supply)	1,490,800	250,000	17.20%	256,437
Elevated Storage	1 MG Elevated Storage Tank (east of FM969)	9,500,000	1,000,000	17.20%	1,634,122
Transmission Lines	8-inch line on Old Austin Hwy	146,590	1,000	65.69%	96,296
Transmission Lines	12-inch line on Perkins/Higgins	96,491	1,000	65.69%	63,386
Transmission Lines	12-inch line on Eskew/Loop 150	48,904	1,000	65.69%	32,125
Transmission Lines	Hunters Crossing Blvd (16-inch)	100,160	1,200	65.69%	65,796
Transmission Lines	Downtown Feeder (8-inch)	148,500	450	65.69%	97,551
Transmission Lines	Willow/Wilson Connection (6-inch)	-	250	65.69%	-
Transmission Lines	Loop 150 Standpipe Feeder (10, 12 inch)	1,058,750	1,000	65.69%	695,502
Transmission Lines	SH 95 North (12-inch)	437,600	1,000	65.69%	287,463
Transmission Lines	Hoffman Road (8-inch)	77,000	450	65.69%	50,582
Transmission Lines	Loop 150 West Feeder (12-inch)	438,510	1,000	65.69%	288,061
Transmission Lines	Eskew St. (12-inch)	102,900	2,600	65.69%	67,596
Transmission Lines	Higgins St. (12-inch)	73,500	2,600	65.69%	48,283
Transmission Lines	SH 71 (North Line) (12-inch)	280,000	1,000	65.69%	183,934
Transmission Lines	SH 71 (South Line) (12-inch)	444,500	1,000	65.69%	291,996
Transmission Lines	Hasler Blvd (12-inch)	119,000	1,000	65.69%	78,172
Transmission Lines	Agnes Street (12-inch)	41,300	1,000	65.69%	27,130
Transmission Lines	Old Austin Hwy (8,12 inch)	647,700	1,000	65.69%	425,479
Transmission Lines	SH 71 (West Line) (12-inch)	13,050	1,000	65.69%	8,573
Transmission Lines	Hunters Point Drive (12, 16-inch)	57,750	1,200	65.69%	37,936
Transmission Lines	Elevated Tank Feeder (12, 16-inch)	852,500	1,200	65.69%	560,014
Transmission Lines	Hasler Shores Feeder (8 inch)	166,000	450	65.69%	109,047
Transmission Lines	SH 71 East / Buc-ee's (12-inch)	-	1,000	65.69%	-

Exhibit D
Water Capital Improvements Plan

<u>Facility Type</u>	<u>Impact Fee Project Name</u>	<u>Total</u>	<u>Capacity</u>	<u>2022-2032</u>	<u>Recoverable</u>
		<u>Construction</u>		<u>Demand</u>	<u>Cost</u>
Transmission Lines	Ground Storage Tank Feeder (12-inch)	375,900	1,000	65.69%	246,932
Transmission Lines	Bob Bryant Feeder (12-inch)	66,750	1,000	65.69%	43,849
Transmission Lines	Blair Avenue (12-inch)	19,500	1,000	65.69%	12,810
Transmission Lines	16" watermain crossing under river	2,235,000	1,500	65.69%	1,468,190
Transmission Lines	Riverwood Waterline Improvements (Size Ir...)	1,000,000	250	65.69%	656,908
Transmission Lines	Water Main Ext. SH304 to WWTP 3	800,000	250	65.69%	525,527
Transmission Lines	Watermain Replacement Pine Street Size In...	250,000	100	65.69%	164,227
Transmission Lines	Water Main ext. Arena Dr. to Pitt	350,000	250	65.69%	229,918
Transmission Lines	24" line from XS Ranch Water Plant to Willow Plant	10,609,000	9,333	65.69%	6,969,139
Transmission Lines	20/16-inch Bob Bryant Transmission Lines (20/16-inch) (2500 LF of 20" WL, and 1100 of 16" WL)	2,400,000	4,873	65.69%	1,576,580
Distribution Lines	12-inch line (1800LF) Agnes St Extension	800,000	1,060	78.20%	625,625
Distribution Lines	20/16/12-inch Downtown WL (14,400LF). This WL replaces smaller lines. (100LF of 20", 3700 LF of 16", and 10,600 LF of 12")	6,300,000	5,150	78.20%	4,926,800
Distribution Lines	12/8-in WL on Chestnut (4100FL). This WL replaces existing 10/8-in (4100 FL of 12" WL, and 2400 LF of 8")	2,450,000	560	78.20%	1,915,978
Distribution Lines	12-in WL on Chambers (4000 LF). This WL replaces existing 10-in	1,700,000	552	78.20%	1,329,454
Distribution Lines	12-in WL on Driftwood Ln (5300 LF)	2,500,000	1,060	78.20%	1,955,079
Distribution Lines	12/8-in Lost Pines Ave (3100 LF of 12-in, and 900LF of 8-in)	1,300,000	1,547	78.20%	1,016,641
Distribution Lines	16-in Valverde WL (9700LF)- comes off 16" WL on SH 71 at FM20 EST and goes north crossing HWY 71 and then west through the Valverde sub-division	-	1,907	78.20%	-
Distribution Lines	16-in Valverde WL (6800LF) - comes off FM20 EST and goes south, then west through West Bastrop Village	-	1,907	78.20%	-
Distribution Lines	16-in Valverde WL (8700LF) - connects to the line proposed to go through West Bastrop Village, goes north, crossing HWY 71, connecting to 16" WL on SH 71, continue north and connecting to the proposed line crossing Valverde	-	1,907	78.20%	-
Distribution Lines	12-in Lovers Lane (14800LF) - to serve Colorado River Bend movie studio	-	1,907	78.20%	-
Distribution Lines	16/12-in SH 304 (8900LF) - to serve Colorado River Bend movie studio and allow other connections from other developments in surrounding areas, such as development west of SH304 across Cuccina Ranch (~785 LUEs)	-	2,967	78.20%	-
Distribution Lines	16/12-inch line and appurtenances (associated with the EST planned east of FM969) on Blakey Lane - (5100LF of 16" WL, and 2900 LF of 12" WL)	-	2,960	78.20%	-
Distribution Lines	12-in Movie Studio (7600LF) - to serve Colorado River Bend movie studio and allow other connections from other developments in surrounding areas	-	1,060	78.20%	-
Distribution Lines	12-in Mauna Loa Ln (10600FL)	4,100,000	1,060	78.20%	3,206,330
	Water Impact Fee Update	9,250		100%	9,250
	Total	\$ 129,963,889	41,089,250		\$ 45,063,093

Exhibit E
Wastewater Capital Improvements Plan

<u>Facility Type</u>	<u>Impact Fee Project Name</u>	<u>Total Construction Cost</u>	<u>Capacity</u>	<u>2022-2032</u>		<u>Recoverable Cost</u>
				<u>Demand</u>	<u>Demand</u>	
WW Treatment	WWTP No. 1 & 2 Replaced headworks	\$ 451,274	1,400,000	17.38%	\$ 78,415	
WW Treatment	2 MGD WWTP #3 Construction / Design	29,005,900	2,000,000	17.38%	5,040,142	
WW Treatment	2 MGD WWTP #3 Phase II Construction / Design	40,700,000	2,000,000	17.38%	7,072,140	
WW Pumping	Home Depot LS	70,000	115,200	24.72%	17,302	
WW Pumping	Riverside Grove LS	69,500	662,400	24.72%	17,179	
WW Pumping	Old Austin LS	52,000	180,000	24.72%	12,853	
WW Pumping	Central LS	255,730	1,339,200	24.72%	63,210	
WW Pumping	Hunters Crossing LS	100,000	751,680	24.72%	24,717	
WW Pumping	River LS	100,000	648,000	24.72%	24,717	
WW Pumping	North Pecan LS	66,500	475,200	24.72%	16,437	
WW Pumping	Lincoln LS	50,000	48,960	24.72%	12,359	
WW Pumping	Wilson LS 1	15,000	72,000	24.72%	3,708	
WW Pumping	Wilson LS 2	15,000	72,000	24.72%	3,708	
WW Pumping	Fisherman Park LS	225,930	329,000	24.72%	55,844	
WW Pumping	Main Street LS	100,000	648,000	24.72%	24,717	
WW Pumping	Mauna LOA SL	284,000	432,000	24.72%	70,197	
WW Pumping	WWTP	50,000	1,080,000	24.72%	12,359	
WW Pumping	Gills Branch LS	250,000	648,000	24.72%	61,794	
WW Pumping	XS Ranch LS	5,000,000	345	24.72%	1,235,871	
Major Collection Lines	MLK Street Gravity Main	146,590	3,192,000	92.28%	135,273	
Major Collection Lines	Pecan Street Gravity Main	171,255	3,192,000	92.28%	158,034	
Major Collection Lines	Central LS Force Main	143,956	1,762,000	92.28%	132,843	
Major Collection Lines	North Pecan LS Force Main	5,775	282,000	92.28%	5,329	
Major Collection Lines	Highway 71 Pipe Bursting Project (Expansion from 10" to 15")	659,000	1,117	92.28%	608,126	
Major Collection Lines	Fayette St. Improvement (Expansion from 12" to 18")	230,837	1,502	92.28%	213,017	
Major Collection Lines	Westside Collection System Gravity Sewer Improvements	8,150,866	23,564	92.28%	7,521,625	
Major Collection Lines	Transfer Lift Station and Force Main	4,440,387	5,600	92.28%	4,097,592	
Major Collection Lines	Sewer Line replacement (Main St. & Maple, Mesquite, Magnolia, Locust)	395,000	1,200	92.28%	364,506	
Major Collection Lines	10-inch sewer line Agnes St Extension (1800LF)	500,000	860	92.28%	461,400	
Major Collection Lines	24-inch sewer line from Hunter's Crossing to West Bastrop Village	539,569	4,940	92.28%	497,915	
Major Collection Lines	XS Ranch 8-inch sewer force mains to be installed as part of the WTP - 22,000LF (t)	2,200,000	600	92.28%	2,030,162	
	Wastewater Impact Fee Update	9,250		100.00%	9,250	
	Total	\$ 94,453,319	21,369,368		\$ 30,082,740	

WASTEWATER FACILITY PAYMENT CONTRIBUTION AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.

This WASTEWATER FACILITY PAYMENT CONTRIBUTION AGREEMENT (this "Agreement") is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality ("City") and CORIX UTILITIES (TEXAS) INC., a Delaware corporation ("Corix"). In this Agreement, Bastrop and Corix are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

1. Simultaneously herewith, Corix and the City have entered into that a "Wholesale Wastewater Services Agreement" setting forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to certain lands located within its certificated service territory as it exists at the time of execution of this Agreement
4. The Wholesale Wastewater Services Agreement obligates Corix to construct wastewater line improvements (the "Wastewater Line Improvements") necessary to collect wastewater from Corix's customers and to deliver such wastewater to the City's municipal wastewater system for treatment and disposal.
5. The costs of the Wastewater Line Improvements are estimated to exceed \$14,000,000.
6. Corix is negotiating an agreement with SpaceX Investments LLC ("SpaceX") pursuant to which Corix will provide retail wastewater service to real property owned by SpaceX utilizing the Wastewater Line Improvements (the "SpaceX Service Agreement"). Under said agreement, SpaceX is required to provide payment to Corix in an amount equal to \$3,500,000 (the "SpaceX Contribution") to contribute to the costs of the Wastewater Line Improvements.
7. In order for the Wastewater Line Improvements to be economically feasible, Corix requires additional funding.
8. This Agreement is intended to set forth the terms and conditions pursuant to which the City shall provide payment to Corix in an amount equal to \$5,000,000 to contribute to the costs of the Wastewater Line Improvements (the "City Contribution"), and Corix shall reimburse said contribution.
9. Nothing in this Agreement shall alter or amend Corix's obligation to pay wastewater impact fees to the City in accordance with the terms and conditions of the Wholesale Wastewater Services Agreement, and Corix's obligation to reimburse the City Contribution under this Agreement is separate from, and in addition to, the impact fee payment obligation.
10. Corix shall be responsible for payment of all costs of the Wastewater Line Improvements in excess of the SpaceX Contribution and the City Contribution.
11. City and Corix now desire to execute this Agreement to evidence the agreement of the City to provide payment of the City Contribution to Corix, and the agreement of Corix to reimburse the City Contribution.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

ARTICLE I PAYMENT AND REIMBURSEMENT TERMS

Section 1.01 Initial Payment. Upon execution of the SpaceX Service Agreement by both parties thereto, Corix shall provide written notice thereof to the City (the "Initial Payment Notice"). Within thirty (30) days after receipt of the Initial Payment Notice, the City shall provide payment to Corix in the amount of \$2,500,000 (the "Initial Payment Contribution") by wire transfer or other immediately available funds. Corix agrees to deposit the Initial Payment Contribution into a separate bank account and further agrees that such funds may only be utilized for funding costs of design and construction of the Wastewater Line Improvements (including easement acquisition and permitting costs).

Section 1.02 Final Payment. Upon final completion of the Wastewater Line Improvements and approval thereof by the City, Corix shall provide written notice thereof to the City (the "Final Payment Notice"). Within thirty (30) days after receipt of the Final Payment Notice, the City shall provide payment to Corix in the amount of \$2,500,000 (the "Final Payment Contribution") by wire transfer or other immediately available funds.

Section 1.03 Credit for Payments by Bastrop Economic Development Corporation. The Parties acknowledge prior discussions with the Bastrop Economic Development Corporation (the "Bastrop EDC") pursuant to which the Bastrop EDC may provide payment to Corix in an amount up to \$2,500,000 for costs of the Wastewater Line Improvements. In the event Corix receives any payment contribution from the Bastrop EDC for costs of the Wastewater Line Improvements (the "Bastrop EDC Contribution"), Corix shall provide prompt written notice thereof to the City. Further, the amount of the City Contribution shall be reduced by an amount equal to the Bastrop EDC Contribution. By way of example, if Corix receives payment from the Bastrop EDC in the amount of \$2,500,000 as a contribution for the costs of the Wastewater Line Improvements, then Bastrop shall receive a credit in an equal amount. Any credit for the Bastrop EDC Contribution shall be applied to the next payment obligation of the City hereunder.

Section 1.04 Reimbursement of City Contribution.

(a) Upon completion of the construction and commencement of operation of the Wastewater Line Improvements, Corix shall remit to the City a sum equal to \$500 per new retail service connection per Connection Equivalent (the "Connection Fee Payment") that receives retail sewer service from the Wastewater Line Extension (a "Retail Service Connection"). For the purposes of this Agreement, the Connection Equivalent shall be equal to the number of living unit equivalents ("LUEs") at a Retail Service Connection with each LUE being equal to the equivalent of a single family residential connection at 250 gallons per day. For residential service connections, the number of LUEs shall be determined according to the water meter size equivalents promulgated by the American Water Works Association (AWWA), with a standard 5/8-inch x 3/4-inch meter being equal to one (1) LUE. For nonresidential connections, including customers such as SpaceX whose wastewater flows may increase over time and may not correspond to water usage, the number of LUEs shall be determined based on average daily wastewater flows over the final three month billing period during a calendar year. For such connections, Corix shall be required to pay an additional Connection Fee Payment each time the average daily flow increases by 250 gallons per day.

(b) Not later than each January 31st of each year after completion of construction and commencement of operation of the Wastewater Line Improvements, Corix shall pay to the City a sum (the "Annual Connection Fee Payment") equal to the product of multiplying (x) the number of cumulative new service Connection Equivalents for each Retail Service Connection that connects to Corix's wastewater system during the prior calendar year (excluding temporary construction connections), times (y) the Connection Fee Payment. For purposes of illustration, if 50 Retail Service Connections (each of which are

one (1) LUE) connect to the Corix wastewater system during a calendar year, then Corix would pay the City the sum of \$25,000 for that annual period on or prior to the subsequent January 31st. By way of further example, if a large user non-residential service connection had an average daily wastewater flow of 10,000 gallons over the final three month billing period in a calendar year, then Corix will be required to pay \$20,000 to the City for that service connection not later than January 31st of the subsequent calendar year. Similarly, if that same service connection had an average daily wastewater flow of 15,000 gallons over the final three month billing period of a subsequent year, then Corix will be required to provide payment of an additional payment equal to \$10,000 to the City (representing \$500 for each of the additional 20 LUEs of wastewater flow) by the subsequent January 31st.

(c) Corix will continue to tender the Annual Connection Fee Payments to City in accordance with this methodology until such time as the City Contribution in cumulative Connection Fee Payments has been paid by Corix to the City or expiration of the repayment obligation, as provided below.

(d) The Parties mutually agree that the Connection Fee Payments shall be paid only for new Retail Service Connections made by Corix. In the event a customer terminates service at an existing service connection and service is re-established to a new customer at the same service location, such new service shall not qualify as a new Retail Service Connection for purposes of Corix's payment obligation.

(e) Notwithstanding any provision herein to the contrary, Corix's obligation to pay the Connection Fee Payment shall expire for all purposes ten (10) years after final completion of construction of the Wastewater Line Improvements and commencement of operation thereof. After the expiration of the ten year period, City shall not be entitled to any additional Connection Fee Payments from Corix regardless of the total amount of Connection Fee Payments tendered by Corix to City prior to said date. Corix's obligation to provide payment to City for any new Retail Service Connections prior to expiration of this period shall survive expiration.

(f) In the event the Bastrop EDC tenders payment of the Bastrop EDC Contribution to Corix, said contribution shall not alter Corix's obligation to provide payment to the City hereunder, or reduce the amount of payment to be made to the City. In such an event, it shall be the City's sole responsibility to tender any portion of the Connection Fee Payments to the Bastrop EDC, as may be agreed upon by the City and the Bastrop EDC.

(g) Corix may, but is not required to, collect the Connection Fee Payment from each new retail customer that receives retail wastewater service from Corix from the Wastewater Line Improvements. If Corix does not collect the Connection Fee Payment from any individual new retail customer that receives retail wastewater service from Corix from the Wastewater Line Improvements, Corix shall remain responsible for payment of the Connection Fee Payment to the City for the retail service connection, except as provided below with respect to SpaceX.

(h) Notwithstanding any provision herein to the contrary, the City agrees that in recognition of the SpaceX Contribution under the SpaceX Service Agreement, no Connection Fee Payment shall be made to the City for wastewater service furnished to SpaceX (or its assigns) under the SpaceX Service Agreement in a quantity up to 142,500 gallons per day, as measured on an average daily flow basis over the final 3 months of a calendar year. At such time as the average daily wastewater flow of SpaceX (and its assigns) exceeds 142,500 gallons over the final three month billing period, Corix shall then remit the Connection Fee Payment to the City for each additional LUE, as measured over the final three month billing period in a calendar year, in accordance with the terms and conditions of this Agreement.

ARTICLE II

TERM, TERMINATION, DEFAULT, REMEDIES

Section 2.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall remain in effect until the Wastewater Line Improvements have been finally completed and the City Contribution paid in full.

Section 2.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days' written notice of such default and the opportunity to cure same. In the event such default remains uncured, the City shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days' written notice of such default and the opportunity to cure same. In the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City.

Section 2.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City's failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE III
GENERAL PROVISIONS

Section 3.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party; provided however that the City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 3.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 3.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 3.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Wastewater Service by City to Corix for the Wholesale Service Area.

Section 3.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 3.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 3.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 3.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 3.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

City of Bastrop, TX
1311 Chestnut Street
Bastrop, Texas 78602
Attn: City Manager

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 3.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 3.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 3.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 3.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall

be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 3.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 3.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 3.16 Governmental Contract Certifications.

- a. **Boycott Israel Certification.** For purposes of Chapter 2270 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Corix, boycotts Israel. Corix agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Corix, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Corix will boycott Israel during the term of the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this clause has the meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.
- b. **Terrorist Organization Certification.** For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Corix, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as used herein has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.
- c. **Firearms Certification.** Corix hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's

status as a firearm entity or firearm trade association.

- d. **Disclosure of Interested Parties.** Corix acknowledges that Texas Government Code Section 2252.908 ("Section 2252.908") requires business entities entering into a contract with a local government entity such as the Owner to complete a FORM 1295 promulgated by the TEC (which is available on the TEC website at <https://www.ethics.state.tx.us/forms/1295.pdf>) and to file it electronically with the TEC before the time the business entity executes and submits the contract to the local governmental entity. Corix confirms that it has reviewed Section 2252.908, electronically filed a FORM 1295 with the TEC, and has provided the Owner with a completed FORM 1295 and certification of filing generated by the TEC's electronic filing application, as required by Section 2252.908.
- e. **Conflict of Interest Certification.** Corix acknowledges that Texas Local Government Code Chapter 176 requires a vendor that seeks to or enters into a contract with a local governmental entity to file a conflicts of interest questionnaire if the vendor: (i) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer; (ii) has given a local government officer, or a family member of the officer, one or more gifts that exceed certain values; (iii) has a family relationship with a local government officer. Similarly, the Texas Penal Code prohibits the acceptance any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by a public servant. By execution of this Agreement, Corix certifies as follows: (i) Corix has fully complied with the applicable requirements of Chapter 176 of the Texas Local Government Code; (ii) Corix has not provided any gift, payment or other benefit to any director or employee of the Owner; and (iii) Corix has no other conflict of interest with the Owner, or any director or employee of the Owner.

Section 3.17 **Terrorist Organization Certification.** Corix represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Corix, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 806.051, 806.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause (B) has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

Section 3.18 **Disclosure of Interested Parties.** Corix acknowledges that Government Code Section 2252.908 ("Section 2252.908") requires business entities entering into a contract with a local government entity such as the District to complete a FORM 1295 promulgated by the Texas Ethics Commission (TEC) (which is available on the TEC website at <https://www.ethics.state.tx.us/forms/1295.pdf>) and to file it electronically with the TEC before the time the business entity executes and submits the contract to the local governmental entity. Corix confirms that it has reviewed Section 2252.908, electronically filed a FORM 1295 with the TEC, and has provided the District with a completed FORM 1295 and certification of filing generated by the TEC's electronic filing application, as required by Section 2252.908.

Section 3.19 **Effective Date.** This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: R. Darrin Barker

Name: R. Darrin Barker

Title: President

Date: February 23, 2024

CITY OF BASTROP:

By: *Sylvia Carrillo*

Name: Sylvia Carrillo

Title: City Manager

Date: 2/23/24

Attest: *Michelle Diane Limas*
City Secretary



[Handwritten signature]



**WHOLESALE WASTEWATER SERVICES AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.**

This WHOLESALE WASTEWATER SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality (“City”) and CORIX UTILITIES (TEXAS) INC., a Delaware corporation (“Corix”). In this Agreement, Bastrop and Corix are individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

1. City is the owner and operator of municipal water and wastewater systems that it operates to provide retail and wholesale water and wastewater services.
2. Corix is the owner and operator of multiple water and wastewater systems that it operates to provide retail water and wastewater services to its customers.
3. Corix desires to obtain wholesale wastewater treatment and disposal services from the City so that Corix may provide retail wastewater services to certain lands located within its certificated service territory (the “Wholesale Service Area,” as hereinafter defined), and City desires to provide such services to Corix.
4. Corix will be responsible for construction of the wastewater line improvements necessary to collect wastewater from Corix’s customers within the Wholesale Service Area, as defined herein, and to deliver such wastewater to the Point of Entry, as defined herein.
5. Subject to Corix’s compliance with the provisions of this Agreement, City represents that the City System (as hereinafter defined) will be capable of providing Wholesale Wastewater Services (as hereinafter defined) to Corix, and City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Services to Corix under this Agreement and to the other customers of the City System under other agreements, with all costs of the City System, as more fully defined herein, to be recovered in a fair and equitable manner through the rates and charges of City.
6. City and Corix now desire to execute this Agreement to evidence the agreement of City to provide Wholesale Wastewater Services, as more fully defined herein, to Corix under the terms and conditions described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

ARTICLE I
DEFINITIONS

Section 1.01 Definition of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below:

“Agreement” means this Wholesale Wastewater Services Agreement.

“City” means the City of Bastrop.

“City Connection Facilities” means the Metering Facility and/or that portion of the Interceptor located on the City’s side of the Point of Entry.

“City Service Ordinances” means the City ordinances and rules governing wholesale wastewater service, as amended by the City Council from time to time, and applicable to Corix under the express provisions of this Agreement.

“City System” means all of the Wastewater equipment and facilities of City that are used for the collection, transportation, treatment, or disposal of Wastewater received from Corix System and any expansions thereof required to make service available at the levels established in this Agreement. The City System shall include the Connection Facilities upon completion of construction and conveyance to the City but shall not include any of the internal wastewater collection and pumping facilities, and associated connection facilities that are owned by Corix in its retail wastewater service areas.

“Connection Facilities” means the wastewater facilities to be constructed by or on behalf of Corix and conveyed to City in accordance with the terms of this Agreement. The Connection Facilities generally consist of the Interceptor and Metering Facility, together with all related facilities, equipment and appurtenances.

“Connection Facilities’ Costs” means the costs incurred by or on behalf of Corix relating to the design, permitting and construction of the Connection Facilities including acquisition of easements for the Connection Facilities, as more particularly described in Section 4.05.

“Conveyance Date” means the date on which the City Connection Facilities are conveyed by Corix to City in accordance with Section 3.11 below.

“Costs of the System” means all of City’s costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the City System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the City System in accordance with policies of the City Council. Notwithstanding the foregoing, because City is providing Wholesale Wastewater Services to Corix and retail wastewater service to other customers from City’s System, the term “Costs of the System” shall not include retail billing and customer service costs or any costs properly attributed to the provision of retail wastewater service for facilities not used by and useful by to City for the provision of wastewater service to the Wholesale Service Area from the City System, such as costs of retail collection lines, and individual retail customer service lines.

“Corix” means Corix Utilities (Texas) Inc. and its successors and permitted assigns.

“Corix System” means the facilities of Corix to be constructed for collection and transportation of Wastewater from Corix’s retail customers to the Point of Entry into the City System. Corix System shall be owned, operated, and maintained by Corix and shall not include any portion of the Connection Facilities.

“Effective Date” means the date this Agreement has been executed by both Corix and City.

“Emergency” means: a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or, a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of City. The term includes Force Majeure and acts of third

parties that cause the City System to be unable to provide the Wholesale Wastewater Services agreed to be provided herein.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than City or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

“Infiltration” means water that enters Corix System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

“Inflow” means water that enters Corix System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

“Interceptor” means the wastewater line and related appurtenances that will be constructed by Corix as a condition of Wholesale Wastewater Services. That portion of the Interceptor located on the City’s side of the Point of Entry shall be conveyed to the City and shall be owned by the City as part of the City System. That portion of the Interceptor located on Corix’s side of the Point of Entry shall be retained by Corix as part of the Corix System.

“LUE” or “Living Unit Equivalent” means an amount of Wholesale Wastewater Service sufficient for one single family residential connection or its equivalent. The number of LUEs for each retail connection in the Wholesale Service Area shall be calculated based on American Water Works Association (“AWWA”) water meter size equivalents in accordance with City Rules and Policies.

“Metering Facility” means the Wastewater flow meter, meter vault and all metering and telemetering equipment required to measure Wholesale Wastewater Service provided by City pursuant to this Agreement to be located at the Point of Entry.

“Minimum Monthly Charge” means the monthly charge by the City to Corix for the provision of Wholesale Wastewater Service by the City to the Wholesale Service Area as described in Sections 4.01 and 4.03 below.

“Peak Hour Flow Rate” means the highest metered and/or calculated flow rate delivered cumulatively from the Wholesale Service Area to the City System under any operational condition, including Inflow and Infiltration.

“Permit” means TPDES Permit No. WQ0011076002 issued by TCEQ and any future permit issued by TCEQ to City authorizing the treatment and disposal of treated wastewater effluent generated at the Plant.

“Plant” means the wastewater treatment plant or plants that is or are a part of the City System and as described in the Permit.

“Point of Entry” means the location at which all Wastewater will pass from Corix System into City’s System, which shall be the location generally identified in Exhibit “B.”

“Prohibited Wastes” means those substances and waste prohibited from being discharged into the City System as described in the City Service Ordinances and/or in the Permit.

“TCEQ” means the Texas Commission on Environmental Quality, or its successor agency.

“Volume Charges” means the monthly charge assessed by the City to Corix for the provision of Wholesale Wastewater Service to the Wholesale Service Area determined by the volume of wastewater delivered as measured by the Metering Facility and as described in Sections 4.01 and 4.03 herein.

“Waste or Wastewater” means liquid or water-borne pollutants, contaminants, solid and hazardous waste, hazardous substances, including, without limitation, sewage, domestic and industrial waste,, whether separate or commingled.

“Wastewater Impact Fee” means a charge imposed per wastewater LUE in the Wholesale Service Area pursuant to Chapter 395 of the Local Government Code for funding the City’s costs of wastewater capital improvements or facility expansions necessary to serve the Wholesale Service Area. The Wastewater Impact Fee shall include only those capital improvements that are used or useful for the provision of Wholesale Wastewater Services to Corix under this Agreement in accordance with the methodology set forth in Exhibit “C.” The Wastewater Impact Fee may be updated from time to time by the City based on capital improvement costs incurred by the City for capital improvements that are used and useful for the provision of Wholesale Wastewater Service to Corix.

“Wastewater Impact Fee Credit” means the credit against Wastewater Impact Fees granted by City to Corix under this Agreement for the Connection Facilities Costs, as more particularly described in Section 4.05.

“Wholesale Service Area” means the territory more particularly described or depicted in Exhibit “A” attached hereto.

“Wholesale Service Commitment” means the agreed upon minimum of 1 million gallons per day of Wholesale Wastewater Service to be made available by City to Corix under this Agreement for the Wholesale Service Area.

“Wholesale Wastewater Service” means the reception, transportation, treatment, and disposal of Wastewater to be provided by City to Corix under this Agreement and in accordance with applicable provisions of the City Service Ordinances.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II
PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service; Levels.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, City agrees to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment. City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Service to Corix to meet retail service demands within the Wholesale Service Area in a quantity equal to the Wholesale Service Commitment.

(b) Corix may amend the quantity of Wholesale Wastewater Service from time to time by no less than twelve (12) months’ prior written notice to City. In the event of a reduction of the Wholesale Service Commitment, City shall revise the Minimum Monthly Charge and Volume Charge effective the first month after the expiration of 12 months, at which time the Wholesale Service Commitment shall be reduced according to Corix’s notice. In the event of a requested increase in the Service Commitment, the Parties shall negotiate in good faith the terms for additional Wholesale Wastewater Service, but City shall be under no obligation to furnish the additional Wholesale Wastewater Service except as it otherwise agrees in its sole

discretion. City may obligate Corix to fund the costs of expansion of the City System as a condition of additional Wholesale Wastewater Service.

(c) In the event the provision of Wholesale Wastewater Service in a quantity equal to the Wholesale Service Commitment requires City to expand its Plant, City agrees to commence construction of the expansion when the average daily or annual average flow of wastewater into the wastewater treatment plant reaches 90% of the permitted average daily flow for three consecutive months (in accordance with current TCEQ rules at 30 Tex. Admin. Code Sec. 305.126) or as otherwise necessary to make service available as development progresses within the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment.

(d) The Wholesale Service Commitment shall be subject to the following additional limitations:

1. The Peak Hour Flow Rate shall not exceed A TO BE DETERMINED gallons per minute during dry conditions and A TO BE DETERMINED gallons per minute during wet weather conditions. (To be determined no later than March 15, 2024.)
2. The quality of Wastewater delivered to the City System shall comply with applicable provisions of the City Service Ordinances. Wastewater delivered to the City System shall not include Prohibited Wastes.

(e) The Parties agree that any increase in the agreed Peak Hour Flow Rate of Wholesale Wastewater Service that City provides to Corix under this Agreement will require a written amendment of this Agreement duly authorized by the governing bodies of the Parties. The Parties agree that the foregoing Peak Hour Flow Rate of Wholesale Wastewater Service shall apply only to Wastewater generated within the Wholesale Service Area. Under no circumstances shall Wastewater generated from other City customers that tie into the Connection Facilities be included in the calculation of the Peak Hour Flow Rate and the daily permitted biochemical oxygen demand (“BOD”) of Wholesale Wastewater Service provided to the Wholesale Service Area.

(f) Discharges by Corix into the City System shall consist only of Wastewater that the City System is capable of handling:

- 1) so that the effluent and sludge from the City System meets the current legal regulatory standards of the EPA, the TCEQ, or any governmental body having legal authority to set standards for such effluent and sludge, as amended from time to time; and
- 2) that meets any applicable requirements of the EPA Pretreatment Regulations, 40 CFR Part 403.

(g) Corix agrees that it shall adopt and enforce any pretreatment requirements for its retail customers as may be necessary to ensure the quality of Wastewater Corix delivers to the City pursuant to this Agreement meets the requirements of this Section.

Section 2.02 Conditions Precedent for Wholesale Wastewater Service. The provision of Wholesale Wastewater Service to Corix is subject to the prior completion of construction by or on behalf of Corix, and acceptance by City, of the Connection Facilities.

Section 2.03 Sole Provider.

(a) For so long as the City meets its obligations under this Agreement, City will be the sole source of Wholesale Wastewater Service to Corix for the Wholesale Service Area unless City consents in writing to Corix’s conversion to another wholesale provider. Under the terms and conditions set forth herein, City shall be entitled to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area from any source of treatment capacity available to City.

(b) Notwithstanding the foregoing, the Parties recognize that the provision of retail wastewater service to new connections within the Wholesale Service Area may not be economically viable in all cases due to the costs of extension of improvements required to connect the property to the Interceptor. The City agrees that interim service may be furnished by Corix to individual properties when it is economically infeasible to provide service to an applicant by connection of the applicant's property to the Interceptor but the Parties shall cooperate in good faith to cause connection of such areas to the Interceptor when economically viable.

Section 2.04 Wholesale Service Commitment Not Transferable. City's commitment to provide Wholesale Wastewater Service is solely to Corix (and its successors and permitted assigns) and solely for the Wholesale Service Area. Corix may not assign or transfer in whole or in part its right to receive Wholesale Wastewater Service without City's prior written approval.

Section 2.05 Corix Responsible for Retail Connections. Corix will be solely responsible for providing retail wastewater service within the Wholesale Service Area. Corix shall not provide wastewater services received under this Agreement to any entity, private or public, other than Corix's retail customers located within the Wholesale Service Area. Corix will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, for the applicable provisions of the City Service Ordinances, of State and federal laws and regulations, and for the proper and lawful application of Corix's policies and regulations governing connection to the Corix System.

Section 2.06 Curtailment of Service. The Parties agree that, if Wastewater Service is curtailed by City when necessary for good cause to other similarly-situated customers of the City System, City may impose a like curtailment, with notice to Corix, on Wholesale Wastewater Service delivered to Corix under this Agreement. City will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit City from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

Section 2.07 Cooperation During Maintenance or Emergency. Corix will reasonably cooperate with City during periods of Emergency or required maintenance. If necessary, upon prior notice, Corix will operate and maintain Corix System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.08 Corix Prevention of Infiltration and Inflow. It will be Corix's responsibility to undertake such measures as are reasonably necessary or prudent to minimize Infiltration and Inflow to the Corix System. Without limitation, Corix will prohibit the discharge of drainage water and stormwater run-off into the Corix System.

Section 2.09 Construction and Testing Criteria for Corix Sewer Connections.

(a) All tests required by the design criteria and specifications of the State of Texas will be at Corix's or its customer's expense.

(b) Corix agrees that the physical connection of each service line to the local Wastewater facility will be the responsibility of Corix, will be inspected, and will not be left to the discretion of the plumber or contractor. Corix may inspect the connections with its own personnel or may retain a third party inspector for such purposes. All inspection results shall be furnished to City upon request.

(c) Corix agrees that it will maintain strict supervision and maintenance of its local Wastewater facilities to prohibit unpermitted connections such as roof drains or any other means by which surface drainage, *i.e.* stormwater run-off, can enter local Wastewater facilities and then discharge to the City System.

(d) Connections made to the Corix System after the date of execution of this Agreement will be made using only materials permitted by applicable codes and development criteria manuals of the State of Texas.

Section 2.10 Liability of Corix. As between the Parties, liability for damages to third persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Corix to Point of Entry. As between the Parties, liability for damages to third persons will pass to City at the Point of Entry to City's System.

Section 2.11 Liability of City. Subject to the foregoing, City will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it at Point of Entry in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause City to have liability for damages to the City System or to third persons arising from the delivery by Corix of Prohibited Wastes. Similarly, this Agreement shall not be construed as a waiver of any governmental immunity that the City or Corix may enjoy with respect to any claims brought by third party persons or entities.

Section 2.12 City Treatment and Use of Wastewater. City may treat the Wastewater delivered by Corix pursuant to this Agreement and dispose of the effluent generated thereby in such manner as may be provided in the Permit or other applicable TCEQ authorization in its sole discretion.

Section 2.13 Right of Entry. Corix agrees to provide City the right of entry and access to the Corix System at all reasonable times upon prior notice in order to inspect those facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Wastewater Service.

Section 2.14 Confirmation of Service Availability. When requested by Corix, the City shall issue letters of service availability or other evidence of service commitment consistent with Corix's obligations under this Agreement, to a developer in the Wholesale Service Area, such developer's lenders, prospective purchasers, the applicable governing municipal jurisdiction, or any other governmental entity having jurisdiction over development in the Wholesale Service Area. The City Manager and Public Works Director of the City are each authorized to issue such letters of service availability, and shall do so within ten (10) days of receipt of a written request by Corix.

ARTICLE III **DESIGN AND CONSTRUCTION OF CONNECTION FACILITIES**

Section 3.01 General. Corix shall construct and install, or cause the construction and installation of, the Connection Facilities at its sole cost and expense in accordance with the terms and conditions of this Agreement. The Parties contemplate installation of the Connection Facilities generally at the location depicted in **Exhibit "B."** Notwithstanding the foregoing, in the event that Corix is unable to secure any of the Required Easements after utilizing good faith efforts, including eminent domain proceedings, then the Connection Facilities may be relocated into public rights-of-way at locations approved by the City.

Section 3.02 Design and Engineering of Connection Facilities.

(a) The Connection Facilities must be designed by a Texas Licensed Professional Engineer in accordance with the requirements of the Texas Commission on Environmental Quality.

(b) Corix shall submit to the City for review and approval prior to the commencement of construction of the Connection Facilities: (i) preliminary engineering report including facility layout and budgets itemized by facility ownership; (ii) final engineering report including plans, specifications, contract

documents and detailed itemized budgets by facility ownership; and (iii) documentation that all required easements, rights of way, and local, state and federal permits (if applicable) for the Connection Facilities construction have been secured.

(c) Corix shall submit all final plans and specifications for construction of the Connection Facilities to City for review and approval prior to commencement of construction of the Connection Facilities. City approval shall not be unreasonably withheld, delayed or denied provided the plans and specifications comply with all applicable requirements of TCEQ. The City agrees to review all plans and specifications and either approve the plans and specifications, or provide written comments specifically identifying the required changes, within twenty one (21) days after the submittal.

Section 3.03 Corix Payment for Construction and Installation of the Connection Facilities.

(a) Corix agrees to pay for, or cause to be paid, the costs of design and construction of the Connection Facilities. In addition, Corix agrees to pay for, or cause to be paid, the costs incurred in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, and sites required as part of the Connection Facilities as those costs become due.

(b) City will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with by Corix in connection with the construction of the Connection Facilities.

Section 3.04 Easement Acquisition.

(a) At Corix's sole discretion, the Connection Facilities may be located in private easements dedicated to Corix, or may be located within public rights-of-way.

(b) Notwithstanding the foregoing, the City shall determine whether the City Connection Facilities shall be located in easements or public rights -of-way. In the event the City elects for such facilities to be located in easements, the City shall be solely responsible for securing the easements at its sole cost and expense.

Section 3.05 Construction of Facilities.

(a) Corix agrees to provide not less than ten (10) days' prior written notice to City of the date on which construction is scheduled to begin on the Connection Facilities.

(b) Corix agrees to use its reasonable and good faith efforts to ensure that the Connection Facilities shall be constructed in a good and workmanlike manner and that all material used in such construction shall be free from defects and fit for its intended purpose.

(c) Corix shall construct the Connection Facilities in compliance with any and all applicable local, state, and federal regulations.

(d) Any variance to the requirements within this Agreement must be submitted in writing to City and is subject to City's sole discretion and approval. If the City or its designees determine that Connection Facilities as constructed by Corix are not in compliance with any specifications as approved by City, then City may pursue any remedy provided in this Agreement.

Section 3.06 Inspection of Facilities.

(a) City will have the right to inspect the construction of the City Connection Facilities at the City's sole cost and expense. Corix will, at its sole cost, provide City with documentation of third party inspections, testing and reports relating to the construction of the Connection Facilities.

(b) Upon completion of the Connection Facilities, Corix shall provide City with a certificate of completion from the project engineers certifying that the Connection Facilities have been completed substantially in accordance with the approved specifications or otherwise approved by City in response to Corix's variance request. Corix will respond to and repair any outstanding items identified in writing by City. The City shall provide written confirmation of satisfactory completion of the Connection Facilities. City's letter to Corix confirming that all outstanding project items have been completed shall be the "Completion Date."

Section 3.07 Corix Warranties, and Bonds

(a) Duty to Repair and Warranty. Except as otherwise specified, Corix agrees to repair all defects in materials, equipment or workmanship appearing within two (2) years from the Completion Date to comply with the approved specifications for the City Connection Facilities. Upon receipt of written notice from City of the discovery of any defects, Corix shall promptly and at its own cost remedy the defects and replace any property damaged therefrom, or may cause the contractor to do so. In case of Emergency where delay would cause serious risk of loss or damage to City or its customers, or if Corix, after notice, fails to proceed promptly toward such remedy within 30 days or within another period of time which has been agreed to in writing, City may have defects in the Connection Facilities corrected in compliance with the terms of this warranty and guarantee, and Corix shall be liable for all expenses incurred by City in so doing.

(b) Assignment of Warranty Obligations. In addition to Corix's duty to repair, as set forth above, Corix expressly assumes all warranty obligations under the approved plans and specifications for specific components, materials, equipment or workmanship of the Connection Facilities. Corix may satisfy its duty to repair and warranty by obtaining and assigning to City, by written instrument in a form approved by counsel for the City, a complying warranty from a manufacturer, supplier, or contractor providing the warranty for one year from the Completion Date. Where an assigned warranty is tendered and accepted by City that does not fully comply with the requirements of the approved specifications, Corix agrees that it shall remain liable to City on all elements of the required warranty that are not provided by the assigned warranty.

(c) General Requirements for Performance and Payment Bonds.

1) The Cost of the Facilities (herein "Cost of the Facilities") shall be based on the construction contract(s) issued by (or on behalf of) Corix to its contractor for the Connection Facilities (in addition to permitting and easement acquisition costs funded by Corix).

2) When Performance Bonds and/or Payment Bonds are required, each shall be issued as security for the faithful performance and/or payment of all Corix's obligations under this Agreement. Performance Bonds and Payment Bonds shall be issued by a solvent U.S. corporate surety that is authorized to do business in the State of Texas, and shall meet any other requirements established by State of Texas or Federal law. The bonds shall be executed or countersigned by a Texas resident agent.

3) If the surety on any Bond furnished by Corix is declared bankrupt or becomes insolvent or its right to do business in the State of Texas is terminated or it ceases to meet the requirements of this Agreement, Corix shall within ten (10) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Agreement.

(d) Maintenance Bond. Corix agrees to arrange for its general contractor to provide to City not later than the Completion Date a maintenance bond in a form approved by counsel for City, for an amount not less than 25% for the cost of the City Connection Facilities for the repair of all defects in materials, equipment or workmanship appearing in the Connection Facilities within two (2) years from the Completion Date.

Section 3.08 Insurance.

(a) The contract for construction of the Connection Facilities shall require the construction contractor (“Contractor”) to provide and maintain the types and minimum coverages of insurance specified below from the time Corix issues a notice to proceed for construction of the Connection Facilities and extending until the Completion Date.

(b) The Contractor shall be required to present Corix with a current insurance certificate showing the required coverages before any workers or materials are brought to the construction site for the Connection Facilities. City, its employees, officers, and its professional consultants, legal representatives and agents will be named as an additional insured on such insurance certificate. The insurance coverages shall include, and the certificates shall reflect, carrier’s written endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Corix.

(c) If the Contractor engages subcontractors for construction, the Contractor shall either provide coverage for subcontractors in the Contractor’s insurance policies or require each subcontractor to secure insurance of the same types and with the same coverage limits as Contractor’s.

(d) The Contractor’s insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued. Such insurance shall include, at a minimum, coverage for the following types of claims that might arise out of the construction of the Facilities:

- 1) claims under workers’ compensation, disability benefits, and other similar employee benefit laws;
- 2) claims for damages because of bodily injury, occupational sickness or disease, or death of any person;
- 3) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, wherever located, including loss of use resulting therefrom;
- 4) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle; and
- 5) the policies of insurance so required by this section to be purchased and maintained shall include at least the specific coverages for, and shall be written for not less than, the Cost of the Connection Facilities, or as required by law, whichever is greater.

Section 3.09 Conveyance of Facilities and Associated Property

(a) Upon the Completion Date, all facilities located on the City’s side of the Point of Entry shall be deemed owned by the City. Notwithstanding the foregoing, Corix agrees to provide a bill of sale or other conveyance instrument reasonably satisfactory to the City to evidence such conveyance upon request of the City.

(b) Upon the Completion Date, Corix will be responsible for ownership, operation and maintenance of the Interceptor located on its side of the Point of Entry, and City shall be responsible for ownership, operation, and maintenance of the City Connection Facilities.

ARTICLE IV
RATES AND CHARGES

(a) Wholesale Wastewater Rates, Fees and Charges. Corix will pay City for the Wholesale Wastewater Service provided under this Agreement based on rates, charges and fees for the Wholesale

Wastewater Service set by the City Council for its wholesale wastewater customers and amended from time to time. The rates, charges and fees for Wholesale Wastewater Service shall consist of the following:

- 1) Minimum Monthly Charge, which is equal to \$1.75 per wholesale service meter as of the Effective Date;
- 2) Volume Charges, which is equal to \$5.18 per 1,000 gallons as of the Effective Date; and
- 3) Wastewater Impact Fees, as adjusted by this Agreement.

(b) The Minimum Monthly and Volume Charges shall be calculated by City in accordance with standard ratemaking principles for wholesale service; shall be just, reasonable, and non-discriminatory; and shall be based on the Costs of the System at the time of adoption. Wastewater Impact Fees shall be calculated by City in accordance with the applicable provisions of Chapter 395, Texas Local Government Code, and modified in accordance with the methodology set forth in this Agreement.

(c) Corix's obligation to commence payment of the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees shall commence the first month subsequent to the Completion Date and delivery of Wastewater to the City System. The City shall have no obligation to provide Wholesale Wastewater Services prior to the Completion Date.

Section 4.02 Amendment of Wholesale Rates, Fees and Charges, Notices to and Review by Corix.

(a) City may amend the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees from time to time as approved by the City Council.

(b) City will provide Corix with at least ninety (90) days prior written notice of any increases to the Minimum Monthly and Volume Charges. Written notice shall include the proposed new rates, and a cost of service study. Notice of changes to the Wastewater Impact Fee is governed by the provisions of Section 4.04(a) below.

(c) Corix will have the right to inspect and copy, at its expense, City's books, and records to verify any statement, billing, charge, computation, or demand made to Corix by City. City agrees to make all such information available to Corix for inspection and copying with reasonable promptness during normal business hours.

Section 4.03 Volume and Minimum Monthly Charges.

(a) City will measure Wastewater flows monthly based on monthly readings of the Metering Facility. The total of these amounts multiplied by the Volume Charge will be used by City to compute the monthly bill for the Volume Charges as provided in Section 5.02 below.

(b) Upon the commencement of delivery of Wastewater to the City System, Corix will pay to the City the Minimum Monthly Charge.

Section 4.04 Wastewater Impact Fees.

(a) Except for those Wastewater Impact Fees that are credited in accordance with the terms of Section 4.05 below, Corix shall be obligated to pay City a Wastewater Impact Fee that is based upon City's most recently-approved fee for each new retail wastewater customer that connects to the Corix System and receives wastewater service provided under this Agreement. For the term of this Agreement, the Wastewater Impact Fee will be the amount established from time to time in the City Service Ordinances, provided that no increase in the Wastewater Impact Fee will become effective for Corix until the City has given at least ninety days prior written notice of the change to Corix, and any such increases shall be applied to connections

made in the Wholesale Service Area in accordance with Chapter 395, Texas Local Government Code, in order to allow Corix adequate time to make corresponding changes to its Tariff. The Wastewater Impact Fee paid for each new retail wastewater connection to the Corix System shall be due and payable to City within thirty (30) days after the end of each calendar quarterly period in which the new retail wastewater connection is made.

(b) Within thirty (30) days after the end of each calendar quarter after the Completion Date, Corix shall submit a monthly report to City, reflecting the new customer(s), service address(es), meter size(s) and number of LUE(s) for which payment of a Wastewater Impact Fee is being made and/or a credit being applied for the calendar quarter in question. The City reserves the right to audit all Corix submitted data and modify Corix's claimed LUE calculations in accordance with the City Service Ordinances. If no new connections have been made, the monthly report will still be required, but will reflect that there have been no changes from the prior reporting period. Unless changed by written notice in accordance with Section 9.09, the Wastewater Impact Fees and monthly reports required by Section 5.07 and this subsection will be submitted to the following address:

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

(c) The Wastewater Impact Fee will be designed to fund or recover all or a part of the Costs of the City System for capital improvements or facility expansions used or useful to provide Wholesale Wastewater Services in accordance with the methodology set forth in Exhibit "C". Upon payment (or credit), Corix will have a guaranteed reservation of capacity in the City System for the number of LUEs for which a Wastewater Impact Fee has been paid or credited. The Wastewater Impact Fee will be reasonable and just and established in accordance with the provisions of this Agreement.

Section 4.05 Wastewater Impact Fee Credit. As consideration for the design, construction and conveyance of the Connection Facilities, City shall credit Corix with the payment of Wastewater Impact Fees (the "Wastewater Impact Fee Credit") in an amount equal to all costs and expenses incurred by or on behalf of Corix relating to the design, construction, inspection and permitting of the Connection Facilities and acquisition of easements related thereto, including all surveying, appraisal, legal, condemnation and other costs related thereto (collectively, the "Connection Facilities Costs"), including, without limitation, all costs of design, engineering, materials, labor, construction, inspection, and testing arising in connection with the Connection Facilities; all payments arising under any contracts entered into for the construction of the Connection Facilities; all costs incurred by or on behalf of Corix in connection with obtaining governmental approvals, certificates, or permits required for the Connection Facilities; all costs and expenses incurred by or on behalf of Corix in connection with obtaining the easements, rights-of-way, or sites required as a part of the construction of the Connection Facilities. At City's request, Corix shall agree to furnish documentation in reasonable detail evidencing and supporting the Connection Facilities Costs. Commencing on the Completion Date, Corix will be credited with the payment of Wastewater Impact Fees for each new retail wastewater connection to the Corix System, and each then existing wastewater connection to the Corix System that connects to the Connection Facilities, until the Wastewater Impact Fee Credit is exhausted.

Section 4.06 Corix Wastewater Rates and Charges. Corix will determine and charge its retail Wastewater customers such rates in accordance with its tariff. During the term of this Agreement, Corix will fix and collect rates and charges for retail Wastewater service that are, in the opinion of its governing body, sufficient, together with any other revenues available to Corix, to produce the amount necessary to operate, repair, and maintain Corix System, and to pay the cost of Wholesale Wastewater Service from City. Corix will establish retail rates consistent with AWWA ratemaking principles. Corix will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

Section 4.07 Corix Fees. The Parties acknowledge that Corix has the right to the extent allowed under applicable law to assess, charge, and collect contributions in aid of construction, or other service fees, rates, taxes, or other charges. This Agreement will not be construed to require, limit, or restrict the authority of

Corix to implement the same. Corix will be solely responsible for the assessment and collection of such fees and charges and for ensuring that all fees, rates, and charges Corix elects to charge are in compliance with applicable law.

Section 4.08 Verification of Corix Connections. For verification of the Wastewater Impact Fees paid to City and for any other purpose, Corix shall make available for inspection and copying during regular business hours, at City's expense, all records for retail connections to the Corix System. In addition, City shall have the right to inspect Corix System at any time, at City's sole expense, after giving Corix written notice of its intention to inspect and allowing the opportunity for Corix to be present, to verify the type and amount of retail connections made or the condition of Corix System and Corix will provide lawful access to City for this purpose.

ARTICLE V
WHOLESALE BILLING METHODOLOGY, REPORTS
AND OTHER RELATED MATTERS

Section 5.01 Monthly Statement. For each monthly billing period, City will forward to Corix a bill providing a statement of the total Minimum Monthly Charge and Volume Charges owed by Corix for Wholesale Wastewater Service provided to Corix during the previous monthly billing period. Corix will pay City for each bill submitted by City to Corix by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to City Hall in Bastrop County, Texas, upon prior arrangement. If payments will be made by bankwire, Corix shall verify wiring instructions. Payment must be received at City Hall or bank by the due date in order not to be considered past due or late. In the event Corix or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, Corix shall pay in addition City's then-current, Council-approved wholesale wastewater contract late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations. City will compute the Minimum Monthly Charge and Volume Charges included in the monthly billing for Wholesale Wastewater Service on the basis of monthly readings of the Metering Facility. The total of these amounts multiplied by the wholesale Wastewater rate, set from time to time by the City Council, will be used to compute the monthly bill for the Volume Charge.

Section 5.03 Infiltration and Inflow; Winter Averaging. Corix acknowledges that water entering the City System from Corix System emanating from any source whatsoever must be given treatment and handling whether or not its source is revenue-producing for Corix. Therefore, Corix agrees to pay, as part of the Minimum Monthly Charge and Volume Charge, for Infiltration and Inflow originating within the Wholesale Service Area without abatement in the same manner and cost as other Wastewater entering City's System from Corix's System.

Section 5.04 Effect of Nonpayment. With respect to monthly billings, if City has not received payment from Corix by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, City will notify Corix, or its assignee responsible for payment in accordance with this Agreement, of such delinquency in writing, if Corix or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from City, then City may, at its discretion, terminate or reduce the level of Wholesale Wastewater Service to Corix until Corix or its assignee makes payment is made.

Section 5.05 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Corix to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to Corix under this Agreement.

Section 5.06 Metering Facility Accuracy; Calibration.

(a) The City shall own the Metering Facility, which Corix shall pay for, and it shall be calibrated each calendar year by the City at City’s sole cost and expense (and such costs may be included in the Costs of the System). The City shall provide not less than 48 hours’ prior written notice of each such calibration, and a representative of Corix may be present to observe each calibration.

(b) The Metering Facility may be calibrated at any reasonable time, and shall be tested at least annually, by either Party to this Agreement, provided that the party making the calibration notifies the other party in writing at least five days in advance and allows the other Party to witness the calibration. In the event any question arises at any time, but not more than a frequency of once per consecutive 12-month period without mutual consent of both Parties, as to the accuracy of the Metering Facility, then the Metering Facility shall be tested by City promptly upon demand of Corix. The expense of such test shall be borne by Corix if the Metering Facility is found to be within AWWA and manufacturer’s standards of accuracy for the type and size of meter and by City if the Metering Facility is found not to be within AWWA and manufacturer’s standards for the type and size of meter.

(c) If, as a result of any test, the Metering Facility is found to be registering inaccurately (in excess of or below AWWA and manufacturer’s standards for the type and size of meter), the readings of the Metering Facility shall be corrected at the rate of its inaccuracy for any period which is definitively known or agreed upon and City shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

- 1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- 2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

Section 5.07 Additional Required Notices. In addition to the monthly reports required by Section 4.04(b) above, Corix shall:

(a) Provide to City a copy of each final subdivision plat of property within the Wholesale Service Area.

(b) Provide to City by June 1 of every year during the term of this Agreement a report setting forth: (i) the total number of retail wastewater service connections within the Wholesale Service Area as of April 1 of the same year; and, (ii) the total number of new retail wastewater service connections to the Corix System during the prior annual period ending April 1 of the same year, which connections shall be set forth in LUES as determined by City’s Service Ordinance.

ARTICLE VI
REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, legal interpretations, policies and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 6.02 Cooperation to Assure Regulatory Compliance. Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, and any other applicable and/or relevant legal or regulatory requirements, each party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where

noncompliance or non-cooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

Section 6.03 Sewer System Overflows. Each Party shall cooperate with the other and initiate immediate response measures to abate and remediate sewer system overflows in its System in compliance with its internal directives and policies and as directed by state, federal, or other officials, and immediately notify the other Party of the sewer system overflows affecting the Wholesale Service Area. Each Party is responsible for timely providing all required equipment and personnel to remediate the sewer system overflow, and for providing any required notice to the United States Environmental Protection Agency (EPA), the TCEQ, and affected members of the public regarding any threatened or actual overflows.

ARTICLE VII **TERM, TERMINATION, DEFAULT, REMEDIES**

Section 7.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall extend for a term of forty (40) years unless terminated earlier as provided herein. So long as Corix provides at least 12 months' written notice to the City, it may renew this Agreement for one additional term of forty (40) years.

Section 7.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City. In the event such default remains uncured for an additional 180 days, then Corix shall, in addition to and not in lieu of any other remedies available to Corix, have the right to notify City that Corix intends to take a more limited amount of Wholesale Wastewater Services from City (which shall be at least the amount City is then able to provide to Corix) and Corix may then obtain other wastewater services from another provider or may take appropriate action to supply itself with additional wastewater services upon giving City written notice of its intent to do so. City acknowledges that the replacement of the Wholesale Wastewater Services which City has agreed to provide under this Agreement would be difficult and expensive for Corix, and agrees to use diligent good faith efforts to perform its obligations under this Agreement.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City's failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided however that City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Wastewater Service by City to Corix for the Wholesale Service Area.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

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

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 8.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 8.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 8.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.16 Exhibits. The following exhibits, attached to this Agreement, are incorporated into this Agreement as if fully set forth:

- Exhibit A: Wholesale Service Area
- Exhibit B: Point of Entry
- Exhibit C: Wastewater Impact Fee Calculation Methodology

Section 8.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: _____  _____

Name: _____ R. Darrin Barker _____

Title: _____ President _____

Date: _____ February 23, 2024 _____

CITY OF BASTROP:

By:  _____

Name: Sylvia Carrillo

Title: City Manager _____

Date: 02/23/2024 _____

Attest: _____
City Secretary

Exhibit "A"
Wholesale Service Area

**Exhibit “B”
Point of Entry**

**Exhibit “C”
Wastewater Impact Fee Calculation Methodology**

Exhibit C

Wastewater Treatment Plant Impact Fee Calculation Methodology

Wastewater Treatment Plant (WWTP) Impact Fee will be calculated by dividing the total amount of WW Treatment Facility Type Project Recoverable Costs by the Total amount of Wastewater Capital Improvement Projects.

WW Treatment Project Recoverable Costs

Total Wastewater Capital Improvements Projects Recoverable Costs

= WWTP Impact Fee Percentage

Total WW Impact Fee X WWTP Impact Fee Percentage = **WWTP Impact Fee**

Using the July 2022 Ordinance information as example would produce the following:

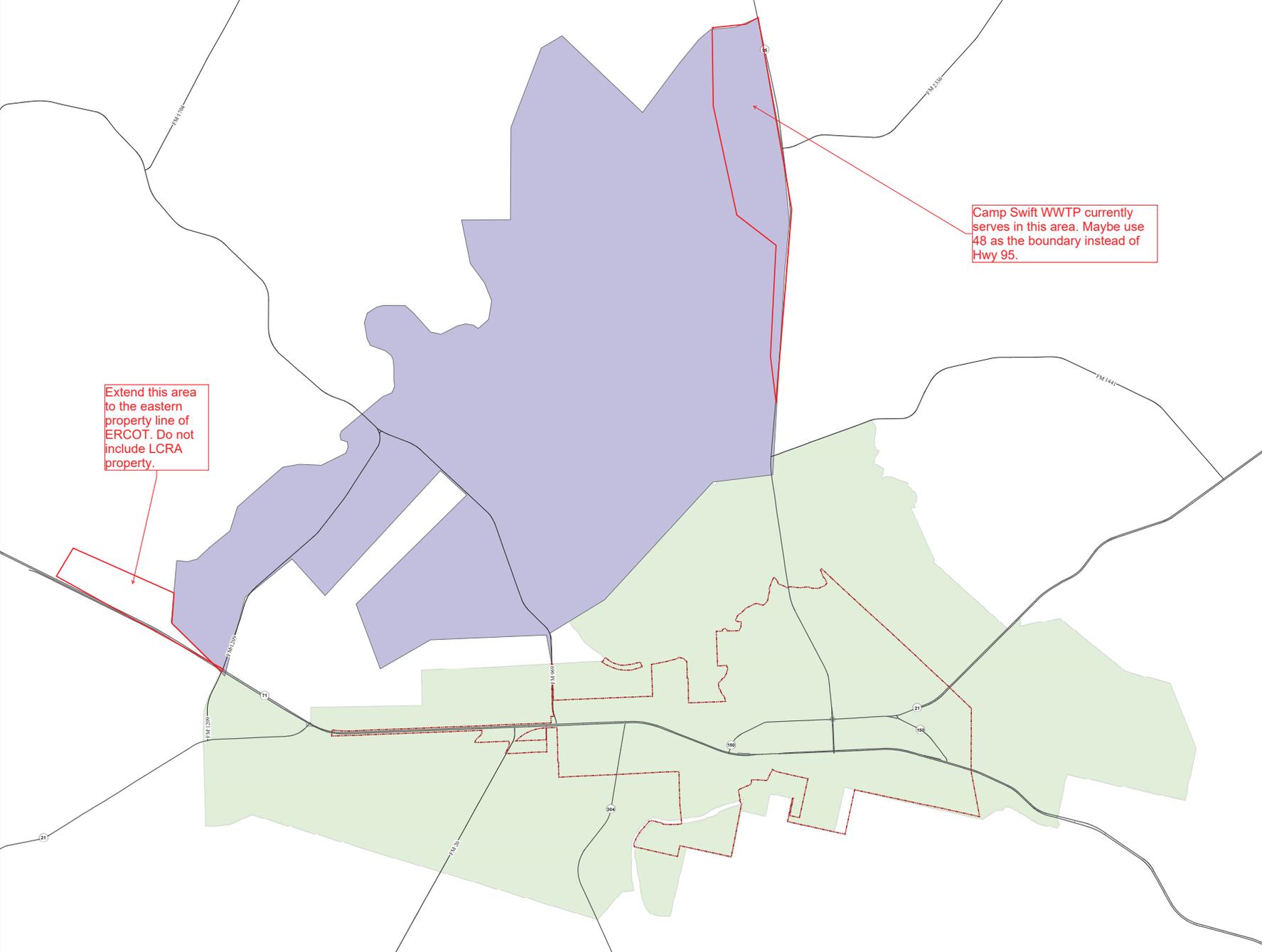
WW Treatment Project Recoverable Costs	\$ 12,190,697.00
Total Wastewater Capital Improvements Projects Recoverable Costs	\$ 30,082,740.00
= WWTP Impact Fee Percentage	40.52%
Total WW Impact Fee	\$ 5,089.00
X WWTP Impact Fee Percentage	40.52%
=WWTP Impact Fee	\$ 2,062.26



City of Bastrop Corix Wholesale Agreement Boundary & Bastrop Wastewater CCN

Legend

- City Limit
- Corix Wholesale Agreement Boundary
- City of Bastrop Wastewater CCN



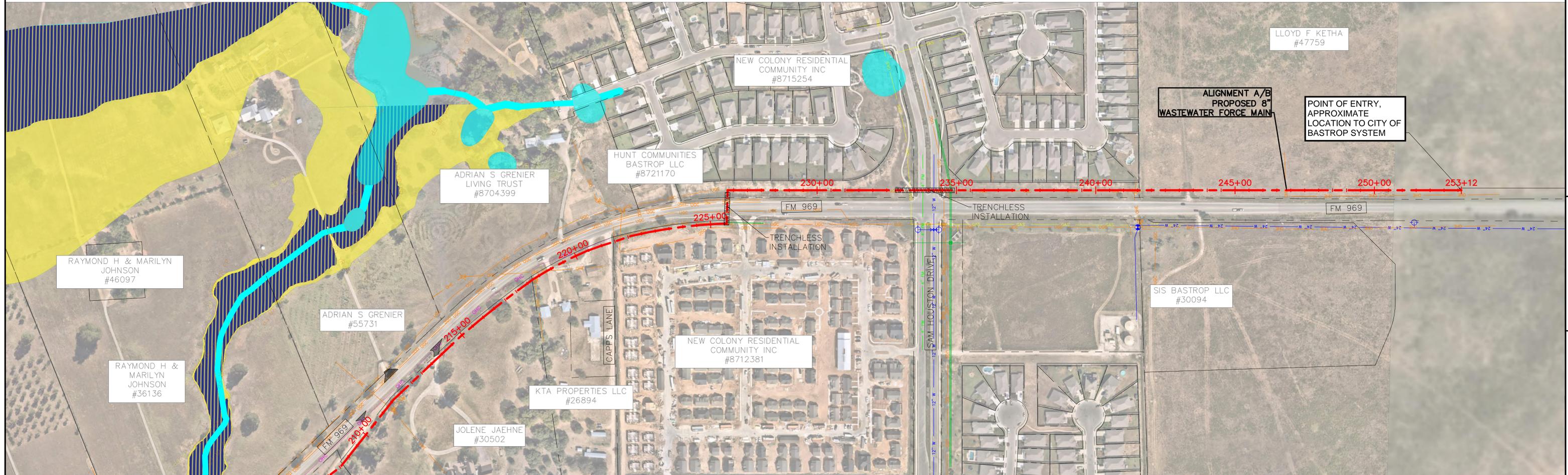
Extend this area to the eastern property line of ERCOT. Do not include LCRA property.

Camp Swift WWTP currently serves in this area. Maybe use 48 as the boundary instead of Hwy 95.

0 500 1,000 3,000
feet
1 inch = 2,700 feet Date: 3/3/2023

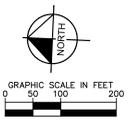
N
The accuracy and precision of this cartographic data is limited and should be used for information bearing purposes only. This data does not replace surveys conducted by registered, licensed land surveyors nor does it constitute an "official" verification of correct land use classification or other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

ALIGNMENT A/B - 210+00 - END



LEGEND

	24" W	EX. WATER LINE
	4" FM	EX. 4-INCH FORCE MAIN
	OHE	EX. OVERHEAD ELECTRIC (BLUEBONNET)
	UGC	EX. UNDERGROUND COMMUNICATION (AT&T)
	PETRO 18 IN	EX. 18" PETROLEUM PIPELINE
	UGC	EX. OVERHEAD TELECOM (AT&T)
	CAS	EX. GAS LINE (CENTERPOINT)
		500 YEAR FLOODPLAIN
		100 YEAR FLOODPLAIN
		RIVER CENTERLINE
		EX. ASPHALT DRIVE
		EX. GRAVEL DRIVE
		PROPOSED ALIGNMENT A/B



C:\Users\mll\OneDrive\Documents\Projects\Bastrop\Bastrop_WW\DWG\DWG\Bastrop_WW\Bastrop_WW.dwg 6/27/2023 4:58 PM



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-34 of the City Council of the City of Bastrop, Texas, approving a Wastewater Easement Acquisition Agreement between the City and Corix Utilities Inc., as attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

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

BACKGROUND/HISTORY:

Corix and the City have entered into that a “Wholesale Wastewater Services Agreement” (attached) setting forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to certain lands located within its certificated service territory. In order to accomplish this, the City and CORIX must partner to acquire the necessary ROW.

The attached agreement would allow the City to facilitate the acquisition with CORIX bearing the cost

FISCAL IMPACT:

NA

RECOMMENDATION:

Approve the agreement as presented.

ATTACHMENTS:

1. Wastewater Easement Acquisition Agreement
2. Wholesale Wastewater Services Agreement

**WASTEWATER EASEMENT ACQUISITION AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.**

This WASTEWATER EASEMENT ACQUISITION AGREEMENT (this "Agreement") is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality ("City") and CORIX UTILITIES (TEXAS) INC., a Delaware corporation ("Corix"). In this Agreement, Bastrop and Corix are individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

1. Corix and the City have entered into that a "Wholesale Wastewater Services Agreement" setting forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to certain lands located within its certificated service territory.
2. Corix and the City have also entered into that certain "Wastewater Facility Payment Contribution Agreement" setting forth the terms and conditions pursuant to which the City has agreed to advance funds to Corix as a contribution to the costs of the wastewater line improvements required to be constructed under the Wholesale Wastewater Services Agreement (the "Wastewater Line Improvements") necessary to extend the City's wastewater system and to receive wastewater from Corix's retail customers.
3. The construction of the Wastewater Line Improvements will require the acquisition of easements for the lands in which the Wastewater Line Improvements will be located (the "Project Easements").
4. The Parties desire to commence the acquisition of Project Easements as soon as practicable, and the City has agreed to acquire the Project Easements on behalf of the Parties.
5. This Agreement sets forth the terms and conditions pursuant to which the City shall acquire the Project Easements at the sole cost and expense of Corix.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

**ARTICLE I
PAYMENT MATTERS**

Section 1.01 **Easement Deposit.** With thirty (30) days of the effective date of this Agreement and as a condition of commencement of easement acquisition by the City, Corix shall post monies with the City (the "Easement Cost Deposit"), to be paid by certified or cashier's check or wire transfer, in the amount of \$100,000.

Section 1.02 **Subsequent Funding.**

(a) Corix will fund and pay for all third party costs and expenses incurred by the City relating to acquisition of the Project Easements, including all third party appraisal costs, right of entry costs, condemnation costs and legal fees directly related thereto (the "Easement Acquisition Costs"). The Easement Acquisition Costs shall not include any City staff time or overhead, and shall only include out-of-pocket

expenses paid by the City to third party consultants and landowners for acquisition of the Project Easements and purchase of rights of entry. At any time the Easement Cost Deposit is drawn down below \$25,000, Corix shall replenish the Easement Cost Deposit in order to restore the balance to an amount specified by the City but not to exceed the original Easement Cost Deposit amount within 15 days after receipt of written notice from the City to do so.

(b) After final acquisition of all Project Easements: (i) if the total Easement Acquisition Costs funded by the City have exceeded the original amount of the Easement Cost Deposit plus any additional sums Corix has paid to replenish the Easement Cost Deposit, Corix will pay the shortfall to the City within thirty (30) days after a receipt of a written invoice for payment; or (ii) if there is a balance remaining in the Easement Cost Deposit after payment of all Easement Acquisition Costs, the City will refund that balance to Corix within thirty (30) days after final acquisition of all Project Easements.

(c) Upon receipt of a written request by Corix, the City will furnish to Corix from time to time a summary of all Easement Acquisition Costs funded by the City with reasonable detail and proof of payment to allow Corix to identify the specific Easement Acquisition Costs paid by the City.

ARTICLE II **EASEMENT ACQUISITION**

Section 2.01 **General.** Except as otherwise set forth herein, the City shall be responsible for acquisition of all Project Easements and shall do so with commercial diligence to allow the Wastewater Line Improvements to be constructed as quickly as practicable.

Section 2.02 **Surveying.** Corix shall be responsible for engaging licensed surveyors to prepare metes and bounds descriptions and surveys for all Project Easements. The City shall have the right to approve all surveys that relate to easements for facilities to be owned by the City and located on the City's side of the Point of Entry, as defined in the Wholesale Wastewater Services Agreement. Corix shall be responsible for payment to the surveying firm for all costs of the surveys.

Section 2.03 **Land Acquisition Consultant.** The City shall engage Seven Arrows Land Staff to provide easement acquisition services on behalf of the Parties. The form of the contract shall be subject to Corix's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. All payments made by the City to said consultant related to acquisition of the Project Easements shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment. The Parties may change the City's Project Easement acquisition consultant by mutual written approval.

Section 2.04 **Form of Easements.** The Parties shall agree upon the form of Project Easements prior to presentation of each easement to a landowner. The Parties agree that the City shall be the grantee of all Project Easements, but that the easements shall be assignable.

Section 2.05 **Appraisals.** The City shall retain any third party appraisal required to appraise the value of any Project Easement. The selection of the appraisal firm shall be subject to Corix's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. All payments made by the City to the appraisal firm shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.06 **Condemnation.** The City agrees that it shall use its power of eminent domain if necessary to acquire the Project Easements. All third party costs and expenses incurred by the City in connection therewith, including court costs, witness fees, appraisal fees and legal fees shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.07 **Payment to Landowners.** The amount of compensation to be paid by the City to any landowner for a Project Easement shall be subject to Corix's prior approval, which approval shall not be

unreasonably withheld, delayed or conditioned. The easement purchase price shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.08 Assignment to Corix. Upon final acquisition of any Project Easements for facilities to be located on Corix’s side of the Point of Entry (as defined in the Wholesale Wastewater Service Agreement), the City shall assign each such Project Easement to Corix by instrument reasonably approved by the Parties. The costs of preparation and recordation of any such easement assignments shall qualify as Easement Acquisition Costs for which Corix shall be responsible for payment.

Section 2.09 Rights of Entry. To the extent that the City acquires any rights of entry on any of the lands in which the Project Easements shall be located before the final easement purchase price is determined by agreement or condemnation, the City agrees that such rights of entry shall be assignable to Corix to allow Corix to enter the property and commence construction of the Wastewater Line Improvements as quickly as practicable.

ARTICLE III
TERM, TERMINATION, DEFAULT, REMEDIES

Section 3.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall remain in effect until all Project Easements have been secured and all Easement Acquisition Costs have been paid to the City.

Section 3.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days’ written notice of such default and the opportunity to cure same. In the event such default remains uncured, the City shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days’ written notice of such default and the opportunity to cure same. In the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City.

Section 3.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City’s failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys’ fees. Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE IV
GENERAL PROVISIONS

Section 4.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party; provided however that the City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Corix shall provide written notice to the City of any such assignment to an affiliate or successor entity. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 4.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 4.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 4.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding acquisition of the Project Easements.

Section 4.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 4.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 4.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 4.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 4.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

City of Bastrop, TX
1311 Chestnut Street
Bastrop, Texas 78602
Attn: City Manager

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 4.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 4.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 4.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 4.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 4.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 4.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that it has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 4.16 **Governmental Contract Certifications.**

- a. **Boycott Israel Certification.** For purposes of Chapter 2270 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Corix, boycotts Israel. Corix agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Corix, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Corix will boycott Israel during the term of the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this clause has the meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.
- b. **Terrorist Organization Certification.** For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, at the time of execution and delivery of the Agreement, neither the Corix, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Corix, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as

used herein has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

- c. **Firearms Certification.** Corix hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.
- d. **Disclosure of Interested Parties.** Corix acknowledges that Texas Government Code Section 2252.908 (“Section 2252.908”) requires business entities entering into a contract with a local government entity such as the Owner to complete a FORM 1295 promulgated by the TEC (which is available on the TEC website at <https://www.ethics.state.tx.us/forms/1295.pdf>) and to file it electronically with the TEC before the time the business entity executes and submits the contract to the local governmental entity. Corix confirms that it has reviewed Section 2252.908, electronically filed a FORM 1295 with the TEC, and has provided the Owner with a completed FORM 1295 and certification of filing generated by the TEC’s electronic filing application, as required by Section 2252.908.
- e. **Conflict of Interest Certification.** Corix acknowledges that Texas Local Government Code Chapter 176 requires a vendor that seeks to or enters into a contract with a local governmental entity to file a conflicts of interest questionnaire if the vendor: (i) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer; (ii) has given a local government officer, or a family member of the officer, one or more gifts that exceed certain values; (iii) has a family relationship with a local government officer. Similarly, the Texas Penal Code prohibits the acceptance any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by a public servant. By execution of this Agreement, Corix certifies as follows: (i) Corix has fully complied with the applicable requirements of Chapter 176 of the Texas Local Government Code; (ii) Corix has not provided any gift, payment or other benefit to any director or employee of the Owner; and (iii) Corix has no other conflict of interest with the Owner, or any director or employee of the Owner.

Section 4.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: _____

Name: R. Darrin Barker

Title: President

Date: _____

CITY OF BASTROP:

By: _____

Name: Sylvia Carrillo

Title: City Manager

Date: _____

Attest: _____
City Secretary

**WHOLESALE WASTEWATER SERVICES AGREEMENT
BETWEEN
CITY OF BASTROP
AND
CORIX UTILITIES (TEXAS) INC.**

This WHOLESALE WASTEWATER SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between CITY OF BASTROP, a Texas home rule municipality (“City”) and CORIX UTILITIES (TEXAS) INC., a Delaware corporation (“Corix”). In this Agreement, Bastrop and Corix are individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

1. City is the owner and operator of municipal water and wastewater systems that it operates to provide retail and wholesale water and wastewater services.
2. Corix is the owner and operator of multiple water and wastewater systems that it operates to provide retail water and wastewater services to its customers.
3. Corix desires to obtain wholesale wastewater treatment and disposal services from the City so that Corix may provide retail wastewater services to certain lands located within its certificated service territory (the “Wholesale Service Area,” as hereinafter defined), and City desires to provide such services to Corix.
4. Corix will be responsible for construction of the wastewater line improvements necessary to collect wastewater from Corix’s customers within the Wholesale Service Area, as defined herein, and to deliver such wastewater to the Point of Entry, as defined herein.
5. Subject to Corix’s compliance with the provisions of this Agreement, City represents that the City System (as hereinafter defined) will be capable of providing Wholesale Wastewater Services (as hereinafter defined) to Corix, and City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Services to Corix under this Agreement and to the other customers of the City System under other agreements, with all costs of the City System, as more fully defined herein, to be recovered in a fair and equitable manner through the rates and charges of City.
6. City and Corix now desire to execute this Agreement to evidence the agreement of City to provide Wholesale Wastewater Services, as more fully defined herein, to Corix under the terms and conditions described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Corix agree as follows.

**ARTICLE I
DEFINITIONS**

Section 1.01 Definition of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below:

“Agreement” means this Wholesale Wastewater Services Agreement.

“City” means the City of Bastrop.

“City Connection Facilities” means the Metering Facility and/or that portion of the Interceptor located on the City’s side of the Point of Entry.

“City Service Ordinances” means the City ordinances and rules governing wholesale wastewater service, as amended by the City Council from time to time, and applicable to Corix under the express provisions of this Agreement.

“City System” means all of the Wastewater equipment and facilities of City that are used for the collection, transportation, treatment, or disposal of Wastewater received from Corix System and any expansions thereof required to make service available at the levels established in this Agreement. The City System shall include the Connection Facilities upon completion of construction and conveyance to the City but shall not include any of the internal wastewater collection and pumping facilities, and associated connection facilities that are owned by Corix in its retail wastewater service areas.

“Connection Facilities” means the wastewater facilities to be constructed by or on behalf of Corix and conveyed to City in accordance with the terms of this Agreement. The Connection Facilities generally consist of the Interceptor and Metering Facility, together with all related facilities, equipment and appurtenances.

“Connection Facilities’ Costs” means the costs incurred by or on behalf of Corix relating to the design, permitting and construction of the Connection Facilities including acquisition of easements for the Connection Facilities, as more particularly described in Section 4.05.

“Conveyance Date” means the date on which the City Connection Facilities are conveyed by Corix to City in accordance with Section 3.11 below.

“Costs of the System” means all of City’s costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the City System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the City System in accordance with policies of the City Council. Notwithstanding the foregoing, because City is providing Wholesale Wastewater Services to Corix and retail wastewater service to other customers from City’s System, the term “Costs of the System” shall not include retail billing and customer service costs or any costs properly attributed to the provision of retail wastewater service for facilities not used by and useful by to City for the provision of wastewater service to the Wholesale Service Area from the City System, such as costs of retail collection lines, and individual retail customer service lines.

“Corix” means Corix Utilities (Texas) Inc. and its successors and permitted assigns.

“Corix System” means the facilities of Corix to be constructed for collection and transportation of Wastewater from Corix’s retail customers to the Point of Entry into the City System. Corix System shall be owned, operated, and maintained by Corix and shall not include any portion of the Connection Facilities.

“Effective Date” means the date this Agreement has been executed by both Corix and City.

“Emergency” means: a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or, a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of City. The term includes Force Majeure and acts of third

parties that cause the City System to be unable to provide the Wholesale Wastewater Services agreed to be provided herein.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than City or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

“Infiltration” means water that enters Corix System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

“Inflow” means water that enters Corix System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

“Interceptor” means the wastewater line and related appurtenances that will be constructed by Corix as a condition of Wholesale Wastewater Services. That portion of the Interceptor located on the City’s side of the Point of Entry shall be conveyed to the City and shall be owned by the City as part of the City System. That portion of the Interceptor located on Corix’s side of the Point of Entry shall be retained by Corix as part of the Corix System.

“LUE” or “Living Unit Equivalent” means an amount of Wholesale Wastewater Service sufficient for one single family residential connection or its equivalent. The number of LUEs for each retail connection in the Wholesale Service Area shall be calculated based on American Water Works Association (“AWWA”) water meter size equivalents in accordance with City Rules and Policies.

“Metering Facility” means the Wastewater flow meter, meter vault and all metering and telemetering equipment required to measure Wholesale Wastewater Service provided by City pursuant to this Agreement to be located at the Point of Entry.

“Minimum Monthly Charge” means the monthly charge by the City to Corix for the provision of Wholesale Wastewater Service by the City to the Wholesale Service Area as described in Sections 4.01 and 4.03 below.

“Peak Hour Flow Rate” means the highest metered and/or calculated flow rate delivered cumulatively from the Wholesale Service Area to the City System under any operational condition, including Inflow and Infiltration.

“Permit” means TPDES Permit No. WQ0011076002 issued by TCEQ and any future permit issued by TCEQ to City authorizing the treatment and disposal of treated wastewater effluent generated at the Plant.

“Plant” means the wastewater treatment plant or plants that is or are a part of the City System and as described in the Permit.

“Point of Entry” means the location at which all Wastewater will pass from Corix System into City’s System, which shall be the location generally identified in Exhibit “B.”

“Prohibited Wastes” means those substances and waste prohibited from being discharged into the City System as described in the City Service Ordinances and/or in the Permit.

“TCEQ” means the Texas Commission on Environmental Quality, or its successor agency.

“Volume Charges” means the monthly charge assessed by the City to Corix for the provision of Wholesale Wastewater Service to the Wholesale Service Area determined by the volume of wastewater delivered as measured by the Metering Facility and as described in Sections 4.01 and 4.03 herein.

“Waste or Wastewater” means liquid or water-borne pollutants, contaminants, solid and hazardous waste, hazardous substances, including, without limitation, sewage, domestic and industrial waste,, whether separate or commingled.

“Wastewater Impact Fee” means a charge imposed per wastewater LUE in the Wholesale Service Area pursuant to Chapter 395 of the Local Government Code for funding the City’s costs of wastewater capital improvements or facility expansions necessary to serve the Wholesale Service Area. The Wastewater Impact Fee shall include only those capital improvements that are used or useful for the provision of Wholesale Wastewater Services to Corix under this Agreement in accordance with the methodology set forth in Exhibit “C.” The Wastewater Impact Fee may be updated from time to time by the City based on capital improvement costs incurred by the City for capital improvements that are used and useful for the provision of Wholesale Wastewater Service to Corix.

“Wastewater Impact Fee Credit” means the credit against Wastewater Impact Fees granted by City to Corix under this Agreement for the Connection Facilities Costs, as more particularly described in Section 4.05.

“Wholesale Service Area” means the territory more particularly described or depicted in Exhibit “A” attached hereto.

“Wholesale Service Commitment” means the agreed upon minimum of 1 million gallons per day of Wholesale Wastewater Service to be made available by City to Corix under this Agreement for the Wholesale Service Area.

“Wholesale Wastewater Service” means the reception, transportation, treatment, and disposal of Wastewater to be provided by City to Corix under this Agreement and in accordance with applicable provisions of the City Service Ordinances.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II
PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service; Levels.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, City agrees to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment. City agrees to expand and improve the City System as necessary in order to provide adequate Wholesale Wastewater Service to Corix to meet retail service demands within the Wholesale Service Area in a quantity equal to the Wholesale Service Commitment.

(b) Corix may amend the quantity of Wholesale Wastewater Service from time to time by no less than twelve (12) months’ prior written notice to City. In the event of a reduction of the Wholesale Service Commitment, City shall revise the Minimum Monthly Charge and Volume Charge effective the first month after the expiration of 12 months, at which time the Wholesale Service Commitment shall be reduced according to Corix’s notice. In the event of a requested increase in the Service Commitment, the Parties shall negotiate in good faith the terms for additional Wholesale Wastewater Service, but City shall be under no obligation to furnish the additional Wholesale Wastewater Service except as it otherwise agrees in its sole

discretion. City may obligate Corix to fund the costs of expansion of the City System as a condition of additional Wholesale Wastewater Service.

(c) In the event the provision of Wholesale Wastewater Service in a quantity equal to the Wholesale Service Commitment requires City to expand its Plant, City agrees to commence construction of the expansion when the average daily or annual average flow of wastewater into the wastewater treatment plant reaches 90% of the permitted average daily flow for three consecutive months (in accordance with current TCEQ rules at 30 Tex. Admin. Code Sec. 305.126) or as otherwise necessary to make service available as development progresses within the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment.

(d) The Wholesale Service Commitment shall be subject to the following additional limitations:

1. The Peak Hour Flow Rate shall not exceed A TO BE DETERMINED gallons per minute during dry conditions and A TO BE DETERMINED gallons per minute during wet weather conditions. (To be determined no later than March 15, 2024.)
2. The quality of Wastewater delivered to the City System shall comply with applicable provisions of the City Service Ordinances. Wastewater delivered to the City System shall not include Prohibited Wastes.

(e) The Parties agree that any increase in the agreed Peak Hour Flow Rate of Wholesale Wastewater Service that City provides to Corix under this Agreement will require a written amendment of this Agreement duly authorized by the governing bodies of the Parties. The Parties agree that the foregoing Peak Hour Flow Rate of Wholesale Wastewater Service shall apply only to Wastewater generated within the Wholesale Service Area. Under no circumstances shall Wastewater generated from other City customers that tie into the Connection Facilities be included in the calculation of the Peak Hour Flow Rate and the daily permitted biochemical oxygen demand (“BOD”) of Wholesale Wastewater Service provided to the Wholesale Service Area.

(f) Discharges by Corix into the City System shall consist only of Wastewater that the City System is capable of handling:

- 1) so that the effluent and sludge from the City System meets the current legal regulatory standards of the EPA, the TCEQ, or any governmental body having legal authority to set standards for such effluent and sludge, as amended from time to time; and
- 2) that meets any applicable requirements of the EPA Pretreatment Regulations, 40 CFR Part 403.

(g) Corix agrees that it shall adopt and enforce any pretreatment requirements for its retail customers as may be necessary to ensure the quality of Wastewater Corix delivers to the City pursuant to this Agreement meets the requirements of this Section.

Section 2.02 Conditions Precedent for Wholesale Wastewater Service. The provision of Wholesale Wastewater Service to Corix is subject to the prior completion of construction by or on behalf of Corix, and acceptance by City, of the Connection Facilities.

Section 2.03 Sole Provider.

(a) For so long as the City meets its obligations under this Agreement, City will be the sole source of Wholesale Wastewater Service to Corix for the Wholesale Service Area unless City consents in writing to Corix’s conversion to another wholesale provider. Under the terms and conditions set forth herein, City shall be entitled to provide Wholesale Wastewater Service to Corix for the Wholesale Service Area from any source of treatment capacity available to City.

(b) Notwithstanding the foregoing, the Parties recognize that the provision of retail wastewater service to new connections within the Wholesale Service Area may not be economically viable in all cases due to the costs of extension of improvements required to connect the property to the Interceptor. The City agrees that interim service may be furnished by Corix to individual properties when it is economically infeasible to provide service to an applicant by connection of the applicant's property to the Interceptor but the Parties shall cooperate in good faith to cause connection of such areas to the Interceptor when economically viable.

Section 2.04 Wholesale Service Commitment Not Transferable. City's commitment to provide Wholesale Wastewater Service is solely to Corix (and its successors and permitted assigns) and solely for the Wholesale Service Area. Corix may not assign or transfer in whole or in part its right to receive Wholesale Wastewater Service without City's prior written approval.

Section 2.05 Corix Responsible for Retail Connections. Corix will be solely responsible for providing retail wastewater service within the Wholesale Service Area. Corix shall not provide wastewater services received under this Agreement to any entity, private or public, other than Corix's retail customers located within the Wholesale Service Area. Corix will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, for the applicable provisions of the City Service Ordinances, of State and federal laws and regulations, and for the proper and lawful application of Corix's policies and regulations governing connection to the Corix System.

Section 2.06 Curtailment of Service. The Parties agree that, if Wastewater Service is curtailed by City when necessary for good cause to other similarly-situated customers of the City System, City may impose a like curtailment, with notice to Corix, on Wholesale Wastewater Service delivered to Corix under this Agreement. City will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit City from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

Section 2.07 Cooperation During Maintenance or Emergency. Corix will reasonably cooperate with City during periods of Emergency or required maintenance. If necessary, upon prior notice, Corix will operate and maintain Corix System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.08 Corix Prevention of Infiltration and Inflow. It will be Corix's responsibility to undertake such measures as are reasonably necessary or prudent to minimize Infiltration and Inflow to the Corix System. Without limitation, Corix will prohibit the discharge of drainage water and stormwater run-off into the Corix System.

Section 2.09 Construction and Testing Criteria for Corix Sewer Connections.

(a) All tests required by the design criteria and specifications of the State of Texas will be at Corix's or its customer's expense.

(b) Corix agrees that the physical connection of each service line to the local Wastewater facility will be the responsibility of Corix, will be inspected, and will not be left to the discretion of the plumber or contractor. Corix may inspect the connections with its own personnel or may retain a third party inspector for such purposes. All inspection results shall be furnished to City upon request.

(c) Corix agrees that it will maintain strict supervision and maintenance of its local Wastewater facilities to prohibit unpermitted connections such as roof drains or any other means by which surface drainage, *i.e.* stormwater run-off, can enter local Wastewater facilities and then discharge to the City System.

(d) Connections made to the Corix System after the date of execution of this Agreement will be made using only materials permitted by applicable codes and development criteria manuals of the State of Texas.

Section 2.10 Liability of Corix. As between the Parties, liability for damages to third persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Corix to Point of Entry. As between the Parties, liability for damages to third persons will pass to City at the Point of Entry to City's System.

Section 2.11 Liability of City. Subject to the foregoing, City will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it at Point of Entry in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause City to have liability for damages to the City System or to third persons arising from the delivery by Corix of Prohibited Wastes. Similarly, this Agreement shall not be construed as a waiver of any governmental immunity that the City or Corix may enjoy with respect to any claims brought by third party persons or entities.

Section 2.12 City Treatment and Use of Wastewater. City may treat the Wastewater delivered by Corix pursuant to this Agreement and dispose of the effluent generated thereby in such manner as may be provided in the Permit or other applicable TCEQ authorization in its sole discretion.

Section 2.13 Right of Entry. Corix agrees to provide City the right of entry and access to the Corix System at all reasonable times upon prior notice in order to inspect those facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Wastewater Service.

Section 2.14 Confirmation of Service Availability. When requested by Corix, the City shall issue letters of service availability or other evidence of service commitment consistent with Corix's obligations under this Agreement, to a developer in the Wholesale Service Area, such developer's lenders, prospective purchasers, the applicable governing municipal jurisdiction, or any other governmental entity having jurisdiction over development in the Wholesale Service Area. The City Manager and Public Works Director of the City are each authorized to issue such letters of service availability, and shall do so within ten (10) days of receipt of a written request by Corix.

ARTICLE III **DESIGN AND CONSTRUCTION OF CONNECTION FACILITIES**

Section 3.01 General. Corix shall construct and install, or cause the construction and installation of, the Connection Facilities at its sole cost and expense in accordance with the terms and conditions of this Agreement. The Parties contemplate installation of the Connection Facilities generally at the location depicted in **Exhibit "B."** Notwithstanding the foregoing, in the event that Corix is unable to secure any of the Required Easements after utilizing good faith efforts, including eminent domain proceedings, then the Connection Facilities may be relocated into public rights-of-way at locations approved by the City.

Section 3.02 Design and Engineering of Connection Facilities.

(a) The Connection Facilities must be designed by a Texas Licensed Professional Engineer in accordance with the requirements of the Texas Commission on Environmental Quality.

(b) Corix shall submit to the City for review and approval prior to the commencement of construction of the Connection Facilities: (i) preliminary engineering report including facility layout and budgets itemized by facility ownership; (ii) final engineering report including plans, specifications, contract

documents and detailed itemized budgets by facility ownership; and (iii) documentation that all required easements, rights of way, and local, state and federal permits (if applicable) for the Connection Facilities construction have been secured.

(c) Corix shall submit all final plans and specifications for construction of the Connection Facilities to City for review and approval prior to commencement of construction of the Connection Facilities. City approval shall not be unreasonably withheld, delayed or denied provided the plans and specifications comply with all applicable requirements of TCEQ. The City agrees to review all plans and specifications and either approve the plans and specifications, or provide written comments specifically identifying the required changes, within twenty one (21) days after the submittal.

Section 3.03 Corix Payment for Construction and Installation of the Connection Facilities.

(a) Corix agrees to pay for, or cause to be paid, the costs of design and construction of the Connection Facilities. In addition, Corix agrees to pay for, or cause to be paid, the costs incurred in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, and sites required as part of the Connection Facilities as those costs become due.

(b) City will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with by Corix in connection with the construction of the Connection Facilities.

Section 3.04 Easement Acquisition.

(a) At Corix’s sole discretion, the Connection Facilities may be located in private easements dedicated to Corix, or may be located within public rights-of-way.

(b) Notwithstanding the foregoing, the City shall determine whether the City Connection Facilities shall be located in easements or public rights -of-way. In the event the City elects for such facilities to be located in easements, the City shall be solely responsible for securing the easements at its sole cost and expense.

Section 3.05 Construction of Facilities.

(a) Corix agrees to provide not less than ten (10) days’ prior written notice to City of the date on which construction is scheduled to begin on the Connection Facilities.

(b) Corix agrees to use its reasonable and good faith efforts to ensure that the Connection Facilities shall be constructed in a good and workmanlike manner and that all material used in such construction shall be free from defects and fit for its intended purpose.

(c) Corix shall construct the Connection Facilities in compliance with any and all applicable local, state, and federal regulations.

(d) Any variance to the requirements within this Agreement must be submitted in writing to City and is subject to City’s sole discretion and approval. If the City or its designees determine that Connection Facilities as constructed by Corix are not in compliance with any specifications as approved by City, then City may pursue any remedy provided in this Agreement.

Section 3.06 Inspection of Facilities.

(a) City will have the right to inspect the construction of the City Connection Facilities at the City’s sole cost and expense. Corix will, at its sole cost, provide City with documentation of third party inspections, testing and reports relating to the construction of the Connection Facilities.

(b) Upon completion of the Connection Facilities, Corix shall provide City with a certificate of completion from the project engineers certifying that the Connection Facilities have been completed substantially in accordance with the approved specifications or otherwise approved by City in response to Corix's variance request. Corix will respond to and repair any outstanding items identified in writing by City. The City shall provide written confirmation of satisfactory completion of the Connection Facilities. City's letter to Corix confirming that all outstanding project items have been completed shall be the "Completion Date."

Section 3.07 Corix Warranties, and Bonds

(a) Duty to Repair and Warranty. Except as otherwise specified, Corix agrees to repair all defects in materials, equipment or workmanship appearing within two (2) years from the Completion Date to comply with the approved specifications for the City Connection Facilities. Upon receipt of written notice from City of the discovery of any defects, Corix shall promptly and at its own cost remedy the defects and replace any property damaged therefrom, or may cause the contractor to do so. In case of Emergency where delay would cause serious risk of loss or damage to City or its customers, or if Corix, after notice, fails to proceed promptly toward such remedy within 30 days or within another period of time which has been agreed to in writing, City may have defects in the Connection Facilities corrected in compliance with the terms of this warranty and guarantee, and Corix shall be liable for all expenses incurred by City in so doing.

(b) Assignment of Warranty Obligations. In addition to Corix's duty to repair, as set forth above, Corix expressly assumes all warranty obligations under the approved plans and specifications for specific components, materials, equipment or workmanship of the Connection Facilities. Corix may satisfy its duty to repair and warranty by obtaining and assigning to City, by written instrument in a form approved by counsel for the City, a complying warranty from a manufacturer, supplier, or contractor providing the warranty for one year from the Completion Date. Where an assigned warranty is tendered and accepted by City that does not fully comply with the requirements of the approved specifications, Corix agrees that it shall remain liable to City on all elements of the required warranty that are not provided by the assigned warranty.

(c) General Requirements for Performance and Payment Bonds.

1) The Cost of the Facilities (herein "Cost of the Facilities") shall be based on the construction contract(s) issued by (or on behalf of) Corix to its contractor for the Connection Facilities (in addition to permitting and easement acquisition costs funded by Corix).

2) When Performance Bonds and/or Payment Bonds are required, each shall be issued as security for the faithful performance and/or payment of all Corix's obligations under this Agreement. Performance Bonds and Payment Bonds shall be issued by a solvent U.S. corporate surety that is authorized to do business in the State of Texas, and shall meet any other requirements established by State of Texas or Federal law. The bonds shall be executed or countersigned by a Texas resident agent.

3) If the surety on any Bond furnished by Corix is declared bankrupt or becomes insolvent or its right to do business in the State of Texas is terminated or it ceases to meet the requirements of this Agreement, Corix shall within ten (10) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of this Agreement.

(d) Maintenance Bond. Corix agrees to arrange for its general contractor to provide to City not later than the Completion Date a maintenance bond in a form approved by counsel for City, for an amount not less than 25% for the cost of the City Connection Facilities for the repair of all defects in materials, equipment or workmanship appearing in the Connection Facilities within two (2) years from the Completion Date.

Section 3.08 Insurance.

(a) The contract for construction of the Connection Facilities shall require the construction contractor (“*Contractor*”) to provide and maintain the types and minimum coverages of insurance specified below from the time Corix issues a notice to proceed for construction of the Connection Facilities and extending until the Completion Date.

(b) The Contractor shall be required to present Corix with a current insurance certificate showing the required coverages before any workers or materials are brought to the construction site for the Connection Facilities. City, its employees, officers, and its professional consultants, legal representatives and agents will be named as an additional insured on such insurance certificate. The insurance coverages shall include, and the certificates shall reflect, carrier’s written endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Corix.

(c) If the Contractor engages subcontractors for construction, the Contractor shall either provide coverage for subcontractors in the Contractor’s insurance policies or require each subcontractor to secure insurance of the same types and with the same coverage limits as Contractor’s.

(d) The Contractor’s insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued. Such insurance shall include, at a minimum, coverage for the following types of claims that might arise out of the construction of the Facilities:

- 1) claims under workers’ compensation, disability benefits, and other similar employee benefit laws;
- 2) claims for damages because of bodily injury, occupational sickness or disease, or death of any person;
- 3) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, wherever located, including loss of use resulting therefrom;
- 4) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle; and
- 5) the policies of insurance so required by this section to be purchased and maintained shall include at least the specific coverages for, and shall be written for not less than, the Cost of the Connection Facilities, or as required by law, whichever is greater.

Section 3.09 Conveyance of Facilities and Associated Property

(a) Upon the Completion Date, all facilities located on the City’s side of the Point of Entry shall be deemed owned by the City. Notwithstanding the foregoing, Corix agrees to provide a bill of sale or other conveyance instrument reasonably satisfactory to the City to evidence such conveyance upon request of the City.

(b) Upon the Completion Date, Corix will be responsible for ownership, operation and maintenance of the Interceptor located on its side of the Point of Entry, and City shall be responsible for ownership, operation, and maintenance of the City Connection Facilities.

ARTICLE IV
RATES AND CHARGES

(a) Wholesale Wastewater Rates, Fees and Charges. Corix will pay City for the Wholesale Wastewater Service provided under this Agreement based on rates, charges and fees for the Wholesale

Wastewater Service set by the City Council for its wholesale wastewater customers and amended from time to time. The rates, charges and fees for Wholesale Wastewater Service shall consist of the following:

- 1) Minimum Monthly Charge, which is equal to \$1.75 per wholesale service meter as of the Effective Date;
- 2) Volume Charges, which is equal to \$5.18 per 1,000 gallons as of the Effective Date; and
- 3) Wastewater Impact Fees, as adjusted by this Agreement.

(b) The Minimum Monthly and Volume Charges shall be calculated by City in accordance with standard ratemaking principles for wholesale service; shall be just, reasonable, and non-discriminatory; and shall be based on the Costs of the System at the time of adoption. Wastewater Impact Fees shall be calculated by City in accordance with the applicable provisions of Chapter 395, Texas Local Government Code, and modified in accordance with the methodology set forth in this Agreement.

(c) Corix's obligation to commence payment of the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees shall commence the first month subsequent to the Completion Date and delivery of Wastewater to the City System. The City shall have no obligation to provide Wholesale Wastewater Services prior to the Completion Date.

Section 4.02 Amendment of Wholesale Rates, Fees and Charges, Notices to and Review by Corix.

(a) City may amend the Minimum Monthly Charge, Volume Charges and Wastewater Impact Fees from time to time as approved by the City Council.

(b) City will provide Corix with at least ninety (90) days prior written notice of any increases to the Minimum Monthly and Volume Charges. Written notice shall include the proposed new rates, and a cost of service study. Notice of changes to the Wastewater Impact Fee is governed by the provisions of Section 4.04(a) below.

(c) Corix will have the right to inspect and copy, at its expense, City's books, and records to verify any statement, billing, charge, computation, or demand made to Corix by City. City agrees to make all such information available to Corix for inspection and copying with reasonable promptness during normal business hours.

Section 4.03 Volume and Minimum Monthly Charges.

(a) City will measure Wastewater flows monthly based on monthly readings of the Metering Facility. The total of these amounts multiplied by the Volume Charge will be used by City to compute the monthly bill for the Volume Charges as provided in Section 5.02 below.

(b) Upon the commencement of delivery of Wastewater to the City System, Corix will pay to the City the Minimum Monthly Charge.

Section 4.04 Wastewater Impact Fees.

(a) Except for those Wastewater Impact Fees that are credited in accordance with the terms of Section 4.05 below, Corix shall be obligated to pay City a Wastewater Impact Fee that is based upon City's most recently-approved fee for each new retail wastewater customer that connects to the Corix System and receives wastewater service provided under this Agreement. For the term of this Agreement, the Wastewater Impact Fee will be the amount established from time to time in the City Service Ordinances, provided that no increase in the Wastewater Impact Fee will become effective for Corix until the City has given at least ninety days prior written notice of the change to Corix, and any such increases shall be applied to connections

made in the Wholesale Service Area in accordance with Chapter 395, Texas Local Government Code, in order to allow Corix adequate time to make corresponding changes to its Tariff. The Wastewater Impact Fee paid for each new retail wastewater connection to the Corix System shall be due and payable to City within thirty (30) days after the end of each calendar quarterly period in which the new retail wastewater connection is made.

(b) Within thirty (30) days after the end of each calendar quarter after the Completion Date, Corix shall submit a monthly report to City, reflecting the new customer(s), service address(es), meter size(s) and number of LUE(s) for which payment of a Wastewater Impact Fee is being made and/or a credit being applied for the calendar quarter in question. The City reserves the right to audit all Corix submitted data and modify Corix's claimed LUE calculations in accordance with the City Service Ordinances. If no new connections have been made, the monthly report will still be required, but will reflect that there have been no changes from the prior reporting period. Unless changed by written notice in accordance with Section 9.09, the Wastewater Impact Fees and monthly reports required by Section 5.07 and this subsection will be submitted to the following address:

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

(c) The Wastewater Impact Fee will be designed to fund or recover all or a part of the Costs of the City System for capital improvements or facility expansions used or useful to provide Wholesale Wastewater Services in accordance with the methodology set forth in Exhibit "C". Upon payment (or credit), Corix will have a guaranteed reservation of capacity in the City System for the number of LUEs for which a Wastewater Impact Fee has been paid or credited. The Wastewater Impact Fee will be reasonable and just and established in accordance with the provisions of this Agreement.

Section 4.05 Wastewater Impact Fee Credit. As consideration for the design, construction and conveyance of the Connection Facilities, City shall credit Corix with the payment of Wastewater Impact Fees (the "Wastewater Impact Fee Credit") in an amount equal to all costs and expenses incurred by or on behalf of Corix relating to the design, construction, inspection and permitting of the Connection Facilities and acquisition of easements related thereto, including all surveying, appraisal, legal, condemnation and other costs related thereto (collectively, the "Connection Facilities Costs"), including, without limitation, all costs of design, engineering, materials, labor, construction, inspection, and testing arising in connection with the Connection Facilities; all payments arising under any contracts entered into for the construction of the Connection Facilities; all costs incurred by or on behalf of Corix in connection with obtaining governmental approvals, certificates, or permits required for the Connection Facilities; all costs and expenses incurred by or on behalf of Corix in connection with obtaining the easements, rights-of-way, or sites required as a part of the construction of the Connection Facilities. At City's request, Corix shall agree to furnish documentation in reasonable detail evidencing and supporting the Connection Facilities Costs. Commencing on the Completion Date, Corix will be credited with the payment of Wastewater Impact Fees for each new retail wastewater connection to the Corix System, and each then existing wastewater connection to the Corix System that connects to the Connection Facilities, until the Wastewater Impact Fee Credit is exhausted.

Section 4.06 Corix Wastewater Rates and Charges. Corix will determine and charge its retail Wastewater customers such rates in accordance with its tariff. During the term of this Agreement, Corix will fix and collect rates and charges for retail Wastewater service that are, in the opinion of its governing body, sufficient, together with any other revenues available to Corix, to produce the amount necessary to operate, repair, and maintain Corix System, and to pay the cost of Wholesale Wastewater Service from City. Corix will establish retail rates consistent with AWWA ratemaking principles. Corix will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

Section 4.07 Corix Fees. The Parties acknowledge that Corix has the right to the extent allowed under applicable law to assess, charge, and collect contributions in aid of construction, or other service fees, rates, taxes, or other charges. This Agreement will not be construed to require, limit, or restrict the authority of

Corix to implement the same. Corix will be solely responsible for the assessment and collection of such fees and charges and for ensuring that all fees, rates, and charges Corix elects to charge are in compliance with applicable law.

Section 4.08 Verification of Corix Connections. For verification of the Wastewater Impact Fees paid to City and for any other purpose, Corix shall make available for inspection and copying during regular business hours, at City’s expense, all records for retail connections to the Corix System. In addition, City shall have the right to inspect Corix System at any time, at City’s sole expense, after giving Corix written notice of its intention to inspect and allowing the opportunity for Corix to be present, to verify the type and amount of retail connections made or the condition of Corix System and Corix will provide lawful access to City for this purpose.

ARTICLE V
WHOLESALE BILLING METHODOLOGY, REPORTS
AND OTHER RELATED MATTERS

Section 5.01 Monthly Statement. For each monthly billing period, City will forward to Corix a bill providing a statement of the total Minimum Monthly Charge and Volume Charges owed by Corix for Wholesale Wastewater Service provided to Corix during the previous monthly billing period. Corix will pay City for each bill submitted by City to Corix by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to City Hall in Bastrop County, Texas, upon prior arrangement. If payments will be made by bankwire, Corix shall verify wiring instructions. Payment must be received at City Hall or bank by the due date in order not to be considered past due or late. In the event Corix or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, Corix shall pay in addition City’s then-current, Council-approved wholesale wastewater contract late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations. City will compute the Minimum Monthly Charge and Volume Charges included in the monthly billing for Wholesale Wastewater Service on the basis of monthly readings of the Metering Facility. The total of these amounts multiplied by the wholesale Wastewater rate, set from time to time by the City Council, will be used to compute the monthly bill for the Volume Charge.

Section 5.03 Infiltration and Inflow; Winter Averaging. Corix acknowledges that water entering the City System from Corix System emanating from any source whatsoever must be given treatment and handling whether or not its source is revenue-producing for Corix. Therefore, Corix agrees to pay, as part of the Minimum Monthly Charge and Volume Charge, for Infiltration and Inflow originating within the Wholesale Service Area without abatement in the same manner and cost as other Wastewater entering City’s System from Corix’s System.

Section 5.04 Effect of Nonpayment. With respect to monthly billings, if City has not received payment from Corix by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, City will notify Corix, or its assignee responsible for payment in accordance with this Agreement, of such delinquency in writing, if Corix or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from City, then City may, at its discretion, terminate or reduce the level of Wholesale Wastewater Service to Corix until Corix or its assignee makes payment is made.

Section 5.05 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Corix to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to Corix under this Agreement.

Section 5.06 Metering Facility Accuracy; Calibration.

(a) The City shall own the Metering Facility, which Corix shall pay for, and it shall be calibrated each calendar year by the City at City’s sole cost and expense (and such costs may be included in the Costs of the System). The City shall provide not less than 48 hours’ prior written notice of each such calibration, and a representative of Corix may be present to observe each calibration.

(b) The Metering Facility may be calibrated at any reasonable time, and shall be tested at least annually, by either Party to this Agreement, provided that the party making the calibration notifies the other party in writing at least five days in advance and allows the other Party to witness the calibration. In the event any question arises at any time, but not more than a frequency of once per consecutive 12-month period without mutual consent of both Parties, as to the accuracy of the Metering Facility, then the Metering Facility shall be tested by City promptly upon demand of Corix. The expense of such test shall be borne by Corix if the Metering Facility is found to be within AWWA and manufacturer’s standards of accuracy for the type and size of meter and by City if the Metering Facility is found not to be within AWWA and manufacturer’s standards for the type and size of meter.

(c) If, as a result of any test, the Metering Facility is found to be registering inaccurately (in excess of or below AWWA and manufacturer’s standards for the type and size of meter), the readings of the Metering Facility shall be corrected at the rate of its inaccuracy for any period which is definitively known or agreed upon and City shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

- 1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- 2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

Section 5.07 Additional Required Notices. In addition to the monthly reports required by Section 4.04(b) above, Corix shall:

(a) Provide to City a copy of each final subdivision plat of property within the Wholesale Service Area.

(b) Provide to City by June 1 of every year during the term of this Agreement a report setting forth: (i) the total number of retail wastewater service connections within the Wholesale Service Area as of April 1 of the same year; and, (ii) the total number of new retail wastewater service connections to the Corix System during the prior annual period ending April 1 of the same year, which connections shall be set forth in LUES as determined by City’s Service Ordinance.

ARTICLE VI
REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, legal interpretations, policies and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 6.02 Cooperation to Assure Regulatory Compliance. Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, and any other applicable and/or relevant legal or regulatory requirements, each party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where

noncompliance or non-cooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

Section 6.03 Sewer System Overflows. Each Party shall cooperate with the other and initiate immediate response measures to abate and remediate sewer system overflows in its System in compliance with its internal directives and policies and as directed by state, federal, or other officials, and immediately notify the other Party of the sewer system overflows affecting the Wholesale Service Area. Each Party is responsible for timely providing all required equipment and personnel to remediate the sewer system overflow, and for providing any required notice to the United States Environmental Protection Agency (EPA), the TCEQ, and affected members of the public regarding any threatened or actual overflows.

ARTICLE VII **TERM, TERMINATION, DEFAULT, REMEDIES**

Section 7.01 Term and Termination. This Agreement shall become effective upon the Effective Date and shall extend for a term of forty (40) years unless terminated earlier as provided herein. So long as Corix provides at least 12 months' written notice to the City, it may renew this Agreement for one additional term of forty (40) years.

Section 7.02 Default.

(a) In the event Corix shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Corix under this Agreement, then City shall give Corix at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Corix shall give City at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Corix shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City. In the event such default remains uncured for an additional 180 days, then Corix shall, in addition to and not in lieu of any other remedies available to Corix, have the right to notify City that Corix intends to take a more limited amount of Wholesale Wastewater Services from City (which shall be at least the amount City is then able to provide to Corix) and Corix may then obtain other wastewater services from another provider or may take appropriate action to supply itself with additional wastewater services upon giving City written notice of its intent to do so. City acknowledges that the replacement of the Wholesale Wastewater Services which City has agreed to provide under this Agreement would be difficult and expensive for Corix, and agrees to use diligent good faith efforts to perform its obligations under this Agreement.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, to the extent that City's failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Corix shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Corix's obligations could not be adequately compensated in money damages alone, Corix agrees in the event of any default on its part that City shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01 Assignability. Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided however that City hereby consents to the assignment of this Agreement to any affiliate of Corix, to and successor entity created by merger or consolidation with Corix, or to any entity that acquires all or substantially all of the assets of Corix. Other than assignment by Corix to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Corix requires prior consent of the City evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Corix and City and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Wastewater Service by City to Corix for the Wholesale Service Area.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Corix:

Corix Utilities (Texas) Inc.
1812 Centre Creek Dr., Suite 100
Austin, TX 78754
Attn: Darrin Barker

City:

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

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 8.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.12 Records. City and Corix each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. City and Corix shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 8.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 8.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.16 Exhibits. The following exhibits, attached to this Agreement, are incorporated into this Agreement as if fully set forth:

- Exhibit A: Wholesale Service Area
- Exhibit B: Point of Entry
- Exhibit C: Wastewater Impact Fee Calculation Methodology

Section 8.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CORIX UTILITIES (TEXAS) INC., a Delaware corporation

By: _____  _____

Name: _____ R. Darrin Barker _____

Title: _____ President _____

Date: _____ February 23, 2024 _____

CITY OF BASTROP:

By:  _____

Name: Sylvia Carrillo

Title: City Manager _____

Date: 02/23/2024 _____

Attest: _____
City Secretary

Exhibit "A"
Wholesale Service Area

**Exhibit “B”
Point of Entry**

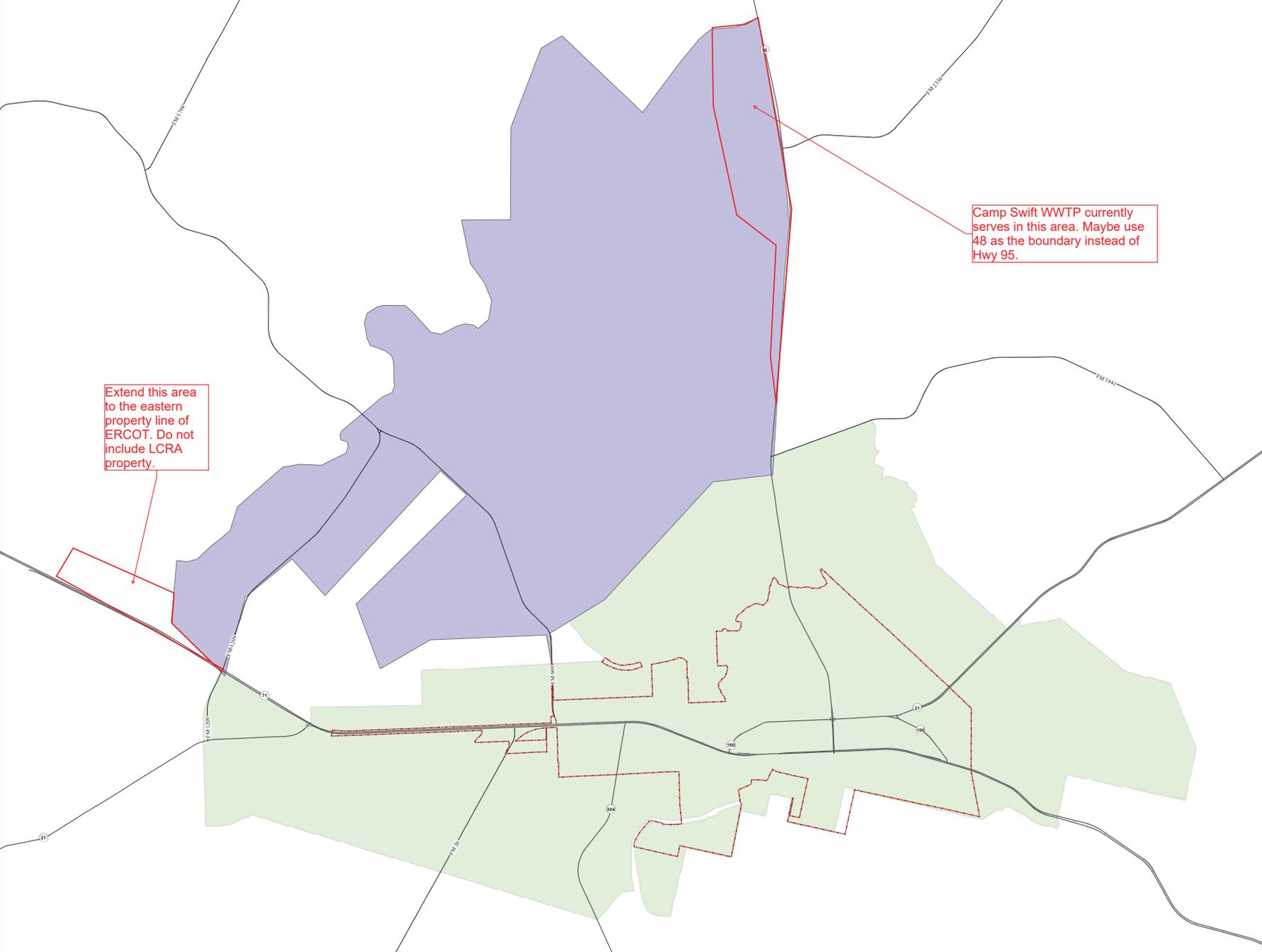
**Exhibit “C”
Wastewater Impact Fee Calculation Methodology**



City of Bastrop Corix Wholesale Agreement Boundary & Bastrop Wastewater CCN

Legend

-  City Limit
-  Corix Wholesale Agreement Boundary
-  City of Bastrop Wastewater CCN



0 500 1,000 3,000
feet

1 inch = 2,700 feet Date: 3/3/2023

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

Exhibit C

Wastewater Treatment Plant Impact Fee Calculation Methodology

Wastewater Treatment Plant (WWTP) Impact Fee will be calculated by dividing the total amount of WW Treatment Facility Type Project Recoverable Costs by the Total amount of Wastewater Capital Improvement Projects.

WW Treatment Project Recoverable Costs

Total Wastewater Capital Improvements Projects Recoverable Costs

= WWTP Impact Fee Percentage

Total WW Impact Fee **X** WWTP Impact Fee Percentage = **WWTP Impact Fee**

Using the July 2022 Ordinance information as example would produce the following:

WW Treatment Project Recoverable Costs	\$ 12,190,697.00
Total Wastewater Capital Improvements Projects Recoverable Costs	\$ 30,082,740.00
= WWTP Impact Fee Percentage	40.52%
Total WW Impact Fee	\$ 5,089.00
X WWTP Impact Fee Percentage	40.52%
=WWTP Impact Fee	\$ 2,062.26



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-35 of the City Council of the City of Bastrop, Texas, approving an Agreement between the City, 7Arrows Land Staff, LLC, and Corix Utilities Inc., for 7Arrows Land Staff, LLC, to provide professional land rights acquisition services in the amount not to exceed Five Hundred Thousand Five Hundred Dollars (\$500,500.00), as attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo-Trevino, ICMA-CM, CPM

BACKGROUND/HISTORY:

Corix and the City have entered into that a “Wholesale Wastewater Services Agreement” setting forth the terms and conditions pursuant to which the City has agreed to provide wholesale wastewater services to Corix, so that Corix may provide retail wastewater services to SpaceX and other future properties along 969.. As part of thr project, the City has agreed to acquire the Project Easements on behalf of the Parties, with funding for all acquisition services provided by CORIX as part of the overall cost share.

The firm engaged is 7Arrows. The cost is estimated to be \$500,500 with CORIX depositing an initial \$100,000 in escrow to begin the work, and will subsequently replenish until the project is complete.

FISCAL IMPACT:

None for acquisition services

RECOMMENDATION:

Approve the agreement.

ATTACHMENTS:

1. Wastewater Easement Acquisition Agreement



February 26, 2024

City of Bastrop
Attn: Sylvia Carrillo, City Manager
1311 Chestnut Street
Bastrop, Texas 78602

Re: 969 Wastewater Connection Project
Land Rights Acquisition Services

SCOPE OF SERVICES

GENERAL: The City of Bastrop has real estate impacts associated with the 969 Wastewater Connection Project (the Project) which will include appraisal and real estate acquisition services. 7Arrows Land Staff, LLC (7Arrows) shall provide a variety of services to support the City of Bastrop, Kimley-Horn and Associates, Inc. (Kimley-Horn) and Corix Utilities in execution of the project including appraisal and land rights acquisition services. 7Arrow's services may also include, as directed by the City of Bastrop, assistance with open houses or similar meetings with the public, presentations to all approval authorities, and other real estate and property work that may be needed from time to time to support the timely execution of the project.

BASIC SERVICES: 7Arrows shall render the following professional services in connection with the development of the Project.

1. Pre-Acquisition Services

- a) Research preliminary ownership and county tax information.
- b) Prepare and obtain any Rights of Entry necessary for surveying, geotechnical investigations, and environmental services.

2. Title Services

- a) Review preliminary title commitment (Schedules A, B & C) or preliminary title search information for all properties.
- b) Secure title commitments and updates in accordance with insurance rules and requirements for parcel payment submissions for properties which will be acquired in fee simple and for ROW easements.
- c) Secure title insurance for all parcels, insuring acceptable title. Cure all exceptions on Schedule C, when applicable. Written approval by City will be required for any exceptions to coverage.
- d) Attend closings and provide closing services in conjunction with Title Company for all tracts.

- e) Record all original instruments immediately after closing at the respective County Clerk's Office.
- f) Research title and provide Condemnation Title Report to legal counsel for property rights that will be acquired through Eminent Domain. (See item 7 below)

3. Pre-Appraisal Negotiations

- a) 7Arrows will make offer based on tax values of property to negotiate settlement for all willing property owners upon receipt of M&B survey documents.
- b) Any parcels that have not settled by the completion of appraisals, will then be acquired through the standard process as set forth by the City of Bastrop.

4. Appraisal Services

- a) Prepare and conduct personal pre-appraisal contact with interest owner(s) for each parcel.
- b) Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of subject property. Maintain record of contact in file.
- c) Finalize complete appraisal report for each parcel. These reports shall conform to the City's policies and procedures along with the Uniform Standards of Professional Appraisal Practice.
- d) All completed appraisals will be administratively reviewed and approved by the City.
- e) Appraisal fee could be adjusted based on complexity of evaluation within range provided in Fee Schedule.

5. Negotiation Services

- a) Analyze appraisal reports and confirm approved value prior to making offer for each parcel.
- b) Analyze preliminary title report to determine potential title problems and propose methods to cure title deficiencies. (Exhaust all efforts to obtain subordinations of liens, waiver of lienholders and clear any title, if 7Arrows staff cannot cure title through standard practices, the City will be responsible for obtaining legal counsel to remedy any tile deficiencies as required by title or alternatively, may elect to close the easement without a title policy).
- c) Prepare the initial offer letter and any other documents required or requested by the City in an acceptable form.
- d) Contact each property owner or owner's designated representative and present the written offer in person where practical. When owners do not wish to have offers delivered in person, they will be mailed via certified mail with return receipt for documentation of delivery/receipt. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.

- e) Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer.
- f) Respond to property owner inquiries verbally and/or in writing within two business days.
- g) Prepare a separate negotiator contact report for each parcel file for each contact.
- h) Maintain parcel files of original documentation related to the purchase of the real property or property interests/acquisition of the Easement or Right of Way.
- i) Present counteroffers in a form as directed by the City. Transmit any written counteroffer from property owners including supporting documentation, and Agent's recommendation with regard to the counteroffer.
- j) Prepare second and final offer letter as necessary.

6. Acquisition/Closing Services

- a) Prepare check request, review closing documents and facilitate execution of all necessary documents. Attend closings and provide closing services in conjunction with Title Company for all tracts.
- b) Transport any documents to the City and landowner for signatures.
- c) Record or cause to be recorded all original instruments immediately after closing at the respective County Clerk's Office.
- d) Review Title Policy and provide to City for permanent storage.

7. Project Administration

- a) Maintain current status reports of all parcel and project activities.
- b) Provide bi-weekly update reports to the City.
- c) Participate in up to 10 project review meetings as requested, all additional meetings will be charged on a per hour basis.
- d) Maintain copies of all correspondence and contacts with property owners.
- e) Update database with current status information and documentation.
- f) Condemnation Support Services are not included in the Basic Scope of Services.



SUPPLEMENTAL SERVICES (Not contemplated within BASIC SCOPE & FEE):

8. Condemnation Support

- a) Upon receipt to proceed with Eminent Domain from City, order updated "Condemnation Limited Title Report" (search parameters set by City and/or outside legal counsel)
- b) Prepare condemnation package as directed by City and deliver to City's designee or legal counsel.
- c) Upon notification from City, request update of appraisal.
- d) As necessary, the appraiser will appear and or testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings as directed by City (additional fees to be charged on an hourly basis).
- e) As necessary, ROW Manager will appear and provide Expert Witness testimony when requested (Additional fees will be charged on an hourly basis).
- f) Supplemental Appraisal Fee to be applied for complex appraisals as needed.

Acquisition of Permanent Easement will be completed as part of Supplemental Services, if needed.

Submitted By: Nicole Costanza

Nicole Costanza, Managing Partner
Date: 2/26/2024

Accepted by Corix Utilities Texas

Darrin Barker
Darrin Barker, Business Unit President

Date: March 6, 2024

Accepted by: City of Bastrop

Sylvia Carrillo
Sylvia Carrillo, ICMA-CM, CPM, City Manager

Date: _____



**City of Bastrop
969 Wastewater Connection**

FEE SCHEDULE – BASIC SERVICES	
Service Item	Per Parcel Fixed Fee
ACQUISITION SERVICES:	
Right of Entry	\$1,250.00
Title & Title Curative	\$1,500.00
Administrative Fee	\$1,500.00
Pre-Appraisal Offer	\$2,000.00
In Fee or Easement Acquisition	\$3,000.00
Closing Services	\$2,500.00
Per Parcel Estimated Cost	\$11,750.00
<i>Acquisition of 26 Parcels</i>	<i>\$305,500.00</i>
APPRAISAL SERVICES:	
Permanent/Temporary Easement	\$5,500.00
<i>Appraisal of 26 Parcels</i>	<i>\$143,000.00</i>
<i>ROW Management - 260 hours</i>	<i>\$52,000.00</i>
ESTIMATED COSTS: \$500,500.00	
ROW Manager Hourly Rate	\$200.00
Agent Hourly Rate	\$125.00
<i>*7Arrows only charges for services performed on each parcel</i>	
<i>*Estimate excludes condemnation support</i>	



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider Action to approve the first reading of Ordinance No. 2024-08 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 14, The Bastrop Building Block (B3) Code, Article 9.2 Categories Of Preservation establishing standards and procedures; as attached in Exhibit A; and providing for findings of fact, repealer, severability, codification, effective date, proper notice, and meeting and move to include on the April 9, 2024 Consent Agenda for the second reading.

AGENDA ITEM SUBMITTED BY:

Kennedy Higgins, Senior Planner

BACKGROUND/HISTORY:

On March 12, 2024, two cases for Historical Landmark Designation were brought to City Council for approval. This required two public hearings to be held, there were no citizen comments as a previous public hearing was held by the Historic Landmark Commission when they made the recommendation to forward them to City Council for approval.

POLICY EXPLANATION:

Bastrop Building Block (B3) Code

Chapter 9, article 9.2, section 9.2.003 – Process For Designation Of Historic Landmarks currently requires 2 public hearings to designate a property as a Local Historic Landmark. This ordinance amendment will lower the requirement to one public hearing in front of the Historic Landmark Commission. This will still allow input from the community in front of the recommending body, then it will be forwarded to City Council for final decision.

RECOMMENDATION:

Consider Action to approve the first reading of Ordinance No. 2024-08 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 14, The Bastrop Building Block (B3) Code, Article 9.2 Categories Of Preservation establishing standards and procedures; as attached in Exhibit A; and providing for findings of fact, repealer, severability, codification, effective date, proper notice, and meeting and move to include on the April 9, 2024 Consent Agenda for the second reading.

ATTACHMENTS:

- Attachment 1 - Exhibit A – Ordinance No. 2024-08

ORDINANCE NO. 2024-08

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS, AMENDING THE BASTROP CODE OF ORDINANCES CHAPTER 14, THE BASTROP BUILDING BLOCK (B3) CODE, ARTICLE 9.2 CATEGORIES OF PRESERVATION ESTABLISHING STANDARDS AND PROCEDURES; AS ATTACHED IN EXHIBIT A; AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE, AND MEETING.

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

WHEREAS, the City adopted Ordinance 98-42 creating the Historic Landmark Preservation Ordinance, in recognition of the need and desire to preserve and maintain historic structures within the City; and

WHEREAS, Ordinance 98-42 was amended by Ordinance 2003-12, Ordinance 2007-30 and Ordinance 2018-03 to continue and strengthen historic preservation through creating incentives; and

WHEREAS, the City Council find that certain amendments to the aforementioned ordinances are necessary and reasonable to meet changing conditions and are in the best interest of the City.

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

Section 1. Finding of Fact: The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Amendment To Bastrop Building Block Code (B3), Section 9.2.003 of the Bastrop Building Code is hereby amended to remove the requirement of a public hearing before City Council, as a public hearing takes place before the Historic Landmark Commission, and shall read in accordance with Exhibit "A", which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any struck-through text shall be deleted from the Code, as shown in each of the attachments.

Section 3. Severability. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

Section 4. Repeal. This Ordinance shall be and is hereby cumulative of all other ordinances of the City of Bastrop, Texas, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other Ordinances, are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect immediately after its final passage and any publication in accordance with the requirements of the City of Bastrop and the laws of the State of Texas.

READ & ACKNOWLEDGED on First Reading by the City Council of the City of Bastrop, on this, the 26 day of March 2024.

PASSED & APPROVED on Second Reading by the City Council of the City of Bastrop, on this, the 09 day of April 2024.

APPROVED:

by: _____
Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit A – Amendment to;
City of Bastrop
Code of Ordinances Chapter 14
Bastrop Building Block (B3) Code
Chapter 9 ; Historic Landmark Preservation & Iredell District
Article 9.2 Categories Of Preservation

SEC. 9.2.003 PROCESS FOR DESIGNATION OF HISTORIC LANDMARKS

- (a) Owners of property being considered for designation as a Historic Landmark shall be notified prior to the Historic Landmark Commission hearing on the recommended designation. The Historic Landmark Commission shall provide notice to property owners within 200 feet of the property and conduct a public hearing.
- (b) After consideration by the Historic Landmark Commission, a recommendation regarding designations shall be submitted the City Council to consider the designations of a Historic Landmark. The adoption of the landmark shall be through a resolution.
- (c) Upon designation of a Historic Landmark, the City Council shall cause the designation to be noted as follows:
 - (1) Recorded in the official real property records of Bastrop County.
 - (2) Designated on the historic resource map of the City.
 - (3) Provide the property owner with a plaque and require the installation indicating the designation of the landmark as a City Historic Landmark.



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve the first reading of Ordinance No. 2024-10 authorizing the amendment of the City of Bastrop FY2024 budget with a reduction of \$25,000 in revenue received from the Bastrop Economic Development Corporation allocated to the Main Street program; providing for severability; repealing conflicting ordinances; providing an effective date; providing for proper meeting and notice; and move to include on the April 9, 2024, Consent Agenda for second reading.

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo-Trevino, ICMA-CM, CPM, City Manager, and Interim Director of the BEDC

BACKGROUND/HISTORY:

The Bastrop Economic Development Corporation (BEDC) budget was significantly reduced as part of an election with reallocated 75% of the budget to a newly created street maintenance tax; as a result, the Board is reviewing and cutting expenses where necessary.

The BEDC contributes \$50,000 towards the overall \$531,861 FY2024 budget. To date, the BEDC has contributed \$25,000 towards Main Street FY 24 budget.

The Main Street Manager position has been vacant since December so significant salary savings have occurred. Additionally, the program is being reviewed for other collaborative opportunities and a more efficient operation that serves the needs of downtown business.

FISCAL IMPACT:

Reduction of revenue in the amount of \$25,000 to the City of Bastrop FY 24 budget. Due to the salary savings, no detrimental impact to the budget is expected.

RECOMMENDATION:

Approve the amendment reducing the BEDC contribution by \$25,000.

ATTACHMENTS:

1. FY24 Main Street Budget
2. Ordinance

Hotel Occupancy Tax

The Hotel Tax Fund is utilized primarily to account for the receipt and expenditures of funds received by the City from the assessment of hotel occupancy tax. This fund includes several departments; Organizational Funding, Convention Center, Main Street Program, Cultural Arts Commission, and the Rodeo Arena.

Organizational Department

CONTRACTUAL SERVICES

This department is where the city appropriates funding to our Community Assets and to Visit Bastrop. Those Community Assets include the Bastrop Opera House, Bastrop County Historical Society & Visitor Center, and the Lost Pines Art Center. It also budgets for administrative costs related to collecting and auditing Hotel Occupancy Tax.

Community Asset Funding

The FY 2024 proposed funding for each organization is:

Organization	FY 21-22 Approved Funding	FY 22-23 Approved Funding	FY 23-24 Requested Funding	% of Operating Funds Requested	FY 23-24 Proposed Funding
Bastrop County Historical Society Visitor Center	\$126,905	\$162,986	\$213,786	100%	\$187,434
Bastrop County Historical Society Museum	\$68,338	\$88,411	\$110,991		\$101,673
Bastrop Opera House	\$118,806	\$147,818	\$169,800	25%	\$169,991
Lost Pines Art Center	\$89,516	\$129,660	\$156,950	27%	\$149,109
TOTALS	\$403,565	\$528,875	\$651,527		\$608,207

Visit Bastrop

Funding provided for Visit Bastrop is established through a contractual agreement. The contract states the City will target 35% of the new Hotel Occupancy Tax (HOT) revenue collected, defined as HOT revenue minus the provision of payment satisfying the City's outstanding debt secured by HOT funds. The amount should not be less than 45% of the total HOT revenues. The FY 2024 payment was calculated per the contract, at \$1,293,700 based on the projected Hotel Occupancy Tax revenue of \$4,000,000. This funding amount does include \$75,000 for special event funding.

Professional Service

The City contracts with Localgov to provide administrative support with collecting, auditing and discovery related to Hotel Occupancy Tax amounting to \$10,000. This is also where the administrative support paid to the General Fund is recorded at \$60,757, down from \$154,700 in FY 2023. This category includes a one-time expenditure item, Hotel Pursuit Costs of \$350,000 (carry-over from FY 2023) and the eCab program funding of \$117,900. This category includes the Community Asset funding noted above.

CAPITAL OUTLAY

None noted

TRANSFER OUT

This transfer represents the outstanding debt secured by Hotel Occupancy Tax funds to the Debt Service Fund.

Other Departments

CONVENTION CENTER

The most significant change is an increase in personnel costs with the transfer of the staff back to this funds budget (out of the General Fund). The contractual service line includes \$215,083 in administrative support expenses paid to the General Fund, down from \$361,972 in FY 2023.

MAIN STREET PROGRAM

This budget increased by \$193,031 over the FY 2023 budget. The personnel costs increased by \$160,464 with the transfer of the staff back to this funds budget (out of the General Fund). The administrative support transfer to the General Fund went down by \$86,933. The Downtown Master Plan for \$150,000 was discussed during the FY 2023 budget workshops as an item to add to the FY 2024 budget. It is included in the contractual services category.

CULTURAL ARTS COMMISSION

This budget reflects the items laid out in the Cultural Arts Commission Work Plan presented to City Council in March of 2022.

Expenditures by Function

Name	FY2022 Actual	FY2023 Budgeted	FY2023 Projected	FY2024 Budgeted	FY2023 Budgeted vs. FY2024 Budgeted (% Change)
Expenditures					
Hotel Tax Fund					
Organizational Funding					
Contractual Services	\$1,525,860	\$2,391,975	\$2,876,700	\$2,442,574	2.1%
Contingency		\$0		\$442,968	N/A
Capital Outlay		\$25,000	\$25,000	\$0	-100%
Transfers Out	\$545,702	\$523,000	\$523,000	\$518,000	-1%
Total Organizational Funding:	\$2,071,562	\$2,939,975	\$3,424,700	\$3,403,542	15.8%
Hospitality & Downtown					
Convention Center					
Personnel Costs		\$0		\$288,122	N/A
Supplies & Materials	\$42,030	\$42,300	\$41,700	\$42,300	0%
Maintenance & Repairs	\$40,000	\$46,450	\$46,450	\$46,450	0%
Occupancy	\$50,434	\$47,100	\$47,100	\$47,100	0%
Contractual Services	\$292,368	\$400,472	\$407,972	\$261,083	-34.8%
Other Charges	\$23,163	\$26,000	\$22,500	\$22,500	-13.5%
Total Convention Center:	\$447,994	\$562,322	\$565,722	\$707,555	25.8%
Main Street					
Personnel Costs		\$0		\$160,464	N/A
Supplies & Materials	\$7,046	\$20,900	\$10,300	\$11,900	-43.1%
Occupancy	-\$28	\$900	\$900	\$900	0%
Contractual Services	\$113,143	\$161,020	\$147,520	\$210,587	30.8%
Other Charges	\$67,145	\$122,510	\$73,010	\$114,510	-6.5%
Contingency	\$40,984	\$33,500	\$33,500	\$33,500	0%
Total Main Street:	\$228,290	\$338,830	\$265,230	\$531,861	57%
Total Hospitality & Downtown:	\$676,284	\$901,152	\$830,952	\$1,239,416	37.5%
Cultural Arts Commission					
Supplies & Materials	\$68	\$2,000		\$2,000	0%
Maintenance & Repairs		\$5,000	\$5,730	\$5,000	0%
Contractual Services	\$1,879	\$47,500	\$42,500	\$47,500	0%
Other Charges	\$1,197	\$1,000	\$1,000	\$1,000	0%
Total Cultural Arts Commission:	\$3,143	\$55,500	\$49,230	\$55,500	0%
Rodeo					
Maintenance & Repairs	\$1,125	\$0		\$0	0%
Occupancy	\$3,415	\$3,200	\$3,200	\$3,296	3%
Total Rodeo:	\$4,540	\$3,200	\$3,200	\$3,296	3%

Name	FY2022 Actual	FY2023 Budgeted	FY2023 Projected	FY2024 Budgeted	FY2023 Budgeted vs. FY2024 Budgeted (% Change)
Total Hotel Tax Fund:	\$2,755,530	\$3,899,827	\$4,308,082	\$4,701,754	20.6%
Total Expenditures:	\$2,755,530	\$3,899,827	\$4,308,082	\$4,701,754	20.6%

Personnel Schedule

POSITION TITLE	ACTUAL FY2022	BUDGET FY2023	PROPOSED FY2024
CONVENTION CENTER			
Special Event Manager	0	0	.65
Maintenance Supervisor	0	0	1
Facilities Attendant	0	0	1
Special Event Worker	0	0	1
TOTAL	0	0	3.65
MAIN STREET			
Main Street Manager	0	0	1
Special Event Worker	0	0	1
TOTAL	0	0	2
TOTAL	0	0	5.65

These positions were previously budgeted in the General Fund and a transfer was made from the Hotel Occupancy Tax fund. For FY 2024, these positions have been moved back to the Hotel Occupancy Tax fund and the transfer to the General Fund has been reduced.

Goal #1

ECONOMIC VITALITY - Increase Convention Center revenue by 10%

Measures: Revenue

Actual FY2022	Goal FY2023	Projected FY2023	Goal FY2024
\$194,000	\$198,000	\$240,000 (21%)	\$264,000 (10%)

ORDINANCE NO. 2024-10

MAIN STREET PROGRAM BUDGET REDUCTION

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS, AUTHORIZING THE AMENDMENT OF THE CITY OF BASTROP FY2024 BUDGET WITH A REDUCTION OF \$25,000 IN REVENUE RECEIVED FROM THE BASTROP ECONOMIC DEVELOPMENT CORPORATION ALLOCATED TO THE MAIN STREET PROGRAM; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PROPER MEETING AND NOTICE.

WHEREAS, the City Manager of the City of Bastrop, Texas has submitted to the Mayor and City Council proposed amendment(s) to the budget for a reduction of \$25,000 in revenue received from the Bastrop Economic Development Corporation allocated to the Main Street Program for Fiscal Year 2024; and

WHEREAS, the City Council finds it is necessary to reduce the allocation of funds to the Main Street Program by \$25,000.

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

- Section 1.** The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.
- Section 2.** That the proposed budget amendment(s) for the Fiscal Year 2024, as submitted to the City Council by the City Manager and which budget amendment(s) are attached hereto as Exhibit A, are hereby adopted, and approved as the amended budget of said City for Fiscal Year 2024.
- Section 3.** That funds shall be transferred, as set forth in Attachment A, for the above-stated purpose.
- Section 4.** Severability. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.
- Section 5.** Repeal. This Ordinance shall be and is hereby cumulative of all other ordinances of the City of Bastrop, Texas, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as

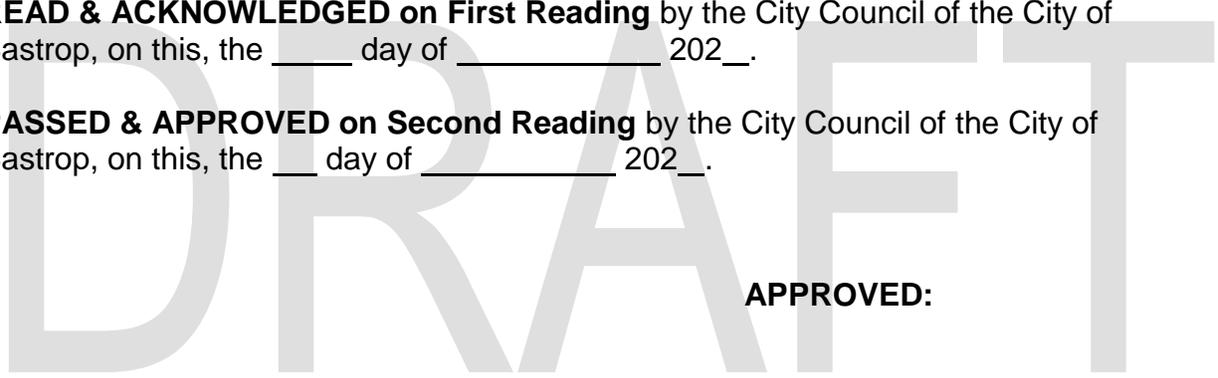
the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other Ordinances, are hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect immediately after its final passage and any publication in accordance with the requirements of the City of Bastrop and the laws of the State of Texas.

Section 7. Proper Meeting and Notice. This budget amendment shall be on file with the City Clerk for public inspection. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading by the City Council of the City of Bastrop, on this, the ____ day of _____ 202__.

PASSED & APPROVED on Second Reading by the City Council of the City of Bastrop, on this, the ____ day of _____ 202__.



APPROVED:

by: _____
Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**Main Street Budget/Actual
Fiscal Year 2024**

	Original Budget	Amended Budget	YTD Actual
Revenue			
HOT Tax Revenue	459,361.00	459,361.00	102,367.85
MS Events	22,500.00	22,500.00	-
BEDC Admin Support	50,000.00	50,000.00	25,000.00
Total Revenue	531,861.00	531,861.00	127,367.85
Expenses			
Personnel	160,464.00	160,464.00	57,116.93
Supplies	11,900.00	11,900.00	1,104.16
Occupancy	900.00	900.00	-
Contractual	210,587.00	210,587.00	26,267.59
Other Charges	114,510.00	114,510.00	30,707.22
Contingencies	33,500.00	33,500.00	12,171.95
Total Expenses	531,861.00	531,861.00	127,367.85
Net Income	-	-	-



City of Bastrop, TX

Item 11F.

Budget Report

Account Summary

For Fiscal: 2023-2024 Period Ending: 03/31/2024

		Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)	Percent Remaining
501-00-00-4007	MOTEL/HOTEL TAX RECEIPTS	459,361.00	459,361.00	-	102,367.85	-	69.58
501-00-00-4044	MS - SPONSORED EVENT	22,500.00	22,500.00	0	-	-22500	100
501-00-00-4493	BEDC ADMIN SERVICES	50,000.00	50,000.00	0	25,000.00	-33333.29	66.67
Revenue Total:		531,861.00	531,861.00	0	127,367.85	(55,833.29)	
Expense							
501-85-80-5101	OPERATIONAL SALARIES	117,225.00	117,225.00	5,642.94	39,751.68	77473.32	66.09
501-85-80-5116	LONGEVITY	180.00	180.00	-	155.00	25	13.89
501-85-80-5117	OVERTIME	-	-	909.16	2,706.02	-2706.02	0
501-85-80-5150	SOCIAL SECURITY	8,969.00	8,969.00	497.01	3,242.90	5726.1	63.84
501-85-80-5151	RETIREMENT	14,688.00	14,688.00	890.82	5,515.80	9172.2	62.45
501-85-80-5155	GROUP INSURANCE	19,402.00	19,402.00	881.35	5,438.43	13963.57	71.97
501-85-80-5156	WORKERS COMPENSATION	-	-	-	307.10	-307.1	0
501-85-80-5201	SUPPLIES	4,300.00	4,300.00	-	85.73	4214.27	98.01
501-85-80-5203	POSTAGE	100.00	100.00	-	-	100	100
501-85-80-5230	FORMS	7,500.00	7,500.00	-	1,018.43	6481.57	86.42
501-85-80-5401	COMMUNICATIONS	900.00	900.00	-	-	900	100
501-85-80-5505	PROFESSIONAL SERVICES	195,000.00	195,000.00	-	21,071.91	173928.09	89.19
501-85-80-5560	ADMIN SUPPORT	15,587.00	15,587.00	-	5,195.68	10391.32	66.67
501-85-80-5601	ADVERTISING	53,250.00	53,250.00	-	1,600.00	51650	97
501-85-80-5602	PROMOTIONAL ACTIVITIES	14,500.00	14,500.00	-	5,926.96	8573.04	59.12
501-85-80-5604	BUSINESS DEVELOPMENT	3,000.00	3,000.00	-	212.00	2788	92.93
501-85-80-5605	TRAVEL & TRAINING	6,250.00	6,250.00	-	1,797.75	4452.25	71.24
501-85-80-5615	DUES & SUBSCRIPTIONS	2,010.00	2,010.00	-	935.00	1075	53.48
501-85-80-5620	SPONSORED EVENTS	35,500.00	35,500.00	-	20,235.51	15264.49	43
501-85-80-5920	DOWNTOWN BEAUTIFICATION	33,500.00	33,500.00	224.58	12,171.95	21328.05	63.67
Expense Total:		531,861.00	531,861.00	9,045.86	127,367.85	404493.15	0.5282
Report Surplus (Deficit):		-	-	(9,045.86)	-	-460326.44	4.822765

Budget Report

For Fiscal: 2023-2024 Period Ending: 03/31/2024

Fund Summary

Fund	Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Variance Favorable (Unfavorable)
501 - HOTEL/MOTEL TAX FUND	182754	157754	197098.68	-603056.48	-760810.48
Report Surplus (Deficit):	182754	157754	197098.68	-603056.48	-760810.48



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-36 of the City Council of the City of Bastrop, Texas confirming appointments by the Mayor of Richard Smarzik to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board as required in Section 3.08 of the City's Charter; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

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

BACKGROUND/HISTORY:

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

FISCAL IMPACT:

N/A

RECOMMENDATION:

Consider action to approve Resolution No. R-2024-36 of the City Council of the City of Bastrop, Texas confirming appointments by the Mayor of Richard Smarzik to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board as required in Section 3.08 of the City's Charter; and establishing an effective date.

ATTACHMENTS:

- Resolution

RESOLUTION NO. R-2024-36

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONFIRMING APPOINTMENTS BY THE MAYOR OF RICHARD SMARZIK TO PLACE 6; KATHRYN LANG TO PLACE 4; CHRISTOPHER HIGGINS TO PLACE 3; AND JUDITH MAGANA TO PLACE 9, OF THE MAIN STREET BOARD, AS REQUIRED IN SECTION 3.08 OF THE CITY'S CHARTER, AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, Mayor Lyle Nelson has appointed Richard Smarzik, to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board; and

WHEREAS, City Council must confirm these appointments as required by the City Charter.

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

Section 1: That Mayor Lyle Nelson has appointed Richard Smarzik, to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board; and

Section 2: That the City Council of the City of Bastrop confirms Mayor Nelson's appointments of Richard Smarzik, to Place 6; Kathryn Lang to Place 4; Christopher Higgins to Place 3; and Judith Magana to Place 9, of the Main Street Board.

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

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 26th day of March 2024.

APPROVED:

Item 11G.

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-39 of the City Council of the City of Bastrop, Texas, approving an interlocal agreement with the Bastrop County Water Control and Improvement District No. 2 for the maintenance and improvement of certain streets, as in attached Exhibit A; authorizing the execution of all necessary documents; providing for repeal; and providing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Andres Rosales, Assistant City Manager

BACKGROUND/HISTORY:

The City of Bastrop and the Bastrop County Water Control and Improvement District No. 2 are authorized under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, to enter interlocal contracts for the provision of governmental functions, including the construction, installation, maintenance and improvement of public roads. Staff recommends to City Council the desire to enter into the Interlocal Agreement for Road Improvements with BCWCID No. 2. The Interlocal Agreement which sets for the terms and conditions pursuant to which BCWCID No. 2 will complete certain road improvements and the City will reimburse BCWCID No. 2 for certain costs of such road improvements.

FISCAL IMPACT:

Bastrop County WCID No. 2 will perform the work with established crews. The cost of materials for the identified streets will be approved by the City Manager each year. The list of streets and costs will be identified and included in the street maintenance budget.

RECOMMENDATION:

Authorize the City Manager to execute an Interlocal Agreement with the Bastrop County Water Control and Improvement District No. 2 for the maintenance and improvement of certain streets, as in attached Exhibit A of the Interlocal Agreement.

ATTACHMENTS:

1. Resolution No. R-2024-39
2. Interlocal Agreement to be executed

CITY OF BASTROP

RESOLUTION NO. R-2024-39

RESOLUTION APPROVING INTERLOCAL AGREEMENT WITH BCWCID NO. 2

A RESOLUTION OF THE CITY OF BASTROP, TEXAS, APPROVING AN INTERLOCAL AGREEMENT FOR ROAD IMPROVEMENTS WITH THE BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2; AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT; PROVIDING FOR REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop (“City”) and the Bastrop County Water Control and Improvement District No. 2 (“BCWCID No. 2”) are authorized under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, to enter interlocal contracts for the provision of governmental functions, including the construction, installation, maintenance and improvement of public roads; and

WHEREAS, the City Council desires to enter into the Interlocal Agreement for Road Improvements with BCWCID No. 2 (“Interlocal Agreement”), as attached as Exhibit “A,” which sets for the terms and conditions pursuant to which BCWCID No. 2 will complete certain road improvements and the City will reimburse BCWCID No. 2 for certain costs of such road improvements.

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

Section 1: The City Council authorizes the execution of the Interlocal Agreement (attached and incorporated herein as Exhibit “A”).

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

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

Section 4: This Resolution shall take effect immediately upon its passage.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, Texas, on this, the 26th day of March 2024.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

INTERLOCAL AGREEMENT FOR ROAD IMPROVEMENTS

(2024)

STATE OF TEXAS	§	BASTROP COUNTY WCID2
COUNTY OF	§	AND
BASTROP	§	THE CITY OF BASTROP, TEXAS

THE BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #2 ("BCWCID2"), a political subdivision of the State of Texas, and the CITY OF BASTROP, TEXAS, ("City"), a Texas Home-Rule Municipality, hereby enter into this Interlocal Agreement for Road Improvements ("Agreement"). BCWCID2 and the City are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

Recitals

WHEREAS, BCWCID2 has an interest in protecting the health and safety of citizens of Bastrop County, and the City has an interest in protecting the health and safety of citizens of the City of Bastrop; and

WHEREAS, consistent with its authority under Texas Special District Local Laws Code Chapter 11001, and Texas Transportation Code Chapter 251 and 253, BCWCID2 also has an interest in improving and maintaining the roads in BCWCID2's jurisdiction, the roads of the unincorporated sections of Bastrop County, roads located within the City's extraterritorial jurisdiction ("ETJ"), and streets within the city limits that are an integral part of or form a connecting link with a county road or state highway; and

WHEREAS, consistent with its authority under Texas Transportation Code Chapter 311, the City also has an interest in improving and maintaining the streets within the city limits, and roads located in the City's ETJ, and roads within the unincorporated sections of Bastrop County that are an integral part of or form a connecting link with city streets; and

WHEREAS, Texas Government Code Section 791.032 authorizes a local government such as BCWCID2 to enter into an interlocal contract with the City to finance the construction, improvement, maintenance, or repair of streets or alleys in the City, including portions of the municipality's streets or alleys that are not an integral part of or a connecting link to other roads or highways; and

WHEREAS, a number of the roads previously constructed within BCWCID2 that are now located within either the ETJ or city limits of the City are in poor condition, create potential hazards to public safety, and are in need of repairs and

BCWCID2: mdo

improvements; and

WHEREAS, both BCWCID2 and the City have previously adopted master plans for road and/or street improvements within their respective jurisdictions and desire to coordinate efforts under this Agreement for improvements to the public roads identified in **Exhibit “A”** attached hereto (the “Project”); and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions pursuant to which: (i) BCWCID2 will endeavor to complete the Project roads prior to September 30, 2024; (ii) the City will reimburse certain costs incurred by BCWCID2 in connection therewith; and the City will accept the roads located in the City limits upon completion of construction of the improvements.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth, to be kept and performed by them respectively, have agreed to and do hereby agree together as follows:

AGREEMENT

1. Purpose

Pursuant to Chapter 791 of the Texas Government Code, BCWCID2 and the City are local governments and desire to enter into this Agreement for the purpose of providing governmental functions in which the Parties are mutually interested and with each Party performing functions they would be authorized to perform individually; specifically: financing, project management, design, construction installation and maintenance of the Project, and will promote the public health, safety and welfare.

2. General Agreement

A. BCWCID2 and the City hereby agree to cooperate in good faith and as further set forth in this Agreement for purposes of undertaking and completing the Project prior to September 30, 2024. The Parties mutually acknowledge and agree that the completion of the Project improvements by this deadline by BCWCID2 will be subject to the availability of funding, personnel, equipment, resources, weather, prior road improvement commitments and other matters, and the completion of the Project cannot be guaranteed by either Party. Failure by BCWCID2 to complete any of the Project improvements by this date will not be deemed a breach of this Agreement.

B. Pursuant to Texas Government Code Section 791.014 (to the extent applicable to BCWCID2), before beginning a project to construct, improve, or repair a road under this Agreement, BCWCID2 Board of Directors shall consider and give specific written approval for the project in a separate document, other than

this Agreement, that describes the type of project to be undertaken and identifies the project's location. Until BCWCID2 has provided documentation of such approval, the City shall not be obligated to make any payments or perform any obligations towards that road project under this Agreement.

- C. For purposes of Texas Transportation Code Section 251.012 (to the extent applicable to BCWCID2), the City gives approval for BCWCID2 to spend BCWCID2 money to finance the construction, improvement, maintenance, or repair of those public roads identified in Exhibit A, if any, that are located in the city limits, and BCWCID2 finds that BCWCID2 will receive benefits as a result of the work on such public roads.
- D. For purposes of Texas Transportation Code Section 253.012 (to the extent applicable to BCWCID2), the City and BCWCID2 agree that BCWCID2 may improve those roads identified in Exhibit A, if any, that are in a subdivision or an access road to a subdivision located in the city limits. For such roads, BCWCID2 finds that the improvement of the road serves a district purpose. Consistent with Texas Transportation Code Section 253.012, the Parties agree that such improved roads are a County road, or a City road, as designated in Exhibit A, for the purposes of improvements under this Agreement.

3. City Responsibilities

- A. City authorizes BCWCID2 to construct the Project roads, and to perform compaction testing as needed to County specifications.
- B. City will reimburse BCWCID2 for all materials. Attached as **Exhibit "B"** is the current estimate of material costs for the Project. Prices are subject to change based on market conditions. In the event that prices for materials change, BCWCID2 shall notify City of the updated price estimates for materials for the Project no later than ten (10) days prior to purchasing the material and to submitting to City an invoice for materials reflecting the changed price.
- C. City will reimburse BCWCID2 for the cost of all surveys undertaken on behalf of BCWCID2 for the Project road improvements.
- D. City will reimburse BCWCID2 for the costs of any of BCWCID2's consultations with any consulting engineer relating to the Project road improvements.
- E. Upon completion of each Project road improvement, City shall contact BCWCID2 and schedule a joint inspection of the completed Project road improvements.

- F. BCWCID2 shall remain responsible for repair and maintenance of the Project road improvements for a one year warranty period after initial completion of construction. Provided the road improvement has been constructed in accordance with the requirements of this Agreement and all matters identified at the joint inspection have been corrected, the City shall accept all Project roads identified as City roads in Exhibit "A" at or prior to expiration of the one year warranty period

4. BCWCID2 Responsibilities

- A. BCWCID2 will use good faith efforts to complete the Project road improvements identified in Exhibit A, using BCWCID2-provided personnel and equipment.
- B. BCWCID2 will purchase all materials for the Project (subject to reimbursement from City).
- C. BCWCID2 will consult with the City's drainage plan. If needed, BCWCID2 will consult with City's consulting engineer, at City's expense, regarding the impact of the Project on City's drainage plan.

5. Other Agreements Relating to the Project

- A. The Parties shall use commercially reasonable efforts to complete all projects within BCWCID2 Fiscal Year 2023-2024 (October 1, 2023 - September 30, 2024) unless otherwise agreed by the Parties in writing.
- B. Payment is expected from the City, within 30 days of receiving an invoice from BCWCID2.
- C. Each Party agrees to conform to its own applicable purchasing laws, regulations, policies, and procedures with respect to the portion of the work under this Agreement performed by each party.
- D. BCWCID2 and City will coordinate work schedules in order to provide for minimal disruption of traffic and operation of the roads described herein.
- E. This Agreement may be renewed every fiscal year upon written request from City to BCWCID2 and written acceptance by BCWCID2 of said request. The request must include an updated **Exhibit A & B attachments**.

6. Miscellaneous

- A. Notice and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

Initial: BCWCID2 WAB City _____

Page 4 of 10

To BCWCID2:

BCWCID2
Attn: Paul Hightower
General Manager
112 Corporate Drive
Bastrop, Texas 78602

To City:

City of Bastrop
Attn: Sylvia Carrillo
City Manager
1311 Chestnut Street
Bastrop, TX 78602

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

For ease of administration of this contract, a main contact person has been designated for the Parties as follows:

For BCWCID2:

BASTROP COUNTY WCID2
Attn: Tyler Walsh
Project Manager
112 Corporate Drive
Bastrop, Texas 78602

For City:

City of Bastrop
Attn: John Eddleton
Public Works Director for
Streets, Drainage and Cemetery
1311 Chestnut Street
Bastrop, TX 78602

- B. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- C. Prior Agreement Superseded. This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein on the Project and supersedes any prior understandings or written or oral agreements between the Parties respecting the Project. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not involve the Project.
- D. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.
- E. General Waiver by the Parties. The Parties hereby waive and release each other from all claims for loss or damage caused by any act or omission by the other, their respective employees, or agents, in the performance of this Agreement, except for gross negligence and/or willful misconduct, and except as otherwise provided by the Texas law. To the extent authorized by Texas law, BCWCID2 and City agree that each entity is responsible for its own proportionate share of any liability for personal injury or death or property damage arising out of or connected to its own negligent acts or omissions in connection with this Agreement as determined by a court of competent law.
- F. Violation of Law. The Parties shall not violate any federal, state or local laws, regulations or ordinances in the performance of this Agreement.
- G. Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provisions of this Agreement, and all remaining provisions shall be fully enforceable.
- H. Governing Law and Place for Performance. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the BASTROP COUNTY and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise and negotiate the terms of this Agreement, and that if in the future there is a dispute as to the meaning of any provision herein, then no such

provision shall be construed against the drafter of the Agreement.

- I. Signature Warranty Clause. The signatories to this Agreement represent that they have the authority to execute this agreement on behalf of City and BCWCID2, respectively.
- J. No Waiver of Immunities. Nothing in the Agreement shall be construed to waive any immunity from suit or liability enjoyed by City, BCWCID2, their past or present officers, employees, or agents.
- K. Approval of Governing Bodies. This Agreement has been approved by the governing bodies of BCWCID2 and City.
- L. Assignment. Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.
- M. Termination. This agreement may be terminated by either Party, with or without cause, upon 30 calendar days written notice to the other Party.
- N. Governmental Purpose. Each Party hereto is entering into this Agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.
- O. Commitment of Current Revenues Only. In the event that, during any term hereof, the governing body of any Party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. Each of the Parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The Parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each Party hereto pursuant to the provisions of Texas Local Government Code Section 271.903.

[Signature page follows.]

EXECUTED TO BE EFFECTIVE this ____ day of _____, 2024.

CITY OF BASTROP

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

BASTROP COUNTY WCID2

By: Mary Beth O'Hanlon
Name: Mary Beth O'Hanlon
Title: Board President

ATTEST:

By: M. Plummer
Name:
Title:

Exhibit "A"
Identification of 2024 Project Roads

ROAD/ROAD SEGMENT	ANTICIPATED CONSTRUCTION TIME FRAME	DESIGNATION AS COUNTY, OR CITY ROAD
1. Aloha Lane		
2. Reva Court		
3. Kouli Court		
4. Kohala Court		
5.		
6.		
7.		
8.		
9.		
10.		

Exhibit "B"
Current Estimate of Materials for the Project*

	Road/Road Segment	Length (feet)	Cost
1.	Aloha Lane	1233 Ft.	\$46,525
2.	Reva Court	205 Ft.	\$6,284
3.	Koui Court	327 Ft.	\$10,004
4.	Kohala Court	540 Ft.	\$16,416
5.	Rip Rap	optional >200	≤\$10,000
6.	2-abandoned D-way		\$1,400
7.	Density Testing		\$2,500
8.			
9.			
10.			

* Note: Current pricing estimates do not include costs of surveys, which BCWICD2 has scheduled for Reva Ct. and sections of Aloha. Rip rap will be needed on Aloha, but the other roads are expected to require minimal rip rap. Costs of fuel shall not be reimbursable under this Agreement.



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-40 of the City Council of the City of Bastrop, Texas, approving an interlocal agreement with the Bastrop County for the maintenance and improvement of certain streets, as in attached Exhibit A; authorizing the negotiation and execution of all necessary documents; providing for repeal; and providing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Andres Rosales, Assistant City Manager

BACKGROUND/HISTORY:

The County of Bastrop and the City of Bastrop are requesting to enter into this Interlocal Agreement for the annual routine paving and maintenance of roads, limited to a mutually agreed upon scope of work, determined annually, by the City Manager and County Commissioner of the appropriate Precinct. This agreement would cover all four precincts within Bastrop County. Each year, staff will work with each precinct to establish a list of streets for paving and maintenance.

FISCAL IMPACT:

The Bastrop County has competitively bid contracts for material that may provide advantageous pricing. Each year a list of streets and specific cost will be approved by the City Manager and Streets Director.

RECOMMENDATION:

Authorize the City Manager to execute an Interlocal Agreement with the Bastrop County for the maintenance and improvement of certain streets, as in attached Exhibit A

ATTACHMENTS:

1. Resolution No. R-2024-40
2. Interlocal Agreement DRAFT to be executed

INTERLOCAL COOPERATION AGREEMENT FOR ROAD IMPROVEMENTS County of Bastrop and City of Bastrop

I.PARTIES

THE COUNTY OF BASTROP (“County”), a local political subdivision of the State of Texas and the City of Bastrop (“City”), a Texas Home-Rule Municipality, hereby enter into this Interlocal Agreement.

II.PURPOSE

The County of Bastrop and the City of Bastrop are referred to jointly herein as the “Parties”, and individually as a “Party”, Bastrop County and The City of Bastrop hereby enter into this Interlocal Agreement (“Agreement”) for the annual routine paving and maintenance of roads, limited to a mutually agreed upon scope of work, determined annually, by the City Manager and County Commissioner of the appropriate Precinct.

III.RECITALS

1. WHEREAS, Pursuant to Chapter 791 of the Texas Government Code, the Parties are public agencies entering into this Agreement for the purpose of providing governmental functions in which the Parties are mutually interested and each Party performing functions they would be authorized to perform individually which will create improvements for roads in Bastrop County, within the City and provide for the public health and welfare.

IV. AGREEMENT

A. CITY AND COUNTY RESPONSIBILITIES.

1. The City Manager and the County Commissioner of the appropriate Precinct shall agree annually to a list of City Streets and scope of work for the routine paving and maintenance to be completed during that fiscal year. That list shall be mutually agreed upon substantially in the form of Exhibit A (“City Streets”).
2. The City of Bastrop agrees to pay for all paving materials, utilized on the City Streets.
3. The City may request for The County to purchase the paving material under County contracted/bid rates and The City agrees to reimburse The County for all paving materials

ordered by Bastrop County with said payment to occur within 30 days of receipt of an invoice for said material from Bastrop County.

4. The County will provide the labor and equipment utilized for the County to perform the mutually agreed upon scope of work on The City Streets.

V. OTHER TERMS OF AGREEMENT

A. NOTICE AND ADDRESSES All notices required hereunder must be addressed to the proper Party, at the following address:

To the County:

County of Bastrop
Attn: Bastrop County Commissioner Precinct 1, or
Bastrop County Commissioner Precinct 2
804 Pecan Street
Bastrop, TX 78602

To The City of Bastrop:

Sylvia Carrillo
City Manager
1311 Chestnut Street
Bastrop, TX 78602

B. PRIOR AGREEMENTS SUPERCEDED This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein and supersedes any prior understanding or written or oral agreements between the Parties.

C. AMENDMENT No amendment, modification, or alteration of the terms if this Agreement shall be binding unless it is in writing dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

D. GENERAL WAIVER BY PARTIES The Parties hereby waive and release each other from all claims for loss or damage caused by the Parties to this Agreement.

E. LEGAL COMPLIANCE The Parties shall not violate any federal, state, or local laws, regulations or ordinances in the performance of this Agreement.

F. GOVERNING LAW AND PLACE FOR PERFORMANCE This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the County of Bastrop and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review revise and negotiate the terms of this Agreement, and that if in the future there is a

dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

G. SIGNATURE WARRANTY CLAUSE The signatories to this Agreement represent that they have the authority to execute this agreement on behalf of the City of Bastrop and Bastrop County, respectively.

H. NO WAIVER OF IMMUNITIES Nothing in the Agreement shall be construed to waive any immunity from suit or liability enjoyed by the City of Bastrop, the County, their past or present officers, employees, or agents.

I. APPROVAL BY GOVERNMENTAL BODIES This Agreement has been approved by the governing bodies of the County and the City of Bastrop. Pursuant to section 791.011(c) (3), the parties shall use current revenues for any payments under this agreement.

J. ASSIGNMENT Neither Party may assign their interest in this Agreement except upon receiving the written consent of the other Party.

K. TERMINATION The agreement shall be for ONE YEAR from the effective date hereof and will automatically be renewed on **October 1 each year thereafter** until modified or terminated by the parties. Ninety (90) days prior to the anniversary date of this Agreement, the Parties will determine if the Agreement will be continued, modified, or terminated. Notwithstanding anything to the contrary, either Party to this Agreement may terminate this Agreement with no penalty, with or without cause, by providing either Party with a written notice of its desire and intent to terminate this Agreement to the persons listed in V. (A) above.

(Signatures on following page)

EXECUTED TO BE EFFECTIVE this _____ day of _____, 2024.

CITY OF BASTROP

By: _____

Printed Name: Lyle Nelson

Title: Mayor

ATTEST:

By: _____

COUNTY OF BASTROP

By: _____

Printed Name: Gregory Klaus

Title: County Judge

ATTEST:

By: _____

Exhibit “A”

I. City Streets (Fiscal Year _____)

ROAD/ROAD SEGMENT (Include street name and start/end points for work)	LENGTH (feet)	ANTICIPATED CONSTRUCTION TIME FRAME
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

II. Scope of Work

[See attachments for scope of work of the routine paving and maintenance to be performed.]

Pursuant to the terms of the Interlocal Agreement, the Parties hereby agree to the above list of City Streets and Scope of Work for the Fiscal Year stated above.

EXECUTED TO BE EFFECTIVE this _____ day of _____, 20__.

County Commissioner Precinct No. _____, The County of Bastrop

City Manager, The City of Bastrop



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-38 of the City Council of the City of Bastrop, Texas adopting the previously accepted 2023 City of Bastrop Parks, Recreation and Open Space Master Plan.

AGENDA ITEM SUBMITTED BY:

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

BACKGROUND/HISTORY:

The City of Bastrop engaged Stantec Engineering to create a Park and Recreation Master Plan.

The council has formally “accepted” the plan, but has not “adopted” the plan. Adoption will open the City to available grants and also inform other areas such as the Development Code

FISCAL IMPACT:

Future Capital Improvement Planning will have a financial impact to the budget and debt ratios. The impact is unknown at this time.

RECOMMENDATION:

Adopt the Park Master Plan

ATTACHMENTS:

1. [Link to the Park Plan is presented here.](#)
2. Resolution No. R-2024-38

RESOLUTION NO. R-2024-38

**A RESOLUTION OF THE CITY COUNCIL OF BASTROP TEXAS
ADOPTING THE 2023 CITY OF BASTROP PARKS, RECREATION AND
OPEN SPACE MASTER PLAN**

WHEREAS, the City of Bastrop has experienced unprecedented growth and development in recent years that has created numerous challenges for the City in the appropriate provision of municipal services, specifically those related to parks, trails, recreation and open spaces; and

WHEREAS, the City Council of the City of Bastrop recognized the need for an updated Parks, Recreation and Open Space Master Plan to provide goals, assessments, standards, recommendations and strategies for implementation of a five to ten-year period in an effort to provide for and continually improve park and recreation facilities, provide trail opportunities, preserve open spaces and upgrade existing parks in the City of Bastrop; and

WHEREAS, the City Council commissioned Stantec, Inc., to perform an update to the City’s Master Parks Plan; and

WHEREAS, the volunteer Steering Committee, the Parks Advisory Board and other community volunteers worked with the city staff and the City Council to produce the proposed 2023 City of Bastrop Parks, Recreation and Open Space Master Plan; and

WHEREAS, public forums on the 2023 City of Bastrop Parks, Recreation and Open Space Master Plan were conducted from March 6, 2023, through August 3, 2023; and

WHEREAS, the 2023 City of Bastrop Parks, Recreation and Open Space Master Plan complies with Texas Parks and Wildlife Department (TPWD) master plan guidelines, which require parks and recreation needs to be prioritized and addressed in an action plan format; and

WHEREAS, the Mayor and City Council wish to now formally adopt the 2023 City of Bastrop Master Parks, Recreation and Open Space Master Plan, as a foundation for future planning documents, subject to further refinement by the Council and Community.

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

Section 1. The 2023 City of Bastrop Parks, Recreation and Open Space Master Plan is hereby adopted and attached hereto and incorporated herein for all intents and purposes.

Section 2. That it is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 3. That the 2023 City of Bastrop Parks, Recreation and Open Space Master Plan shall be used by the City in the planning of, and as guide for future enhancements and improvements of the Parks and Recreation system of the City of Bastrop.

Section 4. All resolutions or parts of resolutions, in conflict with this resolution are hereby repealed, and are no longer of any force or effect.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 26th day of March 2024.

APPROVED:

Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: March 26, 2024

TITLE:

Consider action to approve Resolution No. R-2024-29 regarding a petition filed by Eron R. Smith to remove approximately 128.563 acres of land, as described in the petition, from the City of Bastrop's extraterritorial jurisdiction pursuant to Local Government Code Chapter 42.

AGENDA ITEM SUBMITTED BY:

Sylvia Carrillo, ICMA-CM, CPM, City Manager

BACKGROUND/HISTORY:

The City Secretary received a petition for the release of a certain tract of land comprised of approximately 126.46 acres currently situated within the ETJ of the City.

POLICY EXPLANATION:

Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election.

Pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ.

Pursuant to Texas Local Government Code Section 42.152, a resident of an area in the City's ETJ may request the City to hold an election to vote on the question of whether to release the area from the City's ETJ by filing a petition with the City Secretary

RECOMMENDATION:

Consider action to approve Resolution No. R-2024-29 regarding a petition filed by Eron R. Smith to remove approximately 128.563 acres of land, as described in the petition, from the City of Bastrop's extraterritorial jurisdiction pursuant to Local Government Code Chapter 42.

ATTACHMENTS:

- Resolution No. R-2024-29

**CITY OF BASTROP, TX
RESOLUTION NO. R-2024-29**

EXTRATERRITORIAL JURISDICTION RELEASE

A RESOLUTION OF THE CITY OF BASTROP, TEXAS FOR THE RELEASE OF LAND FROM THE CITY'S EXTRATERRITORIAL JURISDICTION UPON REQUEST AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING

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

WHEREAS, pursuant to Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election; and

WHEREAS, pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ; and

WHEREAS, pursuant to Texas Local Government Code Section 42.152, a resident of an area in the City's ETJ may request the City to hold an election to vote on the question of whether to release the area from the City's ETJ by filing a petition with the City Secretary; and

WHEREAS, the City Council has received a petition for the release of a certain tract of land comprised of +/-128.563 acres currently situated within the ETJ of the City ("Property"), which Property is more accurately described in Exhibit A, which is attached hereto and incorporated herein; and,

WHEREAS, having received verification from the City Secretary, the City Council finds the attached ETJ Release Petition for the Property ("Petition"), which is attached here as Exhibit A and incorporated herein, is valid and this Resolution is necessary and proper for the good government, peace, or order of the City to release the Property from the City's ETJ.

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

- Section 1. Findings of Fact:** The foregoing recitals are incorporated into this resolution (“Resolution”) by reference as findings of fact as if expressly set forth word-for-word herein.
- Section 2. Release:** The Petition is hereby considered verified; therefore, the Property as described in the Petition is hereby released from the City’s ETJ.
- Section 3. Filing:** The City Secretary is hereby directed to file a certified copy of this Resolution and an updated map of the City’s ETJ boundary with the County Clerk of Bastrop County, Texas.
- Section 4. Repealer:** To the extent reasonably possible, resolutions are to be read together in harmony. However, all resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters regulated.
- Section 5. Severability:** Should any of the clauses, sentences, paragraphs, sections, or parts of this Resolution be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Resolution.
- Section 6. Effective Date:** This Resolution shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City’s Charter, its Code of Ordinances, and the laws of the State of Texas.
- Section 7. Proper Notice & Meeting:** It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED on First Reading by the City Council of the City of Bastrop, on this, the 26th day of March 2024.

APPROVED:

by: _____
Lyle Nelson, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "A"

ETJ Release Petition

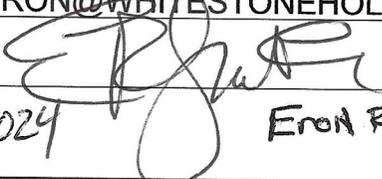
THE CITY OF
BASTROP

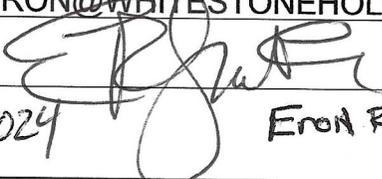
3-14-20 Item 11K.

TEXAS

Release from Extraterritorial Jurisdiction (ETJ) Petition

APPLICANT / OWNER

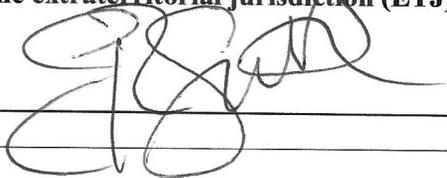
Applicant or Authorized Agent	Owner
Name: ERON SMITH / LOST PINES RV LLC	Name: SAME
Company: DATE OF BIRTH 11-06-1962	Company:
Address: 632 HEATHER LANE	Address:
FRIENDSWOOD TEXAS 77546	
Telephone: 281-389-0194	Telephone:
Email: ERON@WHITESTONEHOLDINGS.NET	Email:
Signature: 	Signature:

3-14-2024  Eron R. Smith

SITE INFORMATION

Number of properties within the area to be released:	2 ADJACENT TRACTS
General location or address of area to be released:	110 COTTON TOP, 2.503 ACRES
Total Acres to be released: 128.563 ACRES	201 PAVILLION DRIVE, 126.06 ACRES
County of Request BASTROP	

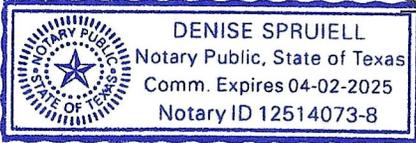
REQUIRED ITEMS FOR PETITION
(Applicant must initial next to each item)

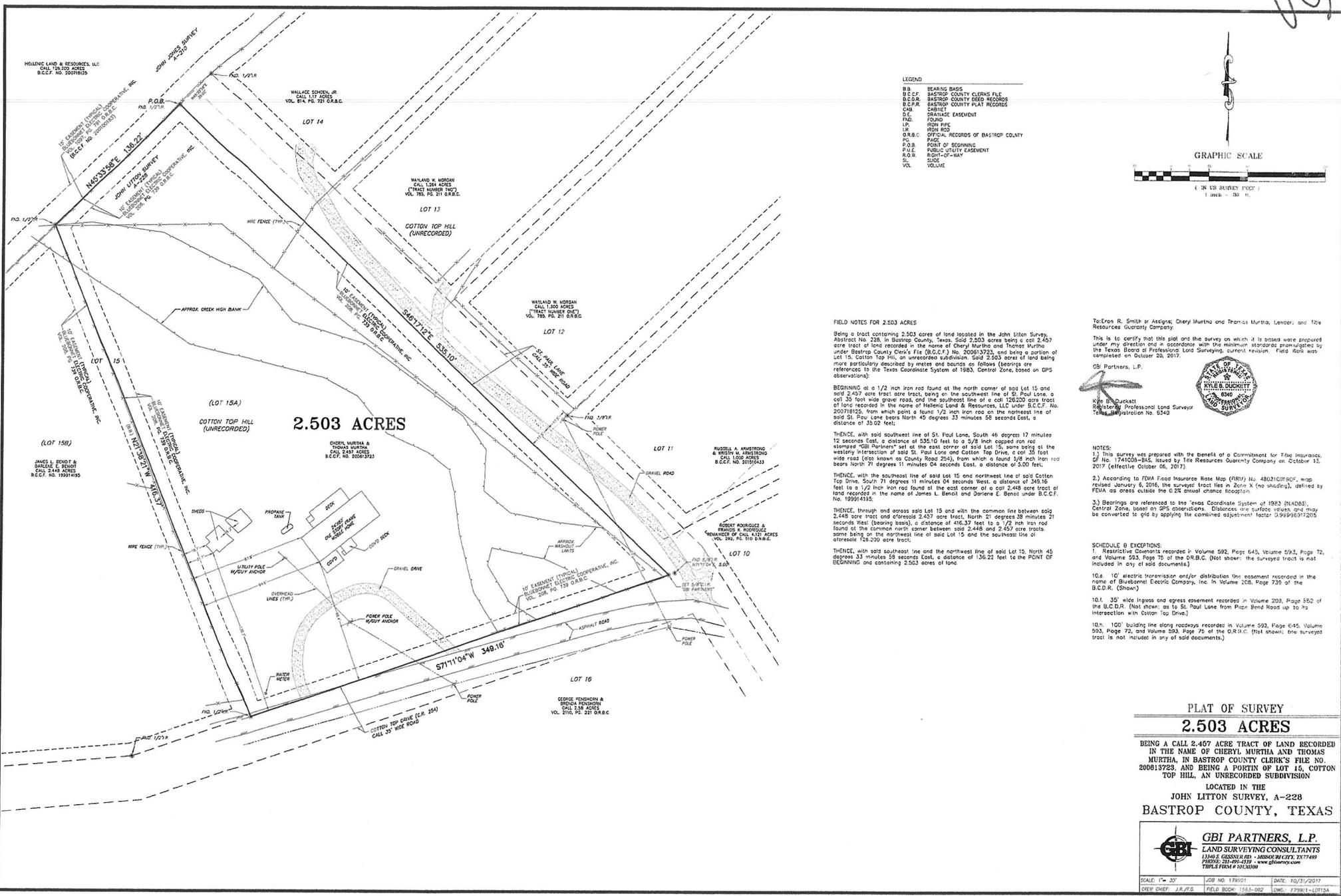
<input type="checkbox"/>	Completed Application
<input type="checkbox"/>	Exact Property description in the form of: 1) Metes and Bounds, or 2) Identification of the property (Lot and Block) on a Recorded Plat
<input type="checkbox"/>	Signed "Release from ETJ Petition" (see next page) 50% of all owners within the area to be released must provide a NOTARIZED signature
<input type="checkbox"/>	If property is owned by an entity, estate, trust, etc. – provide proof of authority to sign on behalf of the entity, estate, trust, etc.
<input type="checkbox"/>	If current ownership differs from data available on the Appraisal District website provide deed(s) as proof of ownership
<input type="checkbox"/>	Owner of the property acknowledges that with the submittal of this petition, that they may no longer assume they will have the ability to receive City of Bastrop utility or emergency services for the property being removed for the extraterritorial jurisdiction (ETJ) of the City of Bastrop .
<input type="checkbox"/>	Owners signature required: 

CITY OF BASTROP RELEASE FROM ETJ PETITION

Item 11K.

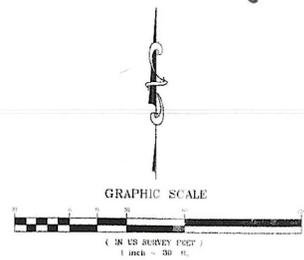
By signing this petition, I hereby request to be removed from the City of BASTROP Extraterritorial Jurisdiction (ETJ). I hereby affirm that I am the legal owner of the property identified below (attach additional pages as required).

Tax ID # and Physical Address	Property Owners Signature	Notary
		<p>State of <u>Texas</u> County of <u>Galveston</u> The instrument was signed or acknowledged before me on <u>3-14-24</u> By <u>Eron Smith</u> Print name of signer(s)   Notary Signature</p>
		<p>State of _____ County of _____ The instrument was signed or acknowledged before me on _____ By _____ Print name of signer(s) _____ Notary Signature</p>



LEGEND

B	BEARING BASIS
B.C.C.F.	BASTROP COUNTY CLERKS FILE
B.C.S.R.	BASTROP COUNTY DEED RECORDS
B.C.P.R.	BASTROP COUNTY PLAT RECORDS
C.M.	CADASTRAL
D.E.	DEED EASEMENT
F.M.D.	FOUND
I.P.	IRON PIPE
M.	MARK
O.R.B.C.	OFFICIAL RECORDS OF BASTROP COUNTY
P.	POINT
P.O.B.	POINT OF BEGINNING
P.U.E.	PUBLIC UTILITY EASEMENT
R.O.W.	RIGHT-OF-WAY
S.	SIDE
VOL.	VOLUME



FIELD NOTES FOR 2.503 ACRES

Being a tract containing 2.503 acres of land located in the John Litton Survey, Abstract No. 228, in Bastrop County, Texas. Said 2.503 acres being a cot 2.457 acre tract of land recorded in the name of Cheryl Murtha and Thomas Murtha under Bastrop County Clerk's File (B.C.C.F.) No. 2006137223, and being a portion of Lot 15, Cotton Top Hill, an unrecorded subdivision, said 2.503 acres of land being more particularly described by meters and bearings as follows (bearings are referenced to the Texas Coordinate System of 1983, Central Zone, based on GPS observations):

BEGINNING at a 1/2 inch iron rod found at the north corner of said Lot 10 and said 2.457 acre tract, being on the southwest line of St. Paul Lane, a cot 35 foot wide gravel road, and the southeast line of a cot 126,200 acre tract of land recorded in the name of Holencik Land & Resources, LLC under B.C.C.F. No. 200718125, from which point a found 1/2 inch iron rod on the northeast line of said St. Paul Lane bears North 45 degrees 33 minutes 58 seconds East, a distance of 35.02 feet;

THENCE, with said southwest line of St. Paul Lane, South 46 degrees 17 minutes 12 seconds East, a distance of 535.10 feet to a 5/8 inch capped iron rod stamped "MSI Robinson" set at the east corner of said Lot 15, some being at the westerly intersection of said St. Paul Lane and Cotton Top Drive, a cot 35 foot wide road (also known as County Road 254), from which a found 5/8 inch iron rod bears North 71 degrees 11 minutes 04 seconds East, a distance of 5.00 feet;

THENCE, with the southeast line of said Lot 15 and the northeast line of said Cotton Top Drive, South 71 degrees 11 minutes 04 seconds West, a distance of 349.16 feet to a 1/2 inch iron rod found at the east corner of a cot 2.468 acre tract of land recorded in the name of James L. Benoit and Darlene E. Benoit under B.C.C.F. No. 199943135;

THENCE, through and across said Lot 15 and with the common line between said 2.468 acre tract and a cot 2.457 acre tract, North 21 degrees 38 minutes 21 seconds West (bearing based), a distance of 416.37 feet to a 1/2 inch iron rod found at the common north corner between said 2.468 and 2.457 acre tracts, some being on the northwest line of said Lot 15 and the southeast line of a cot 126,200 acre tract;

THENCE, with said southwest line and the northwest line of said Lot 15, North 45 degrees 33 minutes 58 seconds East, a distance of 136.22 feet to the POINT OF BEGINNING, one containing 2.503 acres of land.

To: Eron R. Smith or Assigns; Cheryl Murtha and Thomas Murtha, Lessee, and Title Resources Surety Company.

This is to certify that this plat and the survey on which it is based were prepared under my direction and in accordance with the minimum standards promulgated by the Texas Board of Professional Land Surveying, current revision. Field work was completed on October 20, 2017.

CS Partners, L.P.

Kibe B. Duckett
Registered Professional Land Surveyor
Texas Registration No. 6540

- NOTES:**
- 1.) This survey was prepared with the benefit of a Commitment for Title Insurance, OF No. 1741028-848, issued by Title Resources Surety Company on October 13, 2017 (effective October 6, 2017).
 - 2.) According to FEMA Flood Insurance Rate Map (FIRM) No. 4802101H500, maps revised January 8, 2016, the surveyed tract lies in Zone X (no shading), defined by FEMA as areas outside the 0.2% annual chance floodplain.
 - 3.) Bearings are referenced to the Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS observations. Distances in surface values and may be converted to grid by applying the combined adjustment factor 0.9999951205.
- SCHEDULE B EXCEPTIONS**
1. Restrictive Covenants recorded in Volume 592, Page 645, Volume 593, Page 72, and Volume 593, Page 75 of the O.R.B.C. (Not shown; the surveyed tract is not included in any of said documents.)
 10. 10' electric transmission and/or distribution line easement recorded in the name of Bluebonnet Electric Company, Inc. in Volume 208, Page 739 of the B.C.D.R. (Shown)
 - 10.1. 30' wide Highways and egress easement recorded in Volume 203, Page 552 of the B.C.D.R. (Not shown; as to St. Paul Lane from Pipe Bend Road up to the intersection with Cotton Top Drive.)
 - 10.2. 100' building line along roadways recorded in Volume 593, Page 645, Volume 593, Page 72, and Volume 593, Page 75 of the O.R.B.C. (Not shown; the surveyed tract is not included in any of said documents.)

PLAT OF SURVEY
2.503 ACRES

BEING A CALL 2.457 ACRE TRACT OF LAND RECORDED IN THE NAME OF CHERYL MURTHA AND THOMAS MURTHA, IN BASTROP COUNTY CLERK'S FILE NO. 2006137223, AND BEING A PORTION OF LOT 15, COTTON TOP HILL, AN UNRECORDED SUBDIVISION

LOCATED IN THE
JOHN LITTON SURVEY, A-228
BASTROP COUNTY, TEXAS

GPI PARTNERS, L.P.
LAND SURVEYING CONSULTANTS
13340 S. GESSNER RD. - SUITE 201 CTX, 75748
PHONE: 281-491-8539 www.gpipartners.com
TIFBLS FIRM # 1013030

SCALE: 1" = 30' JOB NO. 179901 DATE: 10/31/2017
 DRAWN BY: J.R./P.C. FIELD BOOK: 1564-002 DWG.: 179901-001A
 CHECKED BY: J.R./P.C.

