

Bastrop, TX City Council Meeting Agenda

Bastrop City Hall City Council Chambers

1311 Chestnut Street

Bastrop, TX 78602

(512) 332-8800



October 9, 2018 at 6:30 P.M.

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.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during 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 WISHING TO ADDRESS THE COUNCIL MUST COMPLETE A CITIZEN COMMENT FORM AND GIVE THE CARD TO THE CITY SECRETARY PRIOR TO THE START OF THE CITY COUNCIL MEETING.

1. CALL TO ORDER

- 2. PLEDGE OF ALLEGIANCE** – Kace Benoit and Josiah Reese, Bastrop Independent School District News Kids Krew

TEXAS PLEDGE OF ALLEGIANCE

Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

- 3. INVOCATION** – Chaplain Cliff Sparks, Police Chaplain

4. PRESENTATIONS

- 4A. Mayor's Report
- 4B. Councilmembers' Report
- 4C. City Manager's Report
- 4D. A proclamation of the City Council of the City of Bastrop, Texas recognizing October as Domestic Violence Awareness Month.
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5. WORK SESSION/BRIEFINGS

- 5A. Discuss Warn Central Texas and the Capital Area Council of Governments' transition from "Code Red" to "Everbridge".
- 5B. Discuss revisions to the City's Procurement Policy regarding future fleet acquisitions.

6. STAFF AND BOARD REPORTS - NONE

7. CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the start of the Council meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible future action.

To address the Council concerning any item on the agenda, please submit a fully completed request card to the City Secretary prior to the start of the meeting.

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

8. CONSENT AGENDA

The following may be acted upon in one motion. A Councilmember or a citizen may request items be removed from the Consent Agenda for individual consideration.

- 8A. Consider action to approve City Council minutes from the September 25, 2018 meeting.
- 8B. Consider action to approve the second reading of Ordinance No. 2018-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater rates and charges"; repealing conflicting provisions; providing a severability clause; and providing for an effective date.
- 8C. Consider Action to approve the second reading of Ordinance No. 2018-27 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 12 Titled "TRAFFIC AND VEHICLES," Article 12.05 Titled "SPEED LIMITS," adding Section 12.05.010 Titled "25 MPH SPEED ZONES;" providing for the provision that establishes a speed limit of twenty-five (25) miles per hour in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Block of CP Johnson Lane and repealing all prior ordinances

that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting.

- 8D. Consider action to approve the second reading of Ordinance No. 2018-28 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2018 in accordance with existing statutory requirements; appropriating the various amounts herein; as attached in Exhibit A; repealing all ordinances and actions in conflict herewith; and providing for an effective date.

9. ITEMS FOR INDIVIDUAL CONSIDERATION

- 9A. Consider action and approve Resolution No. R-2018-103 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules).
- 9B. Hold public hearing and consider action to approve the first reading of Ordinance No. 2018-29 of the City Council of the City of Bastrop, Texas, Rezoning 1.95 acres of Building Block 62, East of Water Street, from SF-7, Single-Family 7 to C-1, Commercial 1, located at 303 and 305 Martin Luther King Jr. Drive, within the city limits of Bastrop, Texas; as shown in Exhibits A & B; including a severability clause; establishing an effective date and move to include on the October 23, 2018 consent agenda for second reading.
- 9C. Consider action to approve the first reading of Resolution No. R-2018-102 of the City Council of the City of Bastrop, Texas, approving the terms of an economic development performance agreement between the Bastrop Economic Development Corporation and 921 Bastrop, LLC; approving the terms of an agreement for construction of improvements to the lot at 921 Main Street with 921 Bastrop, LLC, in an amount exceeding ten thousand dollars (\$10,000); repealing all resolutions in conflict; providing severability; providing an effective date; and move to include on the October 23, 2018 consent agenda for second reading.
- 9D. Consider action to approve Resolution No. R-2018-104 of the City Council of the City of Bastrop, Texas confirming a board appointment of the Mayor, as required in Section 3.08 of the City's Charter; and establishing an effective date.

10. EXECUTIVE SESSION

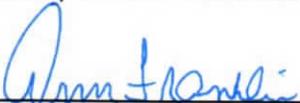
- 10A. City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to confer with City Attorney regarding legal advice related to the status of the 1445 Interlocal Agreement between the City of Bastrop and Bastrop County for the review of subdivision applications in the City's extraterritorial jurisdiction.

10B. City Council shall convene into closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property and Texas Government Code Sec. 551.071 to consult with legal counsel on a matter within the attorney-client privilege, specifically, the acquisition of groundwater rights.

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

12. ADJOURNMENT

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, October 5, 2018 at 12:00 p.m. and remained posted for at least two hours after said meeting was convened.



Ann Franklin, City Secretary



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 4A

TITLE:

Mayor's Report

STAFF REPRESENTATIVE:

Lynda Humble, City Manager

POLICY EXPLANATION:

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

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

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

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

ATTACHMENTS:

- Power Point Presentation

Mayor's Report
October 9, 2018



Latest Activities

September 17 - 28

Events in 2018: 287



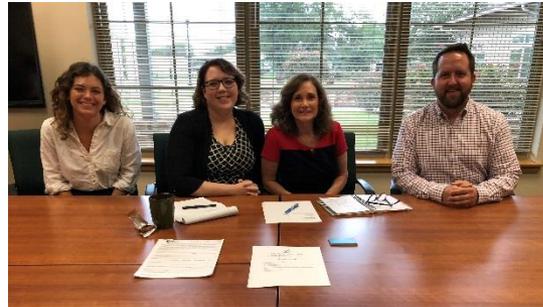
Klose Knit Sisters



Bits & Pieces Re-Opening



Building Bastrop Open House



Building Bastrop Weekly Meeting #6



Welcome Reception
Mike Kamerlander
Susan Smith



Oz – The Musical



Congratulations to all the winners!



Planned Events

September 29 – October 9

- October 1 Library Board
- October 2
 - GuruMD Ribbon Cutting
 - National Night Out
- October 3 –
 - Chamber Luncheon – First Responders Recognized
 - BAIPP Meeting
- October 4
 - Weekly Building Bastrop Meeting
 - Farm Street Opry
- October 5 – First Friday Art Walk
- October 6
 - Annual Safety Event – Home Depot
 - Art after Dark
- October 9
 - City Council Meeting
 - Drive to Annual TML Conference



Upcoming Events & City Meetings

- October 10 – 12 TML Annual Conference
- October 15 – BEDC Monthly Meeting
- October 18
 - Weekly Building Bastrop Meeting
 - Family Crisis Center: Women’s Luncheon
 - Building Bastrop Public Workshop
- October 23 – City Council





STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 4B

TITLE:

Councilmembers' Report

STAFF REPRESENTATIVE:

Lynda Humble, City Manager

POLICY EXPLANATION:

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STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 4C

TITLE:

City Manager's Report

STAFF REPRESENTATIVE:

Lynda Humble, 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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STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 4D

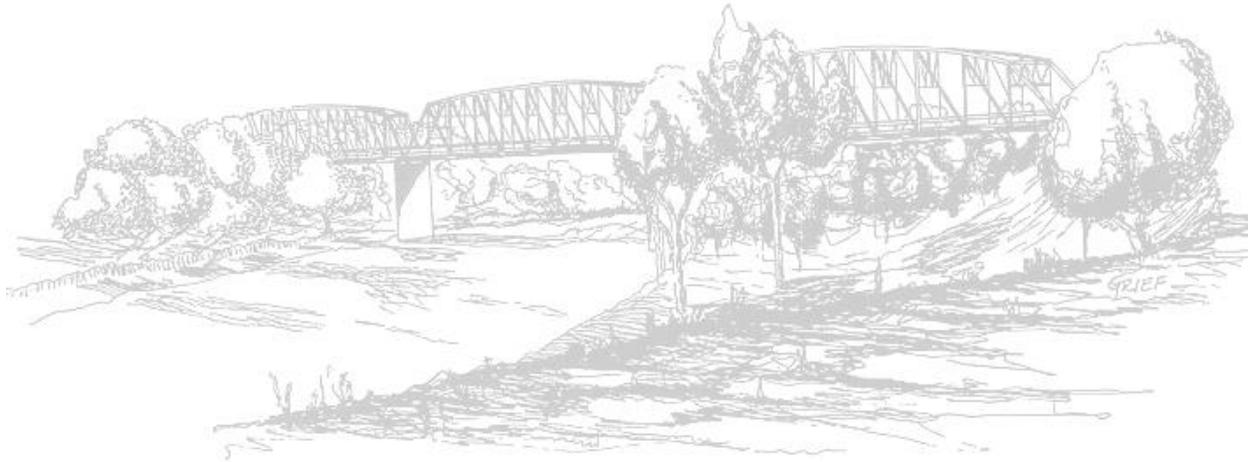
TITLE:

A proclamation of the City Council of the City of Bastrop, Texas recognizing the month of October as Domestic Violence Awareness Month.

STAFF REPRESENTATIVE:

James Altgelt, Director of Public Safety/Chief of Police

Bernie Jackson, Family Crisis Center - Prevention & Volunteer Coordinator



P

ROCLAMATION



BASTROPTX
Heart of the Lost Pines / Est. 1832

WHEREAS, domestic violence is a serious crime that affects people of all races, ages, gender, and income levels; and

WHEREAS, domestic violence is widespread and affects over 4 million Americans each year; and

WHEREAS, one in three Americans have witnessed an incident of domestic violence; and

WHEREAS, children that grow up in violent homes are believed to be abused and neglected at a rate higher than the national average; and

WHEREAS, domestic violence costs the nation billions of dollars annually in medical expenses, police and court costs, shelters, foster care, sick leave, absenteeism, and non-productivity; and

WHEREAS, only a coordinated community effort will put a stop to this heinous crime; and

WHEREAS, domestic Violence Awareness Month provides an excellent opportunity for citizens to learn more about preventing domestic violence and to show support for the numerous organizations and individuals who provide critical advocacy, services and assistance to victims.

NOW, THEREFORE, I, Connie Schroeder, Mayor of the City of Bastrop, do hereby proclaim the **month of October 2018 as Domestic Violence Awareness Month** and urge the citizens of Bastrop to work together to eliminate domestic violence from our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Bastrop, Texas to be affixed this 9th day of October, 2018.

Connie B. Schroeder, Mayor



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 5A

TITLE:

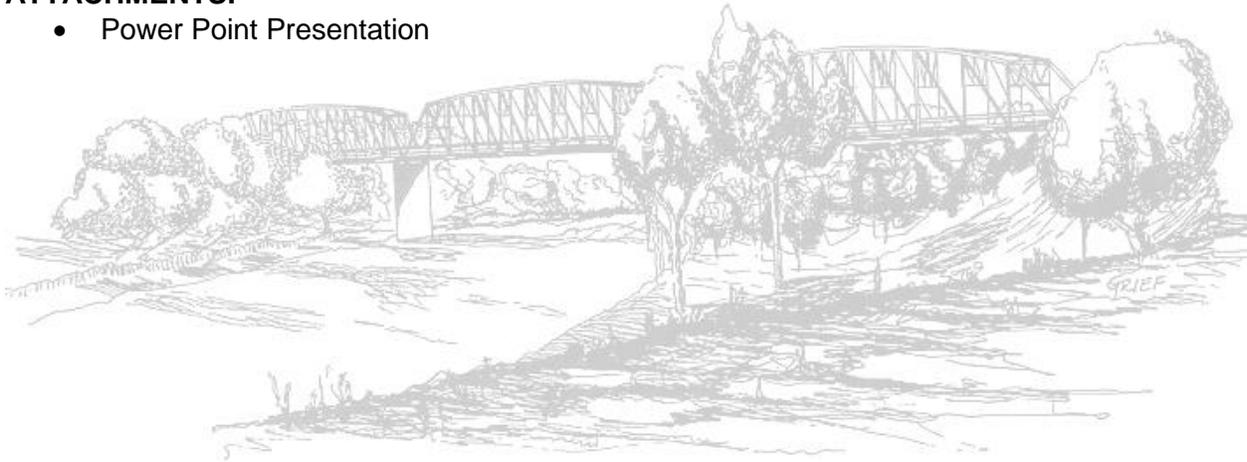
Discuss Warn Central Texas and the Capital Area Council of Governments' transition from "Code Red" to "Everbridge".

STAFF REPRESENTATIVE:

James Altgelt, Director of Public Safety/Chief of Police

ATTACHMENTS:

- Power Point Presentation





STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 5B

TITLE:

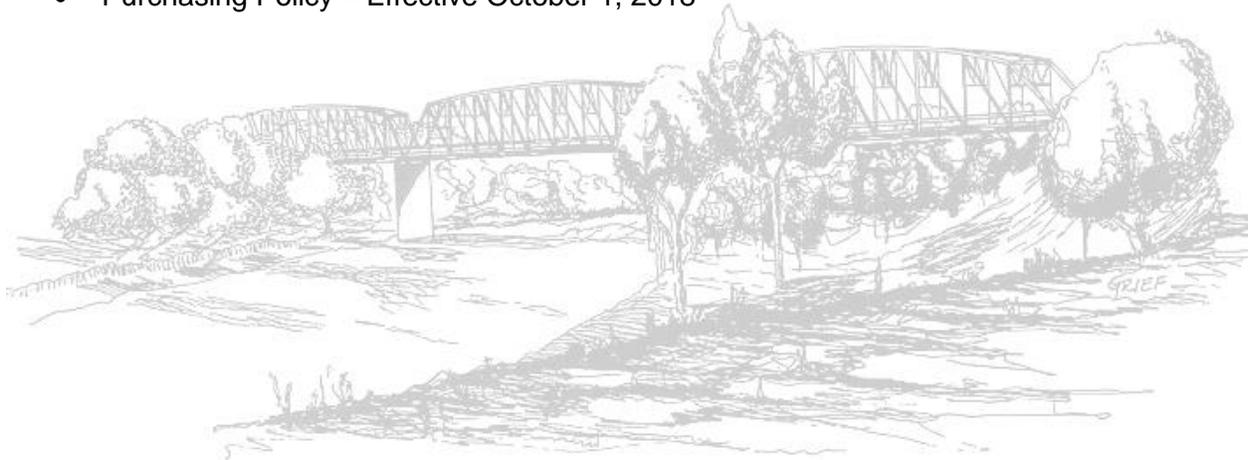
Discuss revisions to the City's Procurement Policy regarding future fleet acquisitions.

STAFF REPRESENTATIVE:

Lynda K. Humble

ATTACHMENTS:

- Purchasing Policy – Effective October 1, 2018





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The mission of the City of Bastrop is to continuously strive to provide innovative and proactive service that enhance our authentic way of life to achieve the vision.

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Purchasing Policy

Effective October 1, 2018

City of Bastrop Purchasing Policy

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I. PURPOSE

It is the policy of the City of Bastrop that all purchasing shall be conducted strictly on the basis of economic and business merit. This policy is intended to promote the best interest of the citizens of the City of Bastrop, Texas.

The City of Bastrop intends to maintain a cost-effective purchasing system conforming to good management practices. The establishment and maintenance of a good purchasing system is possible only through cooperative effort. It must be backed by proper attitudes and cooperation of not only every department head and official, but also every supervisor and employee of the City of Bastrop.

The purchasing process is not instantaneous. Time is required to complete the steps required by State law. In order to accomplish timely purchasing of products and services at the least cost to the City of Bastrop, all departments must cooperate fully. Prior planning and the timely submission of requisitions are essential to expedite the purchasing process and to assure that the process is orderly and lawful.

This Policy reaffirms the City of Bastrop's commitment to strengthen purchasing and property controls to reasonably assure that assets are received and retained in the custody of the City of Bastrop.

II. CODE OF ETHICS

It is important to remember that when employees are participating in the purchasing process, they represent the City of Bastrop. By participating in the purchasing process, employees of the City of Bastrop agree to:

- A. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
- B. Demonstrate loyalty to the City of Bastrop by diligently following the lawful instructions of the employer, using reasonable care, and only authority granted.
- C. Refrain from any private business or professional activity that would create a conflict between personal interests and the interest of the City of Bastrop.
- D. Refrain from soliciting or accepting money, loans, credits, or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence, or appear to influence purchasing decisions.
- E. Handle confidential or proprietary information belonging to employer or suppliers with due care and proper consideration of ethical and legal ramifications and governmental regulations.
- F. Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
- G. Expose corruption and fraud wherever discovered.

- H. Texas Law prohibits *component purchasing, separate purchasing and sequential purchasing* of any kind. An employee commits an offense by intentionally or knowingly making or authorizing component, separate or sequential purchasing to avoid the competitive bidding requirements.
- I. Adherence to the City's Ethics Ordinance is mandatory. If there is a conflict between the two Ethics policies, the stricter of the two would apply.

III. COMPETITIVE PURCHASING REQUIREMENTS

The City of Bastrop policy requires three quotes for purchases over \$3,000. The only exceptions to this rule are for items purchased under a cooperative contract, sealed bid award, sole source purchases or purchases for an emergency situation.

Under no circumstances shall multiple requisitions be used in combination to avoid otherwise applicable bidding requirements or City Council approval.

A. Who is authorized to make purchases?

Purchases will only be processed if authorized by a Department Head or approved representative in an employee's direct chain of command.

B. Instructions for Soliciting Bids

When soliciting bids, City of Bastrop buyers must follow the steps below:

1. Give the same exact specifications to each vendor.
2. Give each bidder same deadline for turning in bids.

City of Bastrop buyers must inform vendors that bids submitted are all inclusive. Any charges for freight and handling, fuel fees or other costs must be included in the bid. In order to obtain contract status, the Department Head is responsible for first adhering to the procurement requirements stated below. City Manager approval or his designee is required.

C. Purchasing Control

Authorization levels established within INCODE for appropriations previously approved by the City Council are as follows:

- Directors' or their designee not to exceed \$9,999.99
- Chief Financial Officer or designee up to \$14,999.99
- City Manager or designee approving purchases exceeding \$15,000.00

All purchases requiring a purchasing summary must have an approved purchase order before placing the order.

D. Fleet Purchases

The Finance Department will create a Fleet Appropriations List at the beginning of every fiscal year based on the adopted budget. A unit number will be assigned to each vehicle and equipment included on this list. This list will be distributed to each department with vehicles and equipment on the list.

Each department will complete and submit their purchasing summaries to the Finance Department, which should include the unit number assigned, as close to October 1st as possible. The purchasing summaries will be checked against the Fleet Appropriations List and reviewed for accuracy and completeness. Once reviewed by the Finance Department, the summaries will go to the City Manager for approval.

Upon approval by the City Manager, a purchase order will be created and authorized by the Finance Department for each approved purchasing summary. At the time of issuance of the purchase order, budgeted funds will be encumbered to prevent the funds from being reallocated.

Approved purchase orders will be sent to each department with authorized vehicles and equipment on the Fleet Appropriations List. Once the department has received the approved purchase order, fleet orders can be placed with the selected vendor.

E. Dollar Limitations

The following dollar limitations should be used as a guideline. These limitations may not apply in all cases. Dollar limitations pertain to total purchase or invoice total not per single item cost. It is the Department Directors responsibility to insure Purchasing policies are being adhered to.

\$0.01-\$3,000: Purchases of non-contract goods or services totaling \$3,000 or less require no quotation but are recommended.

If invoices for a single service contractor combine to total greater than \$3,000 in a fiscal year, the city will require the standards of \$3,001 to \$49,999 for purchasing to apply. As clearly identified in the II. Code of Ethics H. Texas Law prohibits *component purchasing, separate purchasing and sequential purchasing* of any kind. An employee commits an offense by intentionally or knowingly making or authorizing component, separate or sequential purchasing to avoid the competitive bidding requirements.

\$3,001-\$49,999: Except where otherwise exempted by applicable State law, purchases totaling \$3,001 to \$49,999 require three (3) written quotes attached to a Purchasing Summary Form and a purchase order provided to the Finance Department.

No purchase orders of non-contract goods or services will be issued in excess of \$15,000 without City Manager or his designee prior approval.

If the lowest quote is not selected an explanation should be provided on the Purchasing Summary Form and approval by the City Manager will be required, no matter the dollar amount. Only the City Manager or his designee may determine "Best Value". The City Manager may elect to accept less than three quotes from a Director if due diligence has been documented by the Director in trying to adhere to the purchasing policy. A memo will be required from the Director providing a reason for their inability to obtain three written quotes and the scope of services being provided if applicable. It must be approved and signed by the City Manager and attached to each Purchasing Summary Form and purchase order provided to the Finance Department.

According to State Law, two (2) Historically Underutilized Businesses (HUBs) are to be contacted on a rotating basis. HUB vendors are obtained from the Texas Comptroller of Public Accounts website. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt.

If purchasing through a cooperative purchasing alternative, i.e. BuyBoard, DIR, TXMAS provide only one (1) written quote; proof or identification that the quote is from a cooperative source, complete a Purchasing Summary Form and a purchase order. Any vendor specific contracts should be on file with the Finance Department prior to final approval being given if applicable. It is the Department Director's responsibility to insure the cooperative information is on file with the Finance Department.

\$50,000+: Except as otherwise exempted by applicable State law, requisitions for item(s) whose aggregate total cost is more than \$50,000 must be processed as competitive solicitations (e.g. sealed bids, request for proposals, and request for offers). Texas Local Government Code, Subchapter B, Section 252.021 defines the requirements for competitive bids.

The Code requires that sealed bids and request for proposals (RFP) are advertised in a local newspaper for two consecutive weeks prior to the bid opening. All bids must be received sealed and turned in to the City Secretary's Office by the date and time listed in the bid. Any bids received after the stated time will be returned unopened. The bid opening process is open to the public and all vendors that respond to the specific are invited to attend. Questions concerning pricing will not be addressed at the opening. Contracts for services require Errors & Omissions coverage.

If purchasing through a cooperative purchasing alternative, i.e. BuyBoard, DIR, TXMAS provide only one (1) written quote; proof or identification that the quote is from a cooperative source, complete a Purchasing Summary Form and a purchase order. All cooperative vendor specific contracts should be on file with the Finance Department prior to final approval being given if applicable. It is the Department Director's responsibility to insure the cooperative information is on file with the Finance Department. City Manager written approval is required.

Rental Agreement: Vendors who provide rental items to the city are required to carry insurance. The type and amounts of insurance required vary based on the item rented.

The Chief Financial Officer must review all rental contracts before the contract is awarded.

F. Personal or Professional Services

Under the Professional Services Procurement Act, a contract for the purchase of a personal or professional service is exempt from competitive bidding requirements. The City also provides exemption for the purchasing of planning services.

The City may not select providers of professional services based on competitive bids. In these situations, the City must make the selection and award based on demonstrated competence and qualifications for performing the services for a fair and reasonable price.

Professional services may include:

- Accounting.
- Architecture.
- Landscape architecture.
- Land surveying.
- Medicine.
- Optometry.
- Engineering.
- Real estate appraisal.
- Nursing.

According to the Texas Attorney General's Office professional services may include "members of disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence,"

G. Other Exemptions

State law authorizes other categories of exempt purchases. Purchases from other governments, some auctions and going-out-of-business sales, and other purchases are exempt under provisions of the Local Government Code and Vernon's Statutes.

The following is a list of other areas that are exempt from competitive bidding requirements:

1. Land or right-of-way.
2. Items that can be obtained from only one source, including:
 - a. items for which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies;
 - b. films, manuscripts or books;
 - c. electric power, gas, water, and other utility services; and
 - d. captive replacement parts or components for equipment;
3. Food
4. Personal property sold:

- a. at an auction by a state licensed auctioneer;
 - b. at a going-out-of-business sale; or
 - c. by a political subdivision of the state, a state agency, or an entity of the federal government.
5. Any work performed and paid for by the day is exempt from the competitive bidding process.
 6. Work performed under a contract for community and economic development made by a county designed to reasonably increase participation by historically underutilized businesses in public contract awards by establishing a contract percentage goal for HUB businesses.

H. Sole Source Purchases

Sole Source purchases must be approved by the City Manager before purchasing. These conditions occur when the purchase involves compatibility of equipment, accessories or replacement parts or when the goods or services is a one-of-a kind or protected by a patent, copyright, secret process. The product is only available from a regulated or natural monopoly. The product is a component or repair part that may only be purchased from the original supplier. The following items are necessary to provide sufficient justification for sole source purchase:

1. A memorandum to the City Manager with a statement must be attached to the Purchasing Summary Form that says a sufficient number of vendors have been contacted to determine that only one practical source of supply exists or states the reasons only one source exists. This memorandum should include the City Manager's signature signifying his approval.
2. A bid from the sole source provider on company letterhead.
3. A letter from the vendor stating they are the sole supplier of the good.

A Purchasing Summary Form and purchase order is still required with the above information attached.

I. Change Orders

According to purchasing law, the City of Bastrop may make changes to plans, specifications or quantities after award of the contract, if necessary. However, no increase may exceed 25% of the original contract amount and any decrease of 25% or more must have the consent of the contractor.

Increases that cause a change in dollar limitations or purchasing law may supersede the 25% rule:

Example: If a contract is awarded for \$45,000, the allowable increase under the 25% rule would be \$11,250. However, this would cause the new price to exceed \$50,000, which by State law requires sealed bids and advertising. Increase would be limited.

Any change in a purchasing contract that exceeds 25% of the original amount will void the original contract.

J. Making the Purchase

City of Bastrop buyers' are responsible for making sure that the purchased good or service is received as specified. Under no circumstance should a buyer accept more goods or services than ordered. Employees are only authorized to purchase items that have been approved by their Department Head. A purchase over the original amount requires additional approval.

K. 30 Day Accounts Payable Cycle

Texas law requires municipalities to pay invoices within 30 days or be subject to the payment of interest.

It is the responsibility of each department to make sure the signed invoices, purchase orders and any other required paperwork is submitted to the Finance Department as soon as the product is received or service rendered.

It is the responsibility of Accounts Payable to pay all vendor invoices within 30 days of invoice date. Any Variance between the purchase order and the vendor invoice must be reconciled. Vendor payments can only be made for the original or modified purchase order amount.

L. Emergency Procedures

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations. It is required to get City Manager or his designee approval on any emergency purchases.

The Legislature exempted certain items from sealed bidding in the **Texas Local Government Code Section 252.022(a)**, including, but not limited to:

- 1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;*
- 2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;*
- 3. Procurement necessary because of unforeseen damage to public machinery, equipment or other property.*

The following steps must be taken when making emergency purchases:

1. Employee must receive approval from the City Manager or his designee.

2. Employee will make every effort to solicit bids unless circumstances prevent employee from doing so.
3. A written statement concerning the emergency must be provided following the incident to provide necessary documentation in Accounts Payable and must include the City Managers signature or his designees.

IV. ASSET CONTROL

A. Inventory Control

The purpose of inventory control is to create and maintain a record/inventory of all fixed assets of the City of Bastrop. Fixed assets include all items over \$5,000 with a life expectancy of two (2) or more years. "Minor Capital Outlay" items must also be inventoried. These items will include assets purchased for \$1,000 to \$4,999.

When a fixed asset is received by the city, it is tagged with a City of Bastrop property tag and added to the Departments master list.

Each Department shall keep an inventory list of all fixed assets permanently assigned to employee.

A wall to wall inventory of all fixed assets shall be performed every year or as deemed necessary. It is recommended that Departments perform an annual fixed assets inventory of equipment permanently assigned to employees.

B. Use of Property

City of Bastrop employees should be aware that the use of City property for personal gain is strictly prohibited. City vehicles should only be used for official City business. City Personnel Policies list theft and unauthorized use of City property as grounds for immediate dismissal.

In addition, employees are not to use personal property for the performance of their job or at their work site. Personal items such as radios, coffee pots, picture frame, books, etc. is permissible; however, the City of Bastrop is not responsible for damage to or theft of these items.

C. Disposal of Surplus Materials and Equipment/ Donations

City surplus materials and equipment (a/k/a 'surplus items') includes any City owned personal property such as furniture, fixtures, equipment, computers, vehicles, tools, clothing, or other such items, which have lost useful value to the City, have become non-functional or are obsolete. Such surplus items may be disposed of by one of the following methods:

- Sold competitively, by accepting sealed bids or by public auction;

- Traded in for acquisition of new equipment;
- Donated by the City to a recognized charitable organization;
- Provided to other governmental entities (donation or exchange).
- Sold as 'scrap' (for cash), if the items have no value except for salvage and the City Manager or his designee has authorized the sale for scrap; or
- Disposed of through solid waste collection services, if the item has no salvage or other value and the City Manager or his designee has authorized such disposal.

Trade-In or Donation: Before *trading-in* and/or *donating* surplus items, the Department Head must prepare a memorandum to the City Manager and remit a copy to the Finance Department stating: 1) the identity of the surplus items to be disposed of, traded-in or donated, 2) the reasons for the surplus items being declared surplus, 3) the original purchase price (if ascertainable) of the surplus items, and 4) the value of proposed "trade-in" or "donation", in the estimation of the Department Head. If the Department Head receives approval by City Manager to proceed, the Department Head must coordinate their *trading-in* and/or *donating* surplus items with the Finance Department to insure a Disposed Fixed Asset Form is completed and any other ancillary paperwork.

[Note: All property is owned in the name of the City of Bastrop and is not vested in any specific department.]

Sales: If the surplus items are to be sold, then the Department Head must prepare a memorandum to the City Manager and remit a copy to the Finance Department. The memo should include: 1) the identity of the items to be sold to include year, make, model, and any other identification characteristics, 2) a brief description providing why it is necessary to dispose of the item. The Department Head having received approval to sell a surplus item may then utilize one of the following options: 1) post notice in the local newspaper and/or through an approved on-line auction provider 2) advertise in the local newspaper, 3) request sealed bids, or 4) sell through a public auction, which may take place at a specified location or, by means of an on-line sale.

Preferred Disposition: Whenever reasonably feasible, it is the City's preference that the Department Head dispose of the surplus equipment by means of a public auction or sale held in cooperation with other City departments and surrounding government entities.

Procedures: The City Manager shall have the authority to approve the disposal, sale, trade-in or donation of surplus items when the value of same is less than \$50,000, in total. If the total value exceeds \$50,001, then the City Manager shall obtain Council approval of the proposed disposal, sale, trade-in or donation of surplus items.

Once approved by either the City Manager or Council, as appropriate, in order to document the disposal, sale, trade-in or donation of surplus items a Disposed Fixed Asset Form must be prepared and submitted to the Finance Department in addition to providing the license plates for any vehicles or equipment disposed of. The Finance Department manages the change of ownership and the receipt of funds.

City decals must be removed from all surplus City vehicles, machinery, and equipment before disposal, donation, trade-in or sale.

City employees may participate, on their own time, in public auctions for the purchase of surplus City items.

D. Lost Property

After conducting an annual inventory and property is discovered to be lost, an explanation for the lost must be provided immediately to the Department Head using the Fixed Asset Form. Property losses that come to the attention of the employee before the annual inventory should be reported within 24 hours using the Fixed Asset Form.

All thefts are to be reported to a supervisor or Department Head as soon as possible. The City of Bastrop, Police Department must be notified immediately. Stolen fixed asset must be removed from the Master Inventory List and a copy of the police report attached to the Fixed Asset Form.

E. Security Measures

All equipment will be kept in a secure area when not in use. Access to this area will be limited to the employees assigned to the secure area. In case of theft, the security of the area should be evaluated to determine if changes or re-keying of locks should be necessary.

V. RESPONSIBILITIES OF PARTIES

A. Department Heads

1. Monitor and approve overall purchases to ensure that funds are spent judiciously and that budgeted resources are within their control and available for all procurement.
2. Reject requests for purchases that do not have proper authorization or include required documentation.
3. Approve all purchases up to \$9,999 excluding budgeted capital.
4. Adhere to the Purchasing Policies and the Code of Ethics.
5. Place cooperative agreements and RFP's on file with Finance and monitor purchases to ensure that supply agreements are used.
6. Ensure that sole source requests meet the guidelines and include required documentation.
7. Inventory all fixed assets every year.
8. Verify goods and services are received as ordered before approving payment.
9. Annually inventory equipment assigned to employee.

10. Keep records of losses occurring in their areas to detect patterns of theft in one area or individual employee.

B. Supervisors

1. Maintain security of equipment on-site
2. Keep a log of equipment issued to employees on a long-term basis.
3. Keep a log of equipment issued to employees on a short-term basis.
4. Forward all receipts and invoices to Department Head as soon as possible.
5. Check that equipment and supplies are returned upon termination of an employee.

C. City of Bastrop Accounts Payable

1. Pay bills in an accurate and timely manner.
2. Reject requests for purchases that do not have proper authorization or include required documentation.
3. Monitor purchases to ensure that supply agreements are used.
4. Ensure that purchasing policy requirement guidelines are met and required documentation included.

D. City of Bastrop Accounting

1. Maintain the master fixed asset property list.
2. Assign inventory tags for fixed assets.
3. Provide Fixed Assets Forms.
4. Produce Master Inventory List as needed.
5. Process fixed asset transfers and retirements.
6. Review, approve and enter all purchase orders for budgeted fleet purchases.

VI. DEFINITION OF TERMS

Component Purchases – Purchases of component parts of an item that in normal purchasing practices would be accomplished by one purchase. (Purchasing parts and assembling a finished product.)

Pecuniary Benefit – Any form of economic gain (money, gifts, etc.).

Fixed Assets - A piece of equipment with a value of \$5,000 or more and a life expectancy of two (2) year or more.

Separate Purchases – Purchases made separately of items that in normal purchasing practices would be accomplished by one consolidated purchase. (Multiple purchase orders of similar items to avoid bidding procedures.)

Sequential Purchases – Purchases, made over a period, of items in normal purchasing practices would be combined and bid as one purchase. (Similar to above but multiple purchases of the same items to avoid bids.)



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 7

TITLE:

CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Citizens' Comment portion of the Council meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible future action.

To address the Council concerning any item on the agenda, please submit a fully completed request card to the City Secretary prior to the start of the meeting.

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.



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 8A

TITLE:

Consider action to approve City Council minutes from the September 25, 2018 regular meeting.

STAFF REPRESENTATIVE:

Lynda Humble, City Manager
Ann Franklin, City Secretary

BACKGROUND/HISTORY:

N/A

POLICY EXPLANATION:

Section 551.021 of the Government Code provides as follows:

- (a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
- (b) The minutes must:
 1. State the subject of each deliberation; and
 2. Indicate the vote, order, decision, or other action taken.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve City Council minutes from the September 25, 2018 regular meeting.

ATTACHMENTS:

- September 25, 2018, DRAFT Regular Meeting Minutes.

BASTROP CITY COUNCIL
September 25, 2018

The Bastrop City Council met in a Regular Meeting on Tuesday, September 25, 2018, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were Mayor Schroeder, Mayor Pro Tem Nelson and Council Members Jones, Ennis, and Rogers. Officers present were City Manager Lynda Humble, City Secretary Ann Franklin and City Attorney Erin Higginbotham.

CALL TO ORDER

At 6:30 p.m. Mayor Schroeder called the meeting to order with a quorum being present. Council Member Peterson was absent.

PLEDGE OF ALLEGIANCE

Kaylin Drake and Austin Moilan, Mina Elementary Art Club performed the pledge.

INVOCATION

Chaplain Bob Long, Police Chaplain gave the invocation.

PRESENTATIONS

- 4A. A proclamation of the City Council of the City of Bastrop, Texas recognizing October as National Community Planning Month and presentation of the Texas APA Certificate of Achievement for Planning Excellence.
Proclamation was read into record by Council Member Jones and received by Matt Jones, Planning and Zoning Director, Jennifer Bills, Planning and Zoning Assistant Director and Alison Lands, Planner, Planning Department.
- 4B. A proclamation of the City Council of the City of Bastrop, Texas recognizing the evening of October 2nd, 2018 as National Night Out for the City of Bastrop.
Proclamation was read into record by Mayor Schroeder and received by Chief Altgelt and Assistant Chief Nagey.
- 4C. A proclamation of the City Council of the City of Bastrop, Texas recognizing the week of October 7th through October 13th as Fire Prevention Week for the City of Bastrop.
Proclamation was read into record by Mayor Pro Tem Nelson and received by Andres Rosales, Interim Fire Chief.
- 4D. A proclamation of the City Council of the City of Bastrop, Texas, recognizing October 2, 2018 as National Custodial Workers Recognition Day.
Proclamation was read into record by Mayor Schroeder and received by Curtis Hancock, Assistant Director of Public Works and Josie Castellanos, Alma Rodriguez and Charlie Elliot, Custodians.
- 4E. Mayor's Report
- 4F. Councilmembers' Report
- 4G. City Manager's Report

Items 4H, 4I and 6A were taken together.

Presentations and report were given by Clint Howard, Visit Bastrop Chair.

- 4H. Receive public presentation of Visit Bastrop's FY 19 Business Plan and FY 19 Budget, in accordance with the Destination and Marketing Services Agreement.
- 4I. Receive presentation from Visit Bastrop regarding the Brand Strategy Initiative developed by Augustine.

STAFF AND BOARD REPORTS

- 6A. Receive monthly report from Visit Bastrop.

WORK SESSION/BRIEFINGS

- 5A. Discuss the Wholesale Water Partnership Agreement between Aqua Water Corporation and the City of Bastrop.
Presentation was made by Lynda Humble, City Manager.

STAFF AND BOARD REPORTS - CONTINUED

- 6B. Receive presentation on the unaudited Monthly Financial Report for the period ending August 31, 2018.
Presentation was made by Chief Financial Officer, Tracy Waldron.

Mayor Schroeder recessed the Council Meeting at 8:04 p.m.

Mayor Schroeder called the meeting back to order at 8:10 p.m.

CITIZEN COMMENTS - NONE

CONSENT AGENDA

A motion was made by Mayor Pro Tem Nelson to approve Items 8A, 8B, 8C, 8D, and 8E listed on the Consent Agenda after being read into the record by City Secretary, Ann Franklin. Seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 8A. Consider action to approve City Council minutes from the September 11, 2018 meeting.
- 8B. Consider action to approve the second reading of Ordinance No. 2018-20 of the City Council of the City of Bastrop, Texas, granting a Conditional Use Permit for a helistop for Ascension Seton Bastrop Hospital on Lot 1 of Bastrop Grove Subdivision, Section 1, located at 630 West SH 71, an area zoned C-1, within the city limits of Bastrop, Texas; as shown in Exhibit A and Exhibit B; setting out conditions; including a severability clause; and establishing an effective date.
- 8C. Consider Action to approve the second reading of Ordinance No. 2018-19 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, Chapter 12

Titled "Traffic and Vehicles," Article 12.04 Titled "Traffic Schedules," Section 12.04.004 Titled "Scheduled III: Stop Signs;" repealing the provision that established stop signs located at the intersection of Farm Street and Chambers Street and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting.

- 8D. Consider action to approve the second reading of Ordinance No. 2018-18 of the City of Bastrop, Texas amending the Code of Ordinances, Chapter 4 Titled "Business Regulations," Article 4.08 Titled "Commercial Film Making," Sections 4.08.002 Titled "City Control/Authority of City Manager," 4.08.004 Titled "Application", 4.08.005 Titled "Use of City Equipment and Personnel," 4.08.006 Titled " Use of City Property," 4.08.007 Titled "Special Equipment and Vehicles," 4.08.008 Titled "Hours of Filming," and 4.08.009 Titled "Notification of Affected Property Owners"; adding the provision that allows the City Manager to assign a designee to act on his or her behalf and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer severability, and proper notice and meeting.
- 8E. Consider action to approve the second reading of Ordinance No. 2018-21 of the City Council of the City of Bastrop, Texas creating a Master Fee Schedule, attached as Exhibit A for the City of Bastrop to transition all fees listed in the Code of Ordinances, Schedule "A" Fee schedule to this Master Fee Schedule. Excluding sections A13.02 and A13.07; providing that other fees not listed but now charged pursuant to other ordinances and resolutions shall remain in effect until transferred to the Master Fee Schedule by amendment; providing a repealing clause; providing a severability clause; and providing an effective date.

INDIVIDUAL CONSIDERATION

- 9A. Consider action and approve Resolution No. R-2018-96 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules).

Presentation was made by Planning and Zoning, Assistant Director, Jennifer Bills

A motion was made by Mayor Pro Tem Nelson to approve Resolution No. R-2018-96, seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9B. Consider action to approve Resolution No. R-2018-92 of the City Council of the City of Bastrop, Texas approving an Interlocal Agreement between the City of Bastrop and Bastrop County Emergency Services District Number 2 for Fire Protection Services, Attached as Exhibit A; authorizing the City Manager to execute all necessary documents, and establishing an effective date.

Presentation was made by Interim Fire Chief, Andres Rosales.

A motion was made by Council Member Rogers to approve Resolution No. R-2018-92, seconded by Council Member Ennis, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9C. Consider Action to approve the first reading of Ordinance No. 2018-27 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 12 Titled "Traffic and Vehicles," Article 12.05 Titled "Speed Limits," adding Section 12.05.010 Titled "25 MPH Speed Zones;" providing for the provision that establishes a speed limit of twenty-five (25) miles per hour in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; providing for findings of fact, enactment, effective date, repealer, severability, proper notice and meeting; and move to include on the October 9, 2018 agenda for a second reading.

Presentation was made by Director of Safety/Chief of Police, James Altgelt.

A motion was made by Council Member Rogers to approve the first reading of Ordinance No. 2018-27, seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9D. Consider action to approve Resolution R-2018-89 of the City Council of the City of Bastrop, Texas awarding a contract to design the remodel of City Hall to Negrete & Kolar Architects, LLP in the amount of sixty thousand dollars and no cents (\$60,000.00) as attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Presentation was made by Director of Public Works, Utilities and Leisure Services, Trey Job.

A motion was made by Council Member Ennis to approve Resolution No. R-2018-89 with the following friendly amendment, seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

The friendly amendment was to prohibit City Manager's signature of contract until contract has been approved by the City Attorney and to have the contract include design, bid documents and construction management.

- 9E. Consider action to approve the second reading of Ordinance No. 2018-23 of the City Council of the City of Bastrop, Texas adopting a budget for the Fiscal Year 2018-2019 (October 1, 2018 through September 30, 2019), attached as Exhibit A; providing that expenditures for said Fiscal Year be made in accordance with said budget; providing a severability clause; and establishing an effective date.

Presentation was made by Chief Financial Officer, Tracy Waldron.

A motion was made by Mayor Pro Tem Nelson to approve the second reading of Ordinance No. 2018-23, seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

Mayor Pro Tem Nelson Yea X Nay _____ Abstain _____ Absent _____

Council Member Jones	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Ennis	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Rogers	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Peterson	Yea _____	Nay _____	Abstain _____	Absent <u> X </u>

- 9F. Consider action to ratify the vote on the Fiscal Year 2018-2019 budget, which results in more revenues from ad valorem taxes than the previous year.

Presentation was made by Chief Financial Officer, Tracy Waldron

A motion was made by Mayor Pro Tem Nelson to ratify the vote just taken to approve the Fiscal Year 2018-2019 budget which will raise more revenues from ad valorem taxes than the previous fiscal year, seconded by Council Member Rogers, motion was approved on a 4-0 vote. Council Member Peterson was absent.

Mayor Pro Tem Nelson	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Jones	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Ennis	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Rogers	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Peterson	Yea _____	Nay _____	Abstain _____	Absent <u> X </u>

- 9G. Consider action to approve the second reading of Ordinance No. 2018-22 of the City Council of the City of Bastrop adopting the tax rate and levying ad valorem taxes for the Fiscal Year 2018-2019 to provide revenue for the payment of current expenditures: providing a severability clause; and providing for an effective date.

Presentation was made by Chief Financial Officer, Tracy Waldron.

A motion was made by Council Member Ennis to increase the property tax rate by the adoption of a tax rate of 0.5640, which is effectively a 3.2 percent increase in the tax rate, approve the second reading of Ordinance No. 2018-22, seconded by Council Member Rogers, motion was approved on a 4-0 vote. Council Member Peterson was absent.

Mayor Pro Tem Nelson	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Jones	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Ennis	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Rogers	Yea <u> X </u>	Nay _____	Abstain _____	Absent _____
Council Member Peterson	Yea _____	Nay _____	Abstain _____	Absent <u> X </u>

- 9H. Consider action to approve the first reading of Ordinance No. 2018-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater rates and charges"; repealing conflicting provisions; providing a severability; providing for an effective date and move to include on the October 9, 2018 agenda for a second reading.

Presentation was made by Chief Financial Officer, Tracy Waldron.

A motion was made by Council Member Jones to approve the first reading of Ordinance No. 2018-26, seconded by Council Member Rogers, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9I. Consider action to approve the first reading of Ordinance No. 2018-28 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2018 in accordance with existing statutory requirements; appropriating the various amounts herein; as attached in Exhibit A; repealing all ordinances and actions in conflict herewith; providing for an effective date; and move to include on the October 9, 2018, consent agenda for a second reading.

Presentation was made by Chief Financial Officer, Tracy Waldron and Director of Public Works, Utilities and Leisure Services, Trey Job.

A motion was made by Council Member Rogers to approve the first reading of Ordinance No. 2018-28, seconded by Council Member Ennis, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9J. Consider action to approve the second reading of Ordinance No. 2018-24 of the City Council of the City of Bastrop, Texas approving the updated service plan, including provisions related to assessments for the Hunters Crossing Public Improvement District; Attached as Exhibit A; approving a fiscal year 2019 assessment roll for the District; and containing other provisions related to the Hunters Crossing Public Improvement District and the Hunters Crossing Local Government Corporation; and providing for an effective date.

Presentation was made by Chief Financial Officer, Tracy Waldron.

A motion was made by Council Member Rogers to approve the second reading of Ordinance No. 2018-24, seconded by Council Member Ennis, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9K. Consider action to approve Resolution No. R-2018-97 of the City Council of the City of Bastrop, Texas confirming board appointments of the Mayor, as required in Section 3.08 of the City's Charter, as outlined in Exhibit A; and establishing an effective date.

A motion was made by Council Member Ennis to approve Resolution No. R-2018-97, seconded by Mayor Pro Tem Nelson, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9L. Consider action to approve Resolution No. R-2018-98 of the City Council of the City of Bastrop, Texas approving an Interlocal Agreement between the City of Bastrop and Capital Area Rural Transportation System to provide affordable public transportation services and participate in funding for and provisions of those certain transportation services in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00), as attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Presentation was made by City Manager, Lynda Humble.

A motion was made by Council Member Jones to approve Resolution No. R-2018-98, seconded by Council Member Ennis, motion was approved on a 3-0 vote. Mayor Pro Tem Nelson recused himself. Council Member Peterson was absent.

- 9M. Consider action to approve Resolution No. R-2018-99 of the City Council of the City of Bastrop, Texas supporting the City of Bastrop’s participation in the 2019-2023 Austin-Round Rock Metropolitan Statistical Area (MSA) Regional Air Quality Plan; authorizing the City Manager to identify measures to implement in support of the new Regional Air Quality Plan and notify Capital Area Council of Government (CAPCOG) by October 26, 2018; providing for a repealing clause; and establishing an effective date.

Presentation was made by City Manager, Lynda Humble.

A motion was made by Mayor Pro Tem Nelson to approve Resolution No. R-2018-99, seconded by Council Member Jones, motion was approved on a 4-0 vote. Council Member Peterson was absent.

- 9N. Consider action Resolution R-2018-100 of the City Council of the City of Bastrop, Texas designating Mayor Pro Tem Lyle Nelson as the General Assembly Representative to the Capital Area Council of Government (CAPCOG); authorizing the Mayor to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

A motion was made by Council Member Jones to approve Resolution No. R-2018-100, seconded by Council Member Ennis, motion was approved on a 4-0 vote. Council Member Peterson was absent.

EXECUTIVE SESSION

The City Council met at 9:39 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 Section 551.071 of the Texas Government Code to confer with City Attorney regarding legal advice related to the status of the 1445 Interlocal Agreement between the City of Bastrop and Bastrop County for the review of subdivision applications in the City’s extraterritorial jurisdiction.

The Bastrop City Council reconvened at 9:52 p.m. into open (public) session.

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

No action taken.

ADJOURNMENT

Adjourned at 9:53 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie B. Schroeder

City Secretary Ann Franklin



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 8B

TITLE:

Consider action to approve the second reading of Ordinance No. 2018-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges"; repealing conflicting provisions; providing a severability clause; and providing for an effective date.

STAFF REPRESENTATIVE:

Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City Council held a Special Workshop on March 24, 2018 to discuss the current state of the water and wastewater utilities.

The City Manager presented the current operational challenges and the state of all infrastructure. The Council heard from the engineering firm of HDR, regarding their recommendations going forward. The Council understood and supported the City Manager moving forward with the new construction of a Water Plant and a Wastewater Plant. The Council was briefed on rate scenarios and understood the rate impact these new plants would have on the rate payers, especially the wastewater rates. It was their opinion that we needed to phase in the rate increase as to not impact the rate payers all at once. The recommendation was made to increase the wastewater base rate by \$10 and that this increase would all be allocated to debt service, to proactively plan for our future.

POLICY EXPLANATION:

The City Charter, Section 3.14 requires that the rate charges for its services by a public utility be adopted and approved by Ordinance. City Council approved the first reading of this Ordinance at the September 25, 2018 meeting.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve the second reading of Ordinance No. 2018-26 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges"; repealing conflicting provisions; providing a severability clause; and providing for an effective date.

ATTACHMENTS:

- Ordinance No. 2018-26

ORDINANCE NO. 2018-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE BASTROP CODE OF ORDINANCES, APPENDIX A, FEE SCHEDULE, ARTICLE A13.02 “WATER AND WASTEWATER RATES AND CHARGES”; REPEALING CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bastrop, Texas conducted a special workshop on water and wastewater on March 24, 2018 to discuss the current state of both utilities; and

WHEREAS, after careful engineering and technical analysis, the City has determined that, due to increased demands resulting from population growth within the City, and age of our infrastructure, the City’s wastewater facilities and related infrastructure will not have the capacity to adequately handle the current or future demands for wastewater service placed upon such facilities and infrastructure; and

WHEREAS, after a study of the metal thickness of the current wastewater plant, the need to have a design for construction already in process was essential; and

WHEREAS, in order to address these critical needs, City Staff and professional consultants are developing a multi-year program to finance the needed wastewater facility and infrastructure improvements, with the objectives of providing for the health, safety and welfare of Bastrop’s citizens, and providing for the orderly and equitable funding of these utility improvements which are necessary for the ongoing and future provision of wastewater services to the citizens of Bastrop; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that in order to properly provide wastewater service within the City, it is necessary to amend the City Code of Ordinances Appendix A: Fee Schedule Article A13.02 Water and Wastewater Rates and Charges, as noted below.

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

Section 1: That Appendix A: of the Code of Ordinances, entitled Fee Schedule Article A13.02 “Water and Wastewater Rates and Charges”, shall be amended as follows:

ARTICLE A13.02 Water and Wastewater Rates and Charges

Sec. A13.02.002 Wastewater Service Charges

- (a) These rates are applicable to all residential, multifamily and commercial retail wastewater customers within the corporate limits of the city who have metered water connections and to whom city wastewater service has actually been connected, except for customers who have a city approved, on-site sewer system, septic system or other on-site wastewater system, and have not connected to the city's wastewater system, or customers who have a water meter for irrigation use only, as long as the irrigation meter does not provide water to plumbing fixtures.

Minimum Charge: \$36.97

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

0–5,000 gallons	\$ 2.45
5,001–10,000 gallons	\$ 2.77
10,001–20,000 gallons	\$ 2.95
20,001–50,000 gallons	\$ 3.18
Over 50,000 gallons	\$ 3.47

Section 2: If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

Section 3: That all ordinances, resolutions and orders heretofore passed, adopted and made, or any part of the same, affecting rates and charges for residential and commercial electric rates of the City of Bastrop, which are in conflict with this Ordinance, shall be, and the same are hereby, in all things repealed to the extent that the same conflict with this Ordinance, or with the laws of the State of Texas. All provisions not amended herein shall remain in full force and effect.

Section 4: The changes noted in this Ordinance shall become effective during the first municipal utility billing cycle in November in accordance with the City's Charter, Code of Ordinances, and the laws of State of Texas.

READ and APPROVED on First Reading on the 25th day of September 2018.

READ and ADOPTED on Second Reading on the 9th day of October 2018.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 8C

TITLE:

Consider Action to approve the second reading of Ordinance No. 2018-27 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 12 Titled "TRAFFIC AND VEHICLES," Article 12.05 Titled "SPEED LIMITS," adding Section 12.05.010 Titled "25 MPH SPEED ZONES;" providing for the provision that establishes a speed limit of twenty-five (25) miles per hour in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Block of CP Johnson Lane and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting.

STAFF REPRESENTATIVE:

James Altgelt, Director of Public Safety/Chief of Police

BACKGROUND/HISTORY:

On August 14, 2018, citizens reported to the Bastrop City Council ("Council") that they were concerned about the volume of traffic and the speed of that traffic traveling in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane.

Between August 28th and September 4th, the Public Works Department and the Police Department conducted a traffic study / analysis regarding the speed and number of vehicles that utilized the roads located in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane as well as motor vehicle crashes that occurred in the vicinity of these locations for the past two (2) years.

On September 11th, the Council received a report of the traffic study / analysis and determined that due to the imminent threat to public health and safety, the speed limit for the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane intersection needed to be reduced from a speed of thirty (30) miles per hour to a speed of twenty-five (25) miles per hour.

On September 25, 2018, the Council approved the first reading of this ordinance.

POLICY EXPLANATION:

This ordinance, if passed, will cause the speed limits in the 1700 Block of Farm Street, in the 1700 Block of Spring Street, and in the 1000 and 1100 Blocks of CP Johnson Lane to be reduced from thirty (30) miles per hour to twenty-five (25) miles per hour.

FUNDING SOURCE:

This agreement has no adverse impact to the City's budget.

RECOMMENDATION:

Consider Action to approve the second reading of Ordinance No. 2018-27 of the City Council of the City of Bastrop, Texas amending the Code of Ordinances, related to Chapter 12 Titled "TRAFFIC AND VEHICLES," Article 12.05 Titled "SPEED LIMITS," adding Section 12.05.010 Titled "25 MPH SPEED ZONES;" providing for the provision that establishes a speed limit of twenty-five (25) miles per hour in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Block of CP Johnson Lane and repealing all prior ordinances that are in conflict herewith; as attached in Exhibit A; and providing for findings of fact, enactment, effective date, repealer, severability, and proper notice and meeting.

ATTACHMENTS:

- Ordinance 2018-27
- Attachment "A"



ORDINANCE NO. 2018-27

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS; AMENDING THE CODE OF ORDINANCES, RELATED TO CHAPTER 12 TITLED "TRAFFIC AND VEHICLES," ARTICLE 12.05 TITLED "SPEED LIMITS," ADDING SECTION 12.05.010 TITLED "25 MPH SPEED ZONES;" PROVIDING FOR THE PROVISION THAT ESTABLISHES A SPEED LIMIT OF TWENTY-FIVE (25) MILES PER HOUR IN THE 1700 BLOCK OF FARM STREET, THE 1700 BLOCK OF SPRING STREET, AND THE 1000 AND 1100 BLOCKS OF CP JOHNSON LANE AND REPEALING ALL PRIOR ORDINANCES THAT ARE IN CONFLICT HEREWITH; AS ATTACHED IN EXHIBIT A; AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, EFFECTIVE DATE, REPEALER, SEVERABILITY, PROPER NOTICE AND MEETING.

WHEREAS, the City of Bastrop ("City") has the responsibility to address any public health and safety problems; and

WHEREAS, the Bastrop City Council ("Council") has received information from the Police Department and Public Works Department regarding the safety of the following specific locations: 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane; and

WHEREAS, the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane are public roadways within the incorporated limits of the City; and

WHEREAS, on August 14, 2018, citizens reported to the Council that they were concerned about the volume of traffic and the speed of that traffic traveling in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane; and

WHEREAS, between August 28, 2018 and September 4, 2018, the Public Works Department and the Police Department conducted a traffic study / analysis regarding the speed and number of vehicles that utilized the roads located in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane as well as motor vehicle crashes that occurred in the vicinity of these locations for the past two (2) years; and

WHEREAS, on September 11, 2018, the Council received a report of the traffic study / analysis and determined that due to the imminent threat to public health and safety, the speed limit for the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane intersection needed to be reduced from a speed of thirty (30) miles per hour to a speed of twenty-five (25) miles per hour; and

WHEREAS, the City has the authority to alter speed limits of a highway or a part of a highway in the municipality, including a highway or part of a highway that is not an officially designated or marked highway or road of the state highway system, pursuant to section Texas Transportation Code Section 545.356; and

WHEREAS, the City Council has exclusive control over and under its public streets and may control or regulate certain aspects of the movement of vehicles pursuant to Texas Transportation Code Chapter 311; and

WHEREAS, the City has the full power of local self-government as recognized by Tex. Loc. Gov't Code § 51.072; and

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

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

Section 1: FINDINGS OF FACT

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

Section 2: AMENDMENT

Chapter 12, Article 12.05, of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

Section 3: REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

Section 4: SEVERABILITY

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

Section 5: CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6: EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

Section 7: PROPER NOTICE & MEETING

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

READ & ACKNOWLEDGED on First Reading on this, the 25th day of September 2018.

READ & APPROVED on the Second Reading on this, the 9th day of October 2018.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

City of Bastrop Code of Ordinances

Chapter 12 – TRAFFIC AND VEHICLES

ARTICLE 12.05 – SPEED LIMITS

Sec. 12.05.010 – 25 MPH SPEED ZONES.

- (a) Due to an imminent threat to public health and safety, the speed limits in the 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane within the city shall be as follows:

(1) *1700 Block of Farm Street.* On Farm Street from State Highway (SH) 95 to CP Johnson Lane, shall hereby be a maximum speed limit of twenty-five (25) miles per hour.

(2) *1700 Block of Spring Street.* On Spring Street from SH 95 to CP Johnson Lane, shall hereby be a maximum speed limit of twenty-five (25) miles per hour.

(3) *1000 and 1100 Blocks of CP Johnson Lane.* On CP Johnson Lane from State Loop 150 to Farm Street, shall hereby be a maximum speed limit of twenty-five (25) miles per hour.

- (b) The director of public works shall cause speed limit signs and other traffic-control devices to be erected at such locations deemed necessary to provide reasonable notice of the above speed limits to those traveling on 1700 Block of Farm Street, the 1700 Block of Spring Street, and the 1000 and 1100 Blocks of CP Johnson Lane within the city.
- (c) Violators shall be cited and subject to a fine for the offense of speeding as set forth in section 12.05.008.



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 8D

TITLE:

Consider action to approve the second reading of Ordinance No. 2018-28 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2018 in accordance with existing statutory requirements; appropriating the various amounts herein; as attached in Exhibit A; repealing all ordinances and actions in conflict herewith; and providing for an effective date.

STAFF REPRESENTATIVE:

Tracy Waldron, Chief Financial Officer
Trey Job, Managing Director of Public Works & Leisure Services
Curtis Hancock, Assistant Director of Public Works

BACKGROUND/HISTORY:

This budget amendment is due to an internal error in January, where there was confusion regarding a purchase of a dump truck. This vehicle, which was originally appropriated in FY17, needed to be re-appropriated in FY18, due to timing in the delivery of the asset. Because of the confusion, an additional dump truck was ordered, and delivery was made in August 2018. At the time of delivery, staff realized that a duplicate order had been placed.

Staff has met regarding this error. Internal changes are being made to the purchasing process regarding fleet purchases to make sure this does not happen in the future. Once the budget is adopted, all equipment will now be assigned a fleet number **prior to** placing the order. In the case of the duplicate order, it just indicated "dump truck." Therefore, when purchasing summaries are completed and Purchase Orders are issued, the fleet number will be required to be listed and will be marked off the Authorized Fleet Purchase List by a designated individual, when ordered.

BP&L does not own a dump truck and borrows the Public Works' truck, when needed. With additional infill development coming and various system maintenance projects throughout the year, BP&L can benefit from owning their own dump truck. Therefore, BP&L will purchase the dump truck ordered in error. There are available funds in the Vehicle Equipment and Replacement Fund (VERF) to purchase this vehicle. This budget amendment will appropriate the funds for this new BP&L dump truck.

POLICY EXPLANATION:

The City Charter requires the budget be amended by Ordinance. The Financial Management Policy states that the level of budgetary control is at the department level in all funds. When adjustments/transfers are required between departments and funds, these transfers must be approved by City Council through an Ordinance.

Effective October 1, 2018, the Finance Department will create a Fleet Appropriations List at the beginning of each fiscal year, based on the adopted budget, and assign a unit number to each

vehicle to be purchased. Each department will need to submit their purchasing summaries to the Finance Department, and those summaries will be checked against the list and documented as the completed first step. Once reviewed, the summaries will go to the City Manager for approval. In the City of Bastrop, all purchasing is decentralized and handled at the department level. Going forward, the Finance Department will issue all purchase orders related to fleet purchases. Purchase Orders, listing unique unit numbers, will authorize vehicles to be ordered, which will be handled at the department level. All fleet purchases will occur as close to October 1st as possible. City Council approved the first reading of this Ordinance at the September 25, 2018 meeting.

FUNDING SOURCE:

Vehicle Equipment and Replacement Fund

RECOMMENDATION:

Consider action to approve the second reading of Ordinance No. 2018-28 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2018 in accordance with existing statutory requirements; appropriating the various amounts herein; as attached in Exhibit A; repealing all ordinances and actions in conflict herewith; and providing for an effective date.

ATTACHMENTS:

- Ordinance 2018-28
- Exhibit "A"



ORDINANCE NO. 2018-28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE BUDGET FOR THE FISCAL YEAR 2018 IN ACCORDANCE WITH EXISTING STATUTORY REQUIREMENTS; APPROPRIATING THE VARIOUS AMOUNTS HEREIN; AS ATTACHED IN EXHIBIT A: REPEALING ALL ORDINANCES AND ACTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Manager of the City of Bastrop has submitted to the Mayor and City Council proposed amendment(s) to the budget of the revenues and/or expenditures/expenses of conducting the affairs of said city and providing a complete financial plan for Fiscal Year 2018; and

WHEREAS, the Mayor and City Council have now provided for and conducted a public hearing on the budget as provided by law.

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

Section 1: That the proposed budget amendments for the Fiscal Year 2018, as submitted to the City Council by the City Manager and which budget amendments are attached hereto as Exhibit "A", are hereby adopted and approved as the amended budget of said city for Fiscal Year 2018.

Section 2: If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 3: This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

READ and APPROVED on First Reading on the 25th day of September 2018.

READ and ADOPTED on Second Reading on the 9th day of October 2018.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "A"
FY 2018
BUDGET AMENDMENTS
VEHICLE & EQUIPMENT REPLACEMENT FUND

Audited Fund Balance as of 9-30-17	982,991
FY2018 Budgeted Revenues	561,371
FY2018 Budgeted Expenses	(82,000)
1/2018 Budget Amendments (net)	(293,276)
4/2018 Budget Amendments (net)	(57,000)
9/2018 Budget Amendments (net)	(102,715)
Ending Fund Balance	<u>1,009,371</u>

DEPARTMENT	BUDGET	AMOUNT	DESCRIPTION	ACCOUNT #
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Matching Revenues to Expenditures:

Total Revenue	0
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Matching Expenditures to Revenues:

New Expenditures:

BP&L	Increase	(102,715)	Equipment	380-00-00-6010
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Total Expense	(102,715)
Net Change	(102,715)



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 9A

TITLE:

Consider action and approve Resolution No. R-2018-103 of the City Council of the City of Bastrop, Texas, making determinations regarding certain project-specific Exceptions and/or Exemptions as provided by Emergency Ordinance 2018-1, Section 8 (Temporary Moratorium); and Emergency Ordinance 2018-2, Section 7 (Emergency Drainage Application Rules).

STAFF REPRESENTATIVE:

Jennifer Bills, Assistant Planning Director



MEETING DATE: October 9, 2018

AGENDA ITEM: 9B

TITLE:

Hold public hearing and consider action to approve the first reading of Ordinance No. 2018-29 of the City Council of the City of Bastrop, Texas, Rezoning 1.95 acres of Building Block 62, East of Water Street, from SF-7, Single-Family 7 to C-1, Commercial 1, located at 303 and 305 Martin Luther King Jr. Drive, within the city limits of Bastrop, Texas; as shown in Exhibits A & B; including a severability clause; establishing an effective date, and move to include on the October 23, 2018 Consent Agenda for second reading.

STAFF REPRESENTATIVE:

Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

ITEM DETAILS:

Site Address: 303 Martin Luther King Jr. Drive and 305 Martin Luther King Jr. Drive (Exhibit A)
 Total Acreage: 1.95 acres
 Legal Description: (0.71 acres) and (1.240 acres) out of Building Block 62, East of Water Street
 Property Owners: Greg Saunders and Kathryn Rogers
 Agent Contact: Kathryn Rogers
 Existing Use: Vacant/Single-family
 Existing Zoning: SF-7 (Attachment 3)
 Requested Zoning: C-1, Commercial 1
 Future Land Use: Professional Services (Attachment 4)

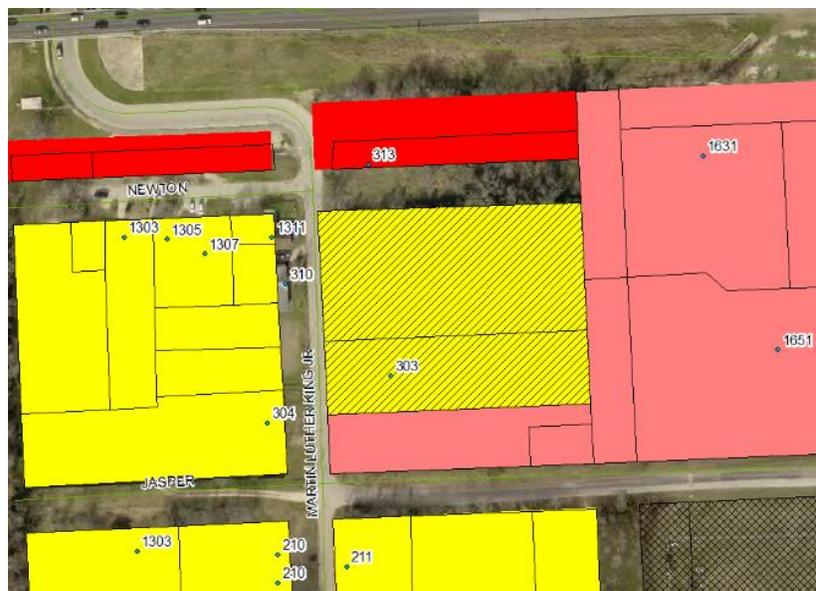
BACKGROUND/HISTORY:

The property owners are requesting to rezone the two properties along Martin Luther King Jr Street from Single-Family 7 to Commercial 1 (Attachment 1).

Legend

Zoning District

- Single Family Residential 7
- Commercial-1
- Commercial-2
- Bastrop County PD



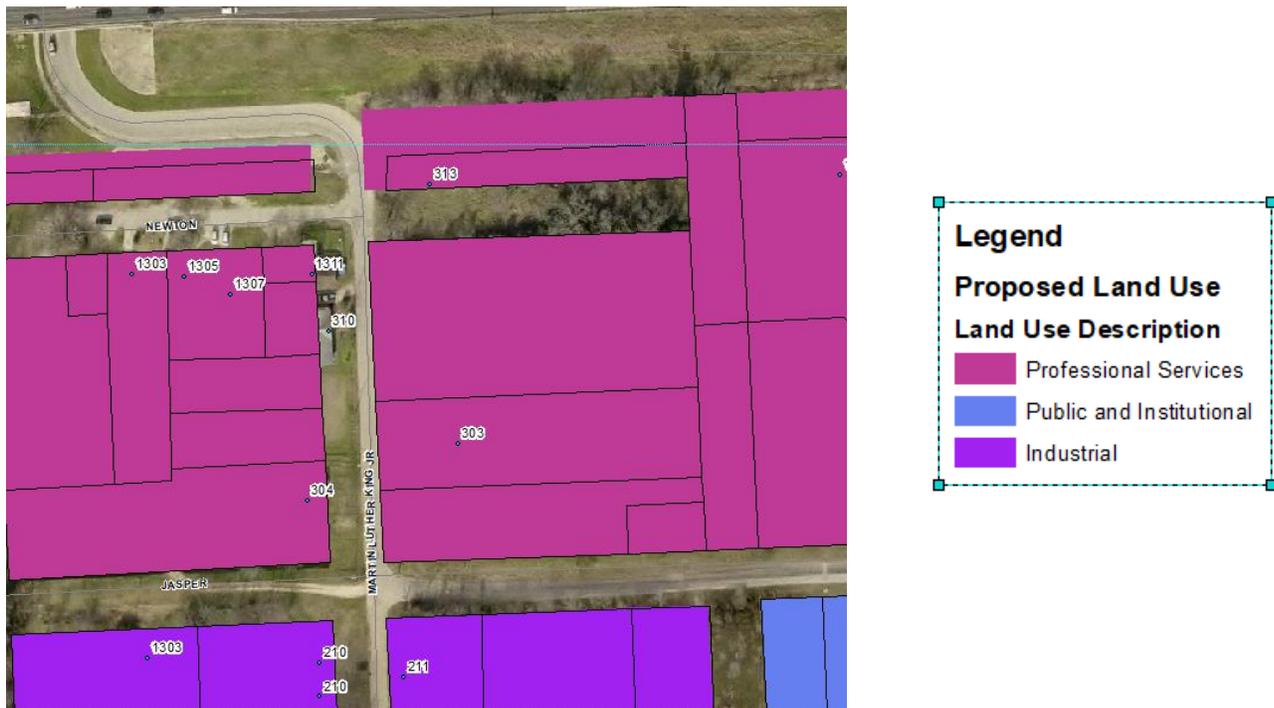
The 1.240 acre property to the north is currently vacant and the 0.665 acre tract has an existing single-family structure and out buildings. For these properties to be developed in the future for a commercial use, a site development plan will have to be approved addressing onsite utilities, building placement, parking, drainage, and landscaping.

PUBLIC COMMENTS:

Property owner notifications were sent to 13 adjacent property owners on September 10, 2018. At the time of this report, one response was received in support of the rezoning. (Attachment 2)

POLICY EXPLANATION:

Staff recommends the amendment of the zoning district to C-1, Commercial 1. The property to the east and south of the site is zoned C-1 and the future land use of Professional Services allows office and smaller scale commercial that would be appropriate to the site.



The authority to establish zoning districts and a process for amending boundaries is outlined in the Texas Local Government Code Section 211. City zoning districts govern the use and development of land, buildings, and structures as a measure necessary to the orderly development of the community.

Texas Local Government Code

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

Notice was published in the Bastrop Advertiser and notice was sent to property owners within 200 feet of the property boundary.

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

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

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

The notice process was adopted in the Bastrop Code of Ordinances.

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

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

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

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

At the time of this report, no protest has been received.

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

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

Compliance with 2036 Comprehensive Plan:

- Future Land Use Plan – Professional Services: The Professional Services character area is for the development of offices and clinics of varying size and intensity. In older areas, of Bastrop – including center city – Professional Services land uses may be small-scale or even located in buildings converted for business use. Land use in the professional services character area are often related to and support the public and quasi-public land uses supported by the Public & Institutional character areas.

The C—1 zoning district complies with the Professional Services character area for this site. Martin Luther King Jr. Drive is currently one of two access points from SH 71 to the Bastrop County Complex that houses various county departments. Once Technology

Drive connects Martin Luther King Jr. Drive to the Bastrop Business and Industrial Park, this area will allow compatible services to the Business Park and Bastrop County offices.

Transportation Master Plan

The TMP has Martin Luther King Jr. Drive/Technology Drive labeled as a Collector Level roadway, which requires a 60 foot right-of-way. The existing MLK Jr. Drive ROW is 55.55 feet. If the properties adjacent to the road have to plat, half of the remaining required ROW (4.45 feet) will be required on either side (2.225 feet).

City of Bastrop Code of Ordinances

Section 10 – Changes and Amendments to All Zoning Ordinances and Districts contains the process for amending the zoning map. Changes shall only be made:

- A. To correct any error in the regulations or map.

The existing zoning district was adopted through the appropriate process. The current owners wish to develop these lots as commercial uses in the future, which requires a zoning amendment to rezone the properties to C-1.

- B. To recognize changed or changing conditions or circumstances in a particular locality.

The property to the east and south is zoned as commercial. To the north is an unopened right-of-way and the remainder of a parcel after SH 71 ROW was acquired that is zoned C-2. Martin Luther King Jr. Street is planned to connect to the new extension of Technology Drive, which will connect the Bastrop Business and Industrial Park to SH 71 via Martin Luther King Jr. Street. The adjacent properties zoned as commercial and the future traffic, a commercial use will be appropriate at this location.

- C. To recognize changes in technology, the style of living, or manner of conducting business.

This does not apply. The request follows the existing development pattern in the area.

- D. To change the property to uses in accordance with the approved Comprehensive Plan.

The requested zoning change to C-1 is consistent with the Future Land Use designation of Professional Office shown in the Comprehensive Plan (Attachment 5).

In making a determination regarding a requested zoning change, the Planning and Zoning Commission and City Council shall consider the following factors:

1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned and their relationship to the general area and the City as a whole.

Primary permitted uses allowed by right within the C-1 district include many uses in the Recreational and Entertainment Uses, Educational, Office and Professional Uses, and Retail and Service Uses categories, and some in the Automobile and Related Uses category, including convenience store with fuel. These uses are appropriate considering the adjacent development is primarily zoned commercial and Martin Luther King Junior Street is a collector level street in Transportation Master Plan that will lead to the Bastrop Business and Industrial Park.

2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area, and shall note the findings.

The proposed change is in accord and shall not adversely affect the existing public schools, streets, or utilities in the area. The area will be required to go through the subdivision process and any additional street or utility improvements needed to serve the development (if any) will be determined and required through that process.

3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances, which may make a substantial part of such vacant land unavailable for development.

There is vacant land classified as commercial in the vicinity and elsewhere in the city. Some of the vacant commercial land in the vicinity is hindered by lack of utility infrastructure (water, wastewater, and/or electric), which requires a longer platting process and increases the cost of development. Retail sale and services that are allowed in commercial districts have a specific target area, and commercially zoned property north of 71 would not be affected by this property.

4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

Over the last 10 years commercial tracts along SH 71 and SH 95 have been developed at a steady rate, with a gas station and new retail and restaurants in the area.

5. How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved.

This site is situated close to SH 71 and will be on a future entrance to the Bastrop Business and Industrial Park so the proposed change will address the changing use of the road, which should not affect other areas designated for similar development.

6. Any other factors which will substantially affect the public health, safety, morals, or general welfare.

None.

PLANNING & ZONING COMMISSION RECOMMENDATION:

The Planning & Zoning Commission held a public hearing at their meeting at the September 27, 2018 meeting. The Commission voted 6-0 to recommend approval of the rezoning of the property to C-1, Commercial 1. There were no comments from members of the public at the meeting.

RECOMMENDATION:

Hold public hearing and consider action to approve the first reading of Ordinance No. 2018-29 of the City Council of the City of Bastrop, Texas, Rezoning 1.95 acres of Building Block 62, East of Water Street, from SF-7, Single-Family 7 to C-1, Commercial 1, located at 303 and 305 Martin Luther King Jr. Drive, within the city limits of Bastrop, Texas; as shown in Exhibits A & B; including a severability clause; establishing an effective date and move to include on the October 23, 2018 Consent Agenda for second reading.

ATTACHMENTS:

Ordinance

Exhibit A: Location Map

Exhibit B: Metes & Bounds

Attachment 1: Letter from Applicant

Attachment 2: Surrounding Property Owners Notification

Attachment 3: Zoning Map

Attachment 4: Future Land Use Map

PowerPoint Presentation



ORDINANCE 2018-29

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, REZONING 1.95 ACRES OF BUILDING BLOCK 62, EAST OF WATER STREET, FROM SF-7, SINGLE-FAMILY 7, TO C-1, COMMERCIAL 1, LOCATED AT 303 AND 305 MARTIN LUTHER KING JR. DRIVE, WITHIN THE CITY LIMITS OF BASTROP, TEXAS; AS SHOWN IN EXHIBITS A & B; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Greg Saunders and Kathryn Rogers (hereinafter referred to as “Applicants”) submitted a request to rezone 1.905 acres of Building Block 62, East of Water Street, within the City limits of Bastrop, Texas, hereinafter referred to as “the Property”; and

WHEREAS, a location map is attached hereto as Exhibit “A” (the “Property”) and a metes and bounds description is attached hereto as Exhibit “B”; and

WHEREAS, the Property is currently zoned as SF-7, Single-Family 7; and

WHEREAS, the Future Land Use Designation for this Property is Professional Service which allows offices uses of varying sizes and intensity as well as uses that are related to and support surrounding public and quasi-public land uses; and

WHEREAS, pursuant to Section 10.4 of the City’s Zoning Ordinance, notice of the rezoning was given to all property owners located within two hundred (200) feet of the Property, and the Planning and Zoning Commission of the City of Bastrop held a public hearing on the rezoning request on September 10, 2018; and

WHEREAS, after notice and hearing, the Planning and Zoning Commission has recommended approval of the proposed request by a vote of 6-0 at the September 27, 2018 meeting; and

WHEREAS, the City Council of the City of Bastrop held a public hearing on October 9, 2018 to consider the Applicants’ request; and

WHEREAS, after consideration of public input received at the hearing, the information provided by the Applicants, and all other information presented, City Council finds that it is in the public interest to approve the rezoning.

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

Section 1: The Property, situated on 1.95 acres of Building Block 62, East of Water Street located at 303 and 305 Martin Luther King Jr. Street, within the city limits

of Bastrop, Texas as more particularly shown and described on attachments Exhibit "A", and Exhibit "B", shall be rezoned to district C-1, Commercial 1.

Section 2: If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 3: This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

READ and ACKNOWLEDGED on First Reading on the 9th day of October 2018.

READ and APPROVED on the Second Reading on the 23th day of October 2018.

APPROVED:

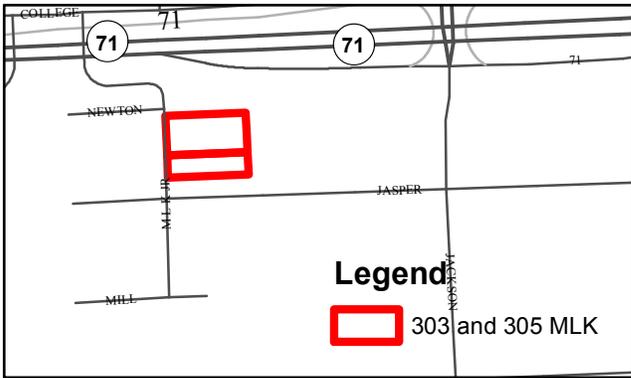
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



1 inch = 131.04 feet

Aerial Map
Rezoning Request for 303 & 305 MLK
SF-7, Single Family-7 to C-1, Commercial-1



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

Date: 09/18/2018

**JAMES E. GARON
& ASSOCIATES, INC.**
PROFESSIONAL LAND SURVEYORS

P.O. Box 1917
Bastrop, Texas 78602
512-303-4185
Firm Reg. #10058400
jgaron@austin.rr.com

June 22, 2018

LEGAL DESCRIPTION: BEING A 0.710 ACRE TRACT OF LAND LYING IN AND BEING SITUATED OUT OF BUILDING BLOCK 62, EAST OF WATER STREET, CITY OF BASTROP, BASTROP COUNTY, TEXAS AS SHOWN ON MAP OR PLAT RECORDED IN PLAT CABINET 1, PAGE 23A OF THE PLAT RECORDS OF BASTROP COUNTY, TEXAS AND BEING ALL OF THAT CERTAIN TRACT OF LAND CONVEYED TO SHARRON SCRANTON, ET AL BY DEED RECORDED IN VOLUME 1626, PAGE 264 OFFICIAL RECORDS, BASTROP COUNTY, TEXAS; SAID 0.710 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES IN JUNE, 2018:

BEGINNING at a cotton gin spindle found on the east line of Martin Luther King, Jr. Drive and the west line of Building Block 62 for the northwest corner of that certain 0.505 acre tract of land conveyed to Kathryn Rogers by deed recorded in Volume 1496, Page 823 of said official records and the southwest corner hereof from which a 60D nail in washer found at the southwest corner of Building Block 62 bears S 00°05'13" E a distance of 78.03 feet;

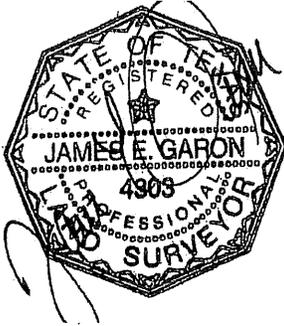
THENCE N 00°06'47" E a distance of 93.16 feet along Martin Luther King, Jr. Drive to a cotton gin spindle found for the northwest corner hereof and the southwest corner of that certain 1.24 acre tract of land conveyed to Kathryn Rogers by deed recorded in Volume 1854, Page 63 of said official records;

THENCE N 89°59'49" E a distance of 332.46 feet to a 1/2" iron rod found in the west line of that certain 0.296 acre tract of land conveyed to Kathryn Rogers by deed recorded in Volume 1961, Page 660 of said official records for the northeast corner hereof and southeast corner of said Rogers 1.24 acre tract;

THENCE S 00°25'38" E a distance of 92.66 feet along said line to a 1/2" iron rod found for the southeast corner hereof and the northeast corner of said Rogers 0.505 acre tract;

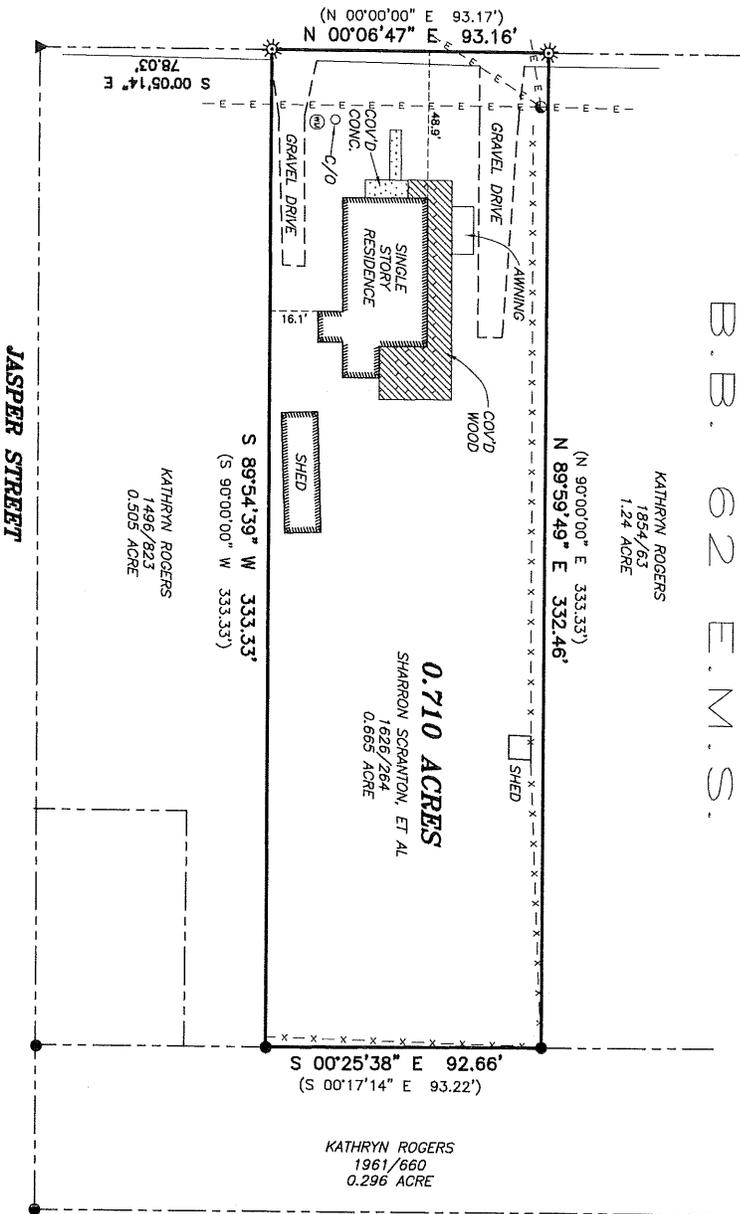
THENCE S 89°54'39" W a distance of 333.33 feet to the **POINT OF BEGINNING**, containing 0.710 acre of land, more or less, and as shown on sketch of survey prepared herewith.

Surveyed by:



James E. Garon
Registered Professional Land Surveyor
Server; co\Bastrop\City Bastrop\BB 62 EWS\38618

MARTIN LUTHER KING, JR. DRIVE
(50' R.O.W.)

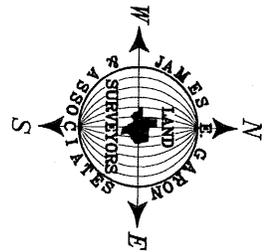
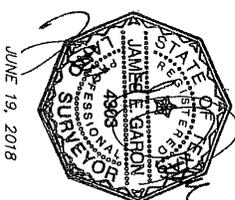


© 2018 All Rights Reserved by James E. Garon & Associates
Use of this survey for any purposes other than this transaction is prohibited

TO THE OWNERS, LIENHOLDERS AND AUSTIN TITLE COMPANY

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO DISCREPANCIES, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON, AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY, EXCEPT AS SHOWN HEREON.

THE UNDERSIGNED DOES FURTHER CERTIFY THAT THE PROPERTY DESCRIBED HEREON IS LOCATED IN ZONE "X" AND IS NOT WITHIN A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP, PANEL NO. 4802100250E EFFECTIVE JANUARY 19, 2008.



- LEGEND**
- 1/2" REBAR FOUND (UNLESS NOTED)
 - 1/2" REBAR SET W/CAP
 - ☼ STAMPED J.E. GARON PLUS 4305
 - COTTON SPINDLE FOUND
 - WIRE FENCE
 - WOOD FENCE
 - POWER POLE
 - OVERHEAD ELECTRIC LINE
 - DOWN GUY
 - RECORD CALL
 - (BRG.-DIST.)
 - ⊗ WATER METER

REFERENCE: GUS CAPITAL VENTURES, LLC G.F. NO.: AUT18003230
ADDRESS: 303 MARTIN LUTHER KING, JR. DRIVE, BASTROP TEXAS

LEGAL DESCRIPTION: 0.710 ACRE OUT OF BUILDING BLOCK 62, EAST OF WATER STREET, CITY OF BASTROP, BASTROP COUNTY, TEXAS, PLAT CABINET NO. 1, PAGE 234, PLAT RECORDS OF BASTROP COUNTY, TEXAS.

FIELD BOOK: B-569/17
FILES: /Co/Bastrop/City of Bastrop/ Building Blocks/B 62/38618.dwg

JAMES E. GARON & ASSOC.
PROFESSIONAL LAND SURVEYORS
Firm Reg. #10058400
P.O. Box 1917
Bastrop, Texas 78602
(512) 303-4185
jgaron@austin.tx.com
www.jamesegarson.com

**JAMES E. GARON
& ASSOCIATES, INC.**
PROFESSIONAL LAND SURVEYORS

924 Main Street
Bastrop, Texas 78602
512-303-4185
Fax 512-321-2107
jgaron@austin.rr.com

April 9, 2008

LEGAL DESCRIPTION: BEING A 1.240 ACRE TRACT OF LAND LYING IN AND BEING SITUATED OUT OF BUILDING BLOCK 62, EAST OF MAIN STREET, CITY OF BASTROP, BASTROP COUNTY, TEXAS AS SHOWN ON MAP OR PLAT RECORDED IN PLAT CABINET 1, PAGE 23A OF THE PLAT RECORDS OF BASTROP COUNTY, TEXAS AND BEING ALL OF THOSE CERTAIN TRACTS OF LAND, TRACTS 5 AND 6 DESCRIBED IN CAUSE NO. 1023 DISTRICT COURT RECORDS OF BASTROP COUNTY, TEXAS AND PARTITION DEED RECORDED IN VOLUME 72, PAGE 197 OF THE DEED RECORDS OF BASTROP COUNTY, TEXAS, SAID TRACTS CONVEYED TO ALBERT WHITE BY DEEDS RECORDED IN VOLUME 24, PAGE 240 AND VOLUME 48, PAGE 541 OF SAID DEED RECORDS; SAID 1.240 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES IN FEBRUARY, 2008:

BEGINNING at a ½" iron rod found on the west line of Chambers Street (not open) and the east line of Building Block 62 for the northeast corner of that certain 0.665 acre tract of land conveyed to Irene Collins by deed recorded in Volume 1058, Page 468 of said deed records and the southeast corner hereof and Tract 6;

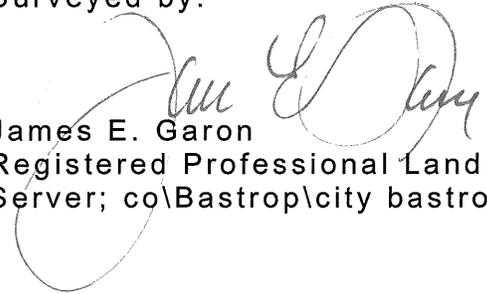
THENCE N 90°00'00"W a distance of 333.33 feet to a cotton gin spindle set in pavement on the west line of Building Block 62 and the east line of MLK Jr, Drive for the southwest corner of hereof and said Tract 6 and the northwest corner of said Collins 0.665 acre tract;

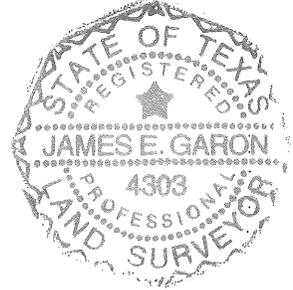
THENCE N 0°00'00"E a distance of 162.06 feet with the west line of Building Block 62 and east line of MLK Jr. Drive to a cotton gin spindle set in pavement for the northwest corner hereof, Building Block 62 and Tract 5;

THENCE N 90°00'00"E a distance of 333.33 feet with the north line of Building Block 62, Tract #5 and the south line of Newton Street (not open) to an iron rod set at the intersection of the south line of Newton Street with the west line of Chambers Street for the northeast corner hereof, Building Block 62 and hereof Tract 5;

THENCE S 0°00'00"E a distance of 162.06 feet to the **POINT OF BEGINNING**, containing 1.240 acres of land, more or less, and as shown on sketch of survey prepared herewith.

Surveyed by:


James E. Garon
Registered Professional Land Surveyor
Server; co\Bastrop\city bastrop\BB62 ems\B18108.doc

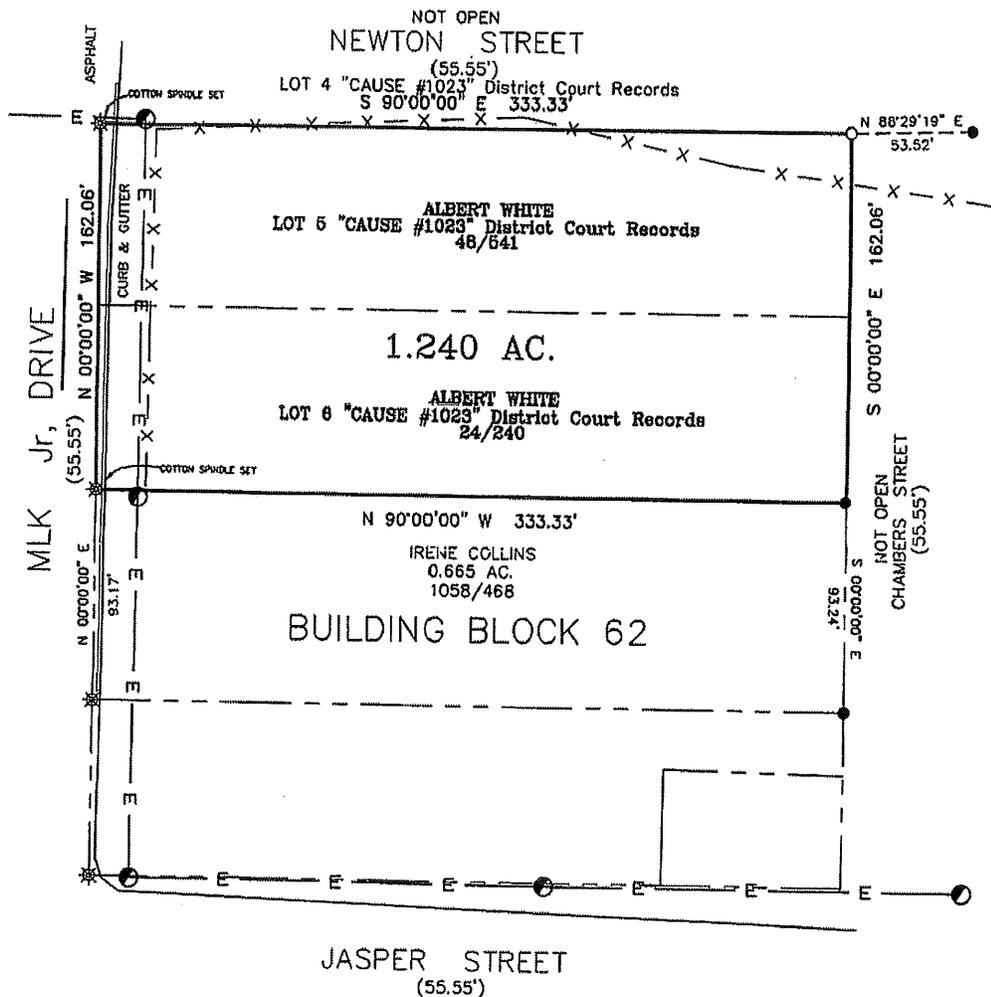


LEGEND

- 1/2" REBAR FOUND
- 1/2" REBAR SET W/CAP
- ⊙ STAMPED I.E. GARON RPLS 4303
- ⊕ 1/2" PIPE SET (UNLESS NOTED)
- ⊗ 1/2" PIPE FOUND (UNLESS NOTED)
- ⊛ COTTON SPINDLE FOUND
- ⊞ FENCE POST FOUND
- ⊟ WIRE FENCE
- ⊠ POWER POLE
- ⊡ OVERHEAD ELECTRIC LINE
- ⊣ DOWN GUY
- (BRG.-DIST.) RECORD CALL



50 25 0 50
SCALE 1" = 50'

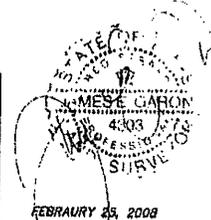


TO THE OWNERS, LIENHOLDERS AND

BASTROP ABSTRACT

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO DISCREPANCIES, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON, AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY, EXCEPT AS SHOWN HEREON.

THE UNDERSIGNED DOES FURTHER CERTIFY THAT THE PROPERTY DESCRIBED HEREON IS LOCATED IN ZONE "X" AND IS NOT WITHIN A 100-YEAR FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP, PANEL NO. 46021C 0360 E EFFECTIVE JANUARY 19, 2006.



JAMES E. GARON & ASSOC.
PROFESSIONAL LAND SURVEYORS

924 Main Street
Bastrop, Texas 78902
(512) 303-4185
(512) 321-2107 fax

REFERENCE KATHRYN ROGERS G.F. NO. 0826212

ADDRESS 305 MLK Jr. DRIVE

LEGAL DESCRIPTION
BEING 1.240 ACRE OUT OF BUILDING BLOCK 62 F.O.M. CITY OF BASTROP,
CAB. 1, PG. 234A PLAT RECORDS & TRACTS 5 & 6 VOL. 72, PG. 197
DEED RECORDS OF BASTROP COUNTY, TEXAS.

FILE: SERVER\CO\BAS\COB\08 62\010108.DWG

Kathryn Rogers
1010 Chestnut Street
Bastrop, Texas 78602
Phone: (512) 924-5912
krogers@obrlaw.net

August 7, 2018

City of Bastrop

Re: Rezoning 303 and 305 MLK Jr. Drive from SF-7 to C-1

To Whom It May Concern:

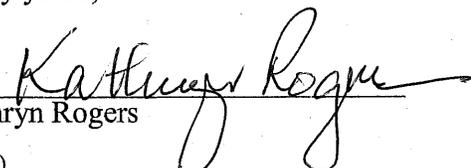
Greg Saunders owns a lot known as 303 MLK Jr. Drive in Bastrop. Kathryn Rogers owns the adjacent lot known as 305 MLK Jr. Drive in Bastrop. Both lots are located in Building Block 62, East of Main Street and Water Street. We are filing this joint application to rezone both lots from SF-7 to C-1, for the following reasons:

1. The balance of Building Block 62 is already zoned C-1. The requested change will result in the entire block being zoned the same, C-1.
2. The block is bounded on the East by Jackson Square, a commercial subdivision. It is bounded on the South by Jasper Street, and the Bastrop County Jail complex. It is bounded on the North by unopened Newton Street, which for all practical purposes serves as drainage. The lot on the other side of Newton is owned by TxDOT and is zoned commercial.
3. MLK Jr. Drive will be connected to Technology Drive in the Business Park and will be one of the two access routes to the Business Park.
4. The County is expanding the Jail, the Justice Center and Emergency Management Center into one large compound. MLK Jr. Drive will be one of the two planned access routes to this Compound.
5. TxDOT has plans to place exit ramps and frontage roads in the area North of these tracts.
6. The requested zoning change is consistent with the City of Bastrop Future Land Use Plan.

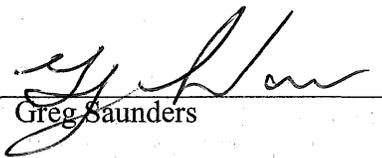
We therefore submit the attached Planning Application, with attachments, with a check in the amount of \$775.00 as a filing fee. Please direct correspondence to both of us at our respective addresses shown on the Application.

Very truly yours,

BY:


Kathryn Rogers

BY:


Greg Saunders

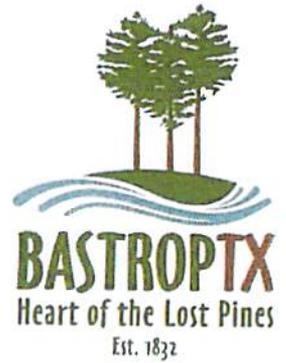
Enclosure(s)

RECEIVED

AUG 10 2018

By 

Notice of Pending Zoning Approval
City of Bastrop
Planning & Zoning Commission
And City Council



Dear Property Owner:

The **Planning and Zoning Commission** will conduct a public hearing on **Thursday, September 27, 2018 at 6:00 p.m.** and the **City Council** will conduct a public hearing (first reading) **Tuesday, October 9, 2018 at 6:30 p.m.** in the **City Hall Council Chambers** located at **1311 Chestnut Street, Bastrop, Texas** on the request to approve a rezoning for (0.665 acres) and (1.240 acres) out of Building Block 62, East of Water Street, located at 303 and 305 Martin Luther King Jr. Drive from SF-7, Single-Family 7 to C-1, Commercial 1, within the city limits of Bastrop, Texas.

Applicant(s)/Owner(s): Kathryn Rogers and Greg Saunders

Address(es): 303 and 305 Martin Luther King

Legal Description: (0.665 acres) and (1.240 acres) out of Building Block 62, East of Water Street

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

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

For additional information, please visit or call the Planning & Development offices.

~~X~~

PROPERTY OWNER'S RESPONSE

As a property owner within 200': (please check one)

- I am in favor of the request.
 I am opposed to the request.
 I have no objection to the request.

Property Owner Name: Kathryn Rogers
Property Address(es): 301 MLK, 1304 Jasper, R117864, 1962. merged Chambers
Phone (optional): 512-924-5912
Mailing Address: 1010 Chestnut St. Bastrop, Tx 78602
Email (optional): _____
Property Owner's Signature: Kathryn Rogers

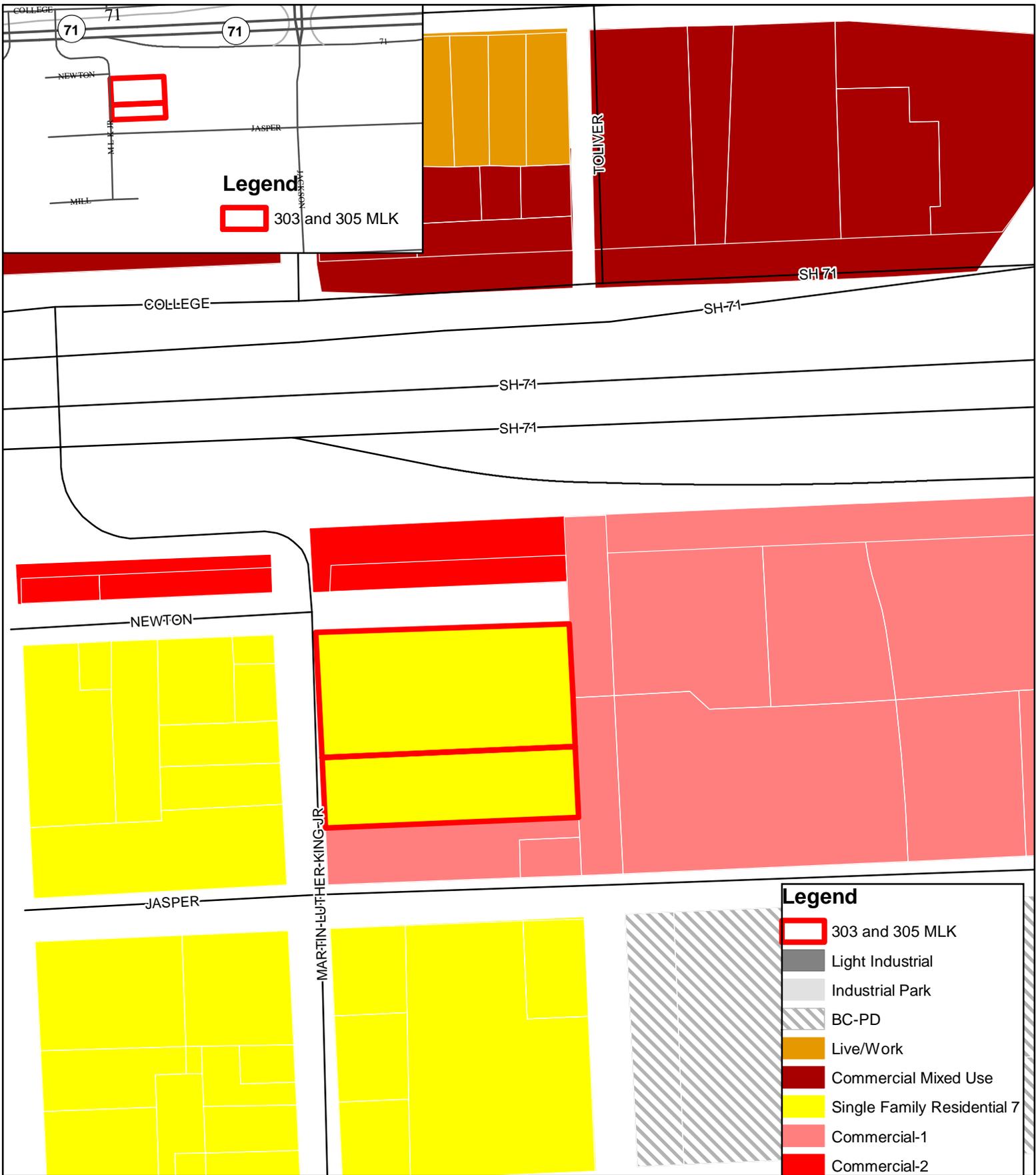
Comments: (Optional)

My lots are adjacent to these lots on the East side + South Side, all in BB #62

Please provide reply to the address below, via fax (512) 332-8829, or email: plan@cityofbastrop.org

Re: [MLK Rezone](#)

PLANNING & DEVELOPMENT



Legend
 303 and 305 MLK

Legend

-  303 and 305 MLK
-  Light Industrial
-  Industrial Park
-  BC-PD
-  Live/Work
-  Commercial Mixed Use
-  Single Family Residential 7
-  Commercial-1
-  Commercial-2

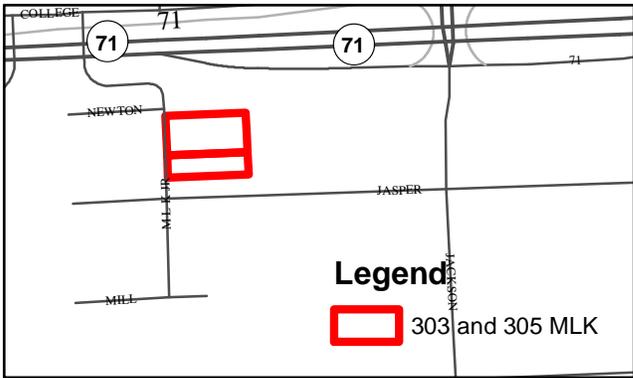


Location and Zoning Map
Rezoning Request for 303 & 305 MLK
SF-7, Single Family-7 to C-1, Commercial-1

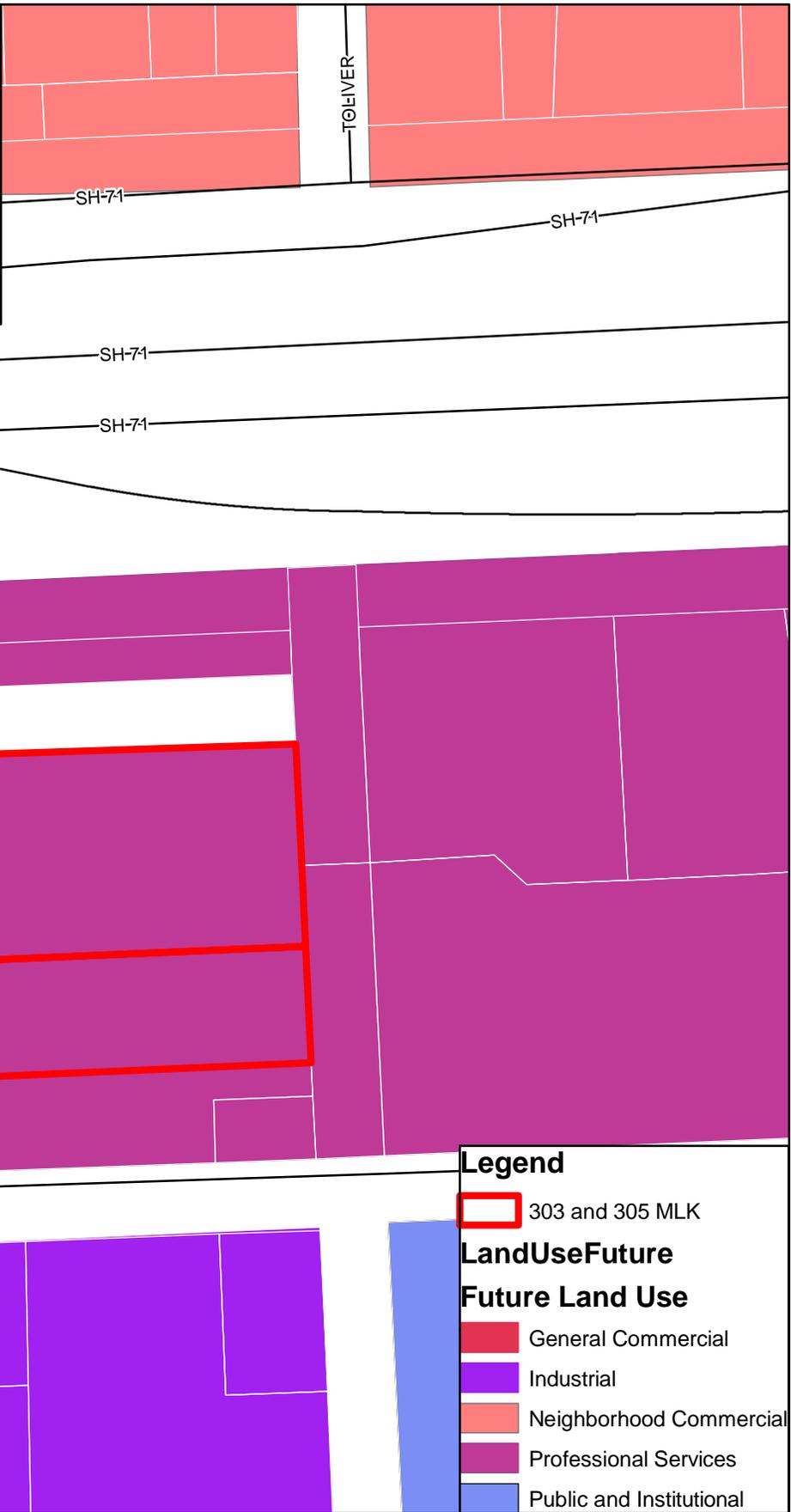
1 inch = 167.7 feet


 The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular 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.

Date: 09/07/2018



Legend
 303 and 305 MLK



Legend
 303 and 305 MLK
LandUseFuture
Future Land Use
 General Commercial
 Industrial
 Neighborhood Commercial
 Professional Services
 Public and Institutional



Future Land Use Map
Rezoning Request for 303 & 305 MLK
SF-7, Single Family-7 to C-1, Commercial-1

1 inch = 131.04 feet

N
 The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.
 Date: 09/18/2018

9B. Items for Individual Consideration

Public hearing and consider action to approve the first reading of Ordinance No. 2018-29 of the City Council of the City of Bastrop, Texas, Rezoning 1.95 acres of Building Block 62, East of Water Street, from SF-7, Single-Family 7 to C-1, Commercial 1, located at 303 and 305 Martin Luther King Jr. Drive, within the city limits of Bastrop, Texas; as shown in Exhibits A & B; including a severability clause; establishing an effective date and move to include on the October 23, 2018



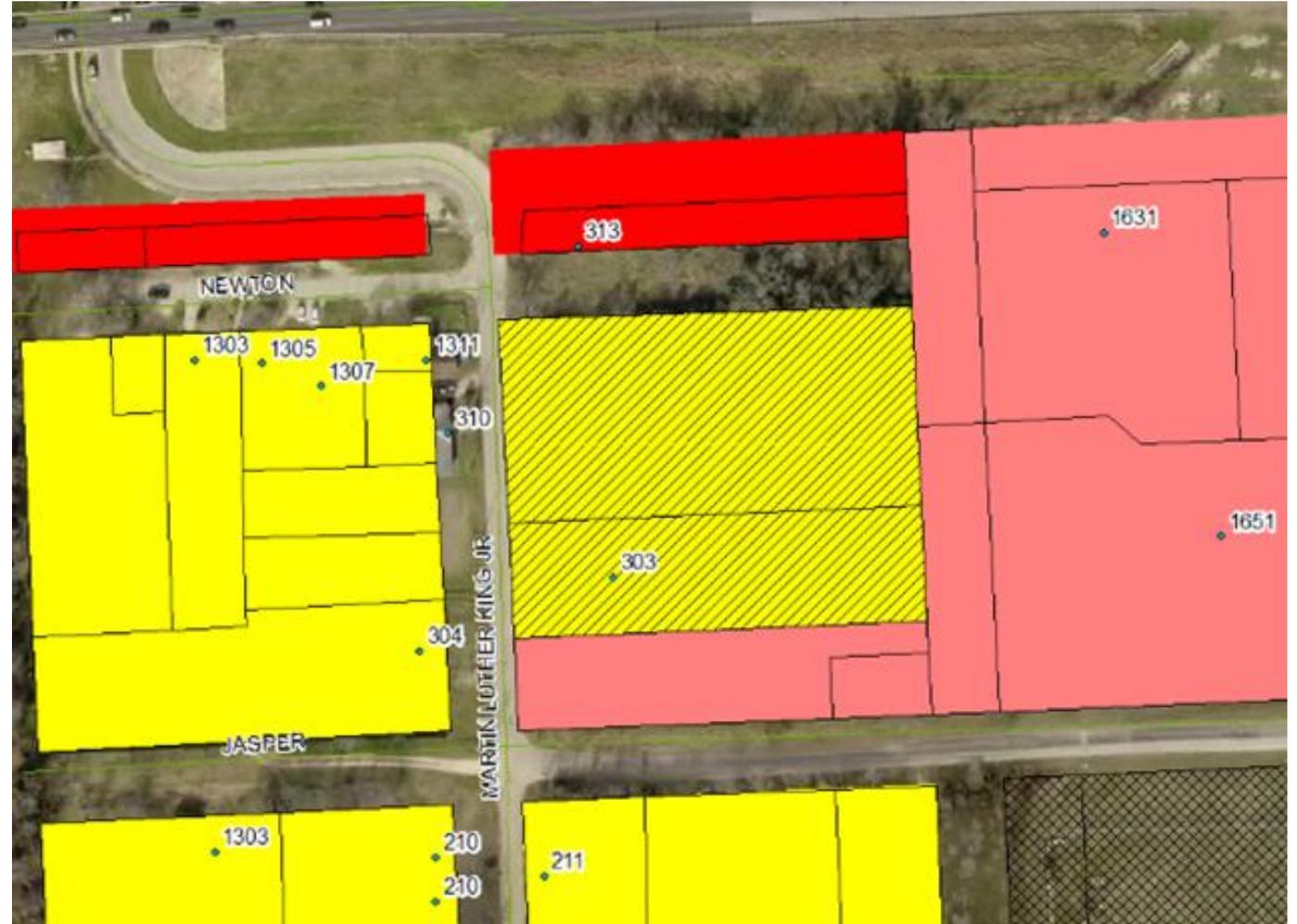
Request

- To rezone two parcels from the existing Single-Family 7 to Commercial 1 zoning.
- Property to the east and south of the two lots are Commercial 1.



Zoning

- SF-7, Single-Family 7



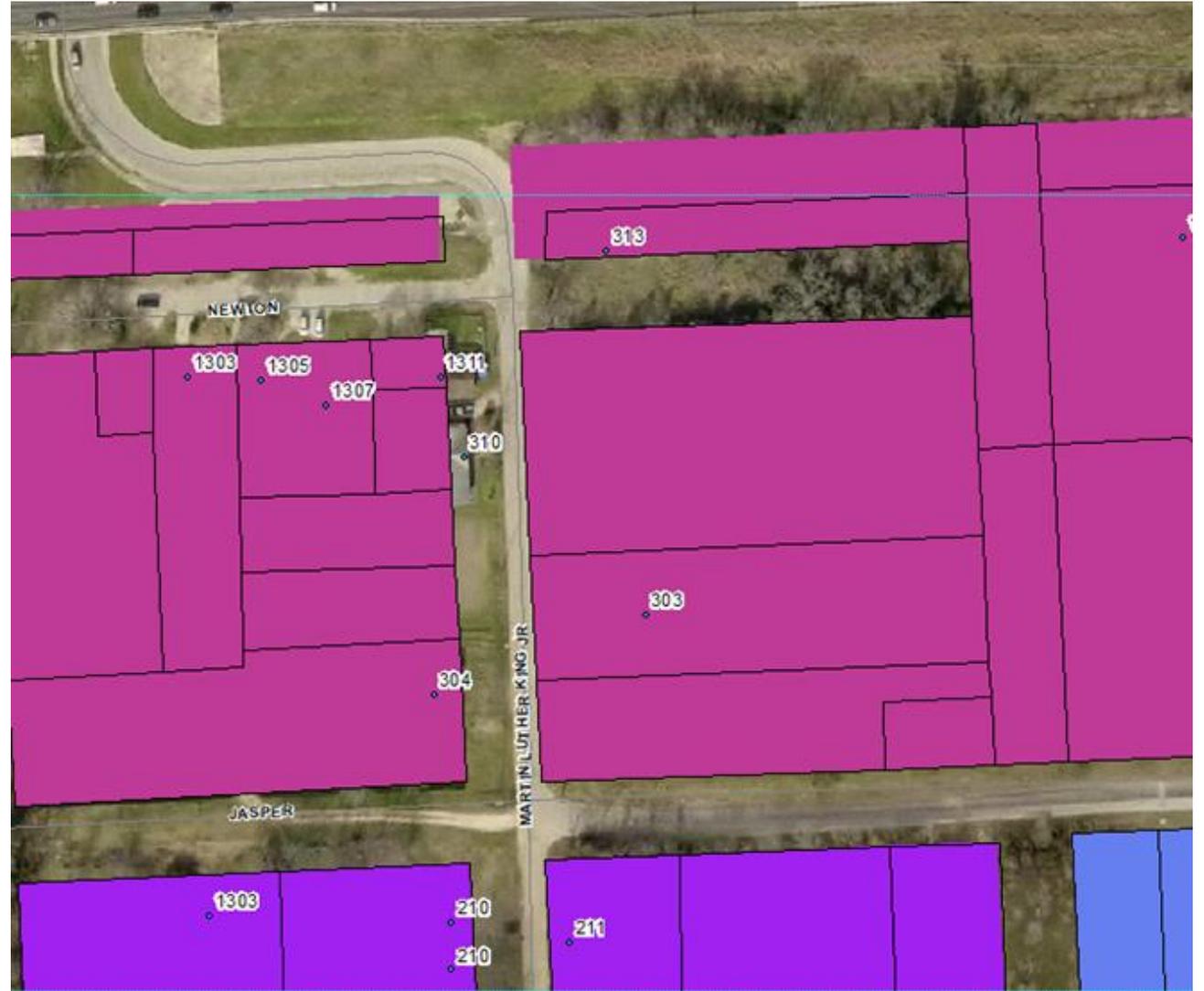
Location

- 303 and 305 MLK

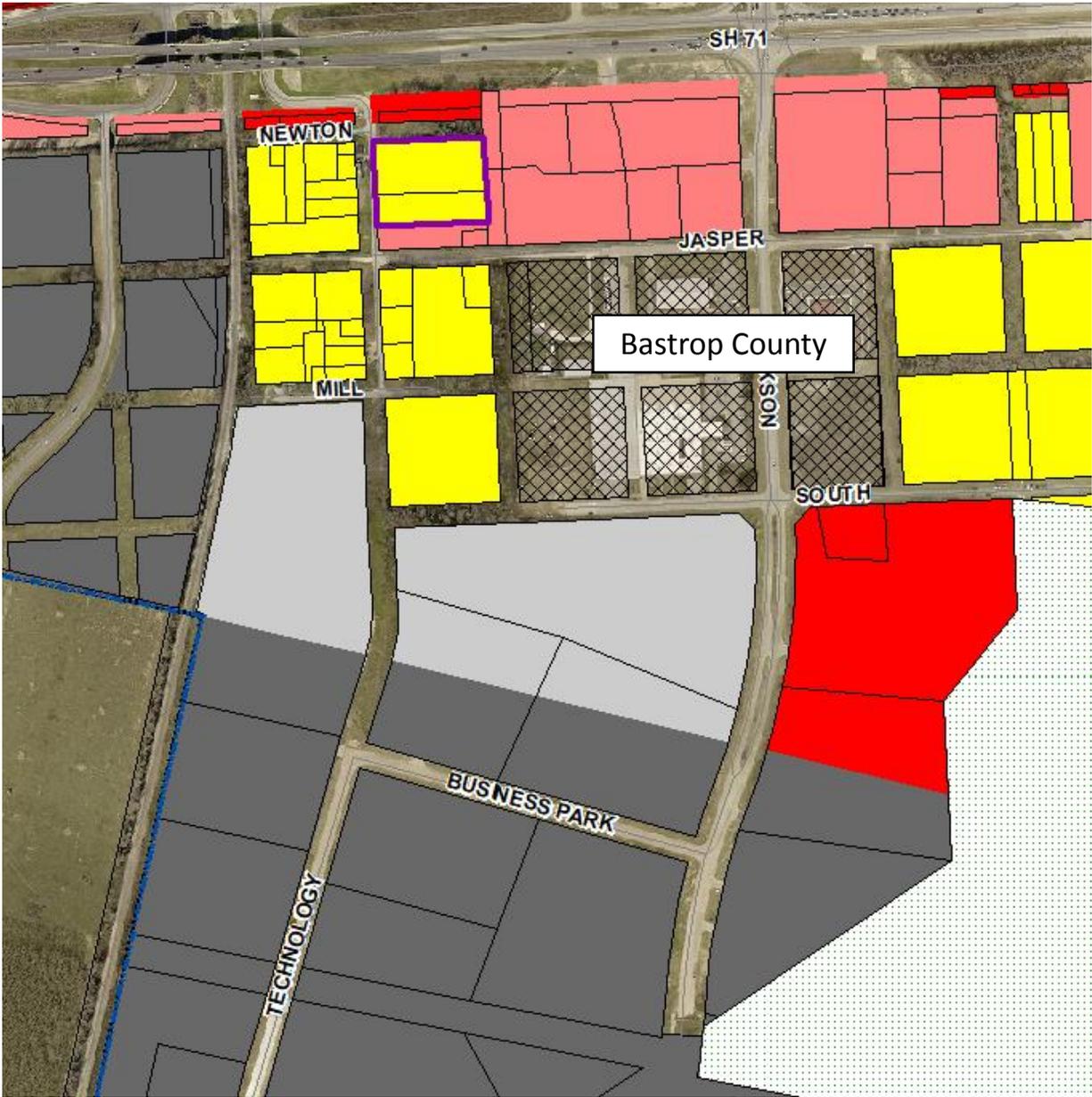


Future Land Use

- Professional Services



Relationship to the Area



Section 10 – Changes and Amendments to All Zoning Ordinances and Districts

Changes shall only be made:

A. To correct any error in the regulations or map.

The existing zoning district was adopted through the appropriate process. The current owner wishes to develop these lots as a commercial use, which requires a zoning amendment to rezone the area to a commercial zoning district.

B. To recognize changed or changing conditions or circumstances in a particular locality.

The property to the east and south is zoned as commercial.. Martin Luther King Jr. Street is planned to connect to the new extension of Technology Drive, which will connect the Bastrop Business and Industrial Park to SH 71 via Martin Luther King Jr. Street. The adjacent properties zoned as commercial and the future traffic, a commercial use will be appropriate at this location

C. To recognize changes in technology, the style of living, or manner of conducting business.

This does not apply. The request follows the existing development pattern in the area.

D. To change the property to uses in accordance with the approved Comprehensive Plan.

The requested zoning change to C-1 is consistent with the Future Land Use designation of Professional Service as shown in the Comprehensive Plan.

Compliance with the Moratorium

- This application is for zoning which does not have an impact on drainage.
- Any applications for subdivision or site plans will have to comply with the requirements of the moratorium.



Planning & Zoning Commission Report

- They held a public hearing at their meeting at the September 27, 2018 meeting.
- The Commission voted 6-0 to recommend approval of the rezoning of the property to C-1, Commercial 1.
- There were no comments from members of the public at the meeting.



Recommendation

- Hold public hearing and consider action on the request to approve a rezoning for (0.665 acres) and (1.240 acres) out of Building Block 62, East of Water Street, located at 303 and 305 Martin Luther King Jr. Drive from SF-7, Single-Family 7 to C-1, Commercial 1, within the city limits of Bastrop, Texas and forward to the next City Council meeting.



Next Steps

- P&Z recommendation will be forwarded to the October 9th City Council meeting for a public hearing and first ordinance reading.



Questions?





STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 9C

TITLE:

Consider action to approve the first reading of Resolution No. R-2018-102 of the City Council of the City of Bastrop, Texas, approving the terms of an economic development performance agreement between the Bastrop Economic Development Corporation and 921 Bastrop, LLC; approving the terms of an agreement for construction of improvements to the lot at 921 Main Street with 921 Bastrop, LLC, in an amount exceeding ten thousand dollars (\$10,000); repealing all resolutions in conflict; providing severability; providing an effective date; and move to include on the October 23, 2018 consent agenda for second reading.

STAFF REPRESENTATIVE:

Mike Kamerlander, Bastrop EDC Executive Director

BACKGROUND/HISTORY:

The Bastrop EDC Board of Directors approved a Performance Agreement with 921 Bastrop, LLC, at their Board Meeting on September 17, 2018. Pursuant to Section 505.158(b) of the Local Government Code, prior to the BEDC funding a project involving an expenditure of more than \$10,000, the City Council shall adopt a Resolution authorizing the project, which Resolution shall be read by the City Council on two separate occasions.

As part of the Performance Agreement, the EDC will provide a cash incentive in the amount of \$123,535 to offset the costs of remediation of the lot and the relocation of certain utilities. That amount added to the appraised value of the property is approximately \$210,000, which is the EDC's commitment to the project.

The EDC budgeted for this project in their FY 2019 budget.

Through the investment of community resources in infrastructure improvements, the EDC is promoting new or expanded business development. The EDC is authorized in the LGC Section 505.158 to undertake projects related to business development in certain small municipalities:

Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT IN CERTAIN SMALL MUNICIPALITIES. (a) For a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, "project" also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development. (b) A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

RECOMMENDATION:

Consider action to approve the first reading of Resolution No. R-2018-102 of the City Council of the City of Bastrop, Texas, approving the terms of an economic development performance agreement between the Bastrop Economic Development Corporation and 921 Bastrop, LLC; approving the terms of an agreement for construction of improvements to the lot at 921 Main Street with 921 Bastrop, LLC, in an amount exceeding ten thousand dollars (\$10,000); repealing all resolutions in conflict; providing severability; providing an effective date; and move to include on the October 23, 2018 consent agenda for second reading.

ATTACHMENTS:

- Draft Resolution
- Economic Development Performance Agreement
- History of 921 Main Street Project



RESOLUTION NO. R-2018-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE TERMS OF AN ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AND 921 BASTROP, LLC; APPROVING THE TERMS OF AN AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS TO THE LOT AT 921 MAIN STREET WITH 921 BASTROP, LLC, IN AN AMOUNT EXCEEDING TEN THOUSAND DOLLARS (\$10,000); REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in recognition of the positive economic benefits which will accrue, and pursuant to the terms of Texas Local Government Code Section 501.158, the Board of Directors of the Bastrop Economic Development Corporation (“BEDC”) has authorized an Economic Development Performance Agreement with 921 Bastrop, LLC, to facilitate the remediation and improve infrastructure of a lot located at 921 Main Street in Bastrop, Bastrop County, Texas, through the BEDC’s funding of said remediation and relocation of certain utilities; and

WHEREAS, the development of an approximate 9,000 square foot building on the vacant lot, owned by the Bastrop Economic Development Corporation, requires certain incentives; and

WHEREAS, the total cost of the improvements is estimated to be \$210,000, including the current value of the lot, remediation, and relocation of certain utilities; and

WHEREAS, the Board of Directors of the BEDC has authorized the approval of a Performance Agreement with 921 Bastrop, LLC, to formalize the terms and conditions under which 921 Bastrop, LLC, shall cause the necessary improvements to the lot located at 921 Main Street in Bastrop, Bastrop County, Texas; and

WHEREAS, the BEDC and City Council by separate resolutions shall authorize the 921 Main Street Project as a qualified infrastructure and site improvement project pursuant to the authority of Texas Local Government Code Section 501.103; and

WHEREAS, pursuant to Texas Local Government Code Section 505.158(b) City Council has been asked by the BEDC to approve the aforementioned Performance Agreement.

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

SECTION 1. To the extent required by Texas Local Government Code Section 505.158(b) the following are authorized:

- The Performance Agreement, attached hereto as Appendix “A”.

SECTION 2. Open Meeting. The City Council hereby finds and determines that the meeting at which this Resolution was passed was open to the public, and public notice of the time, place and purpose at which it was read was given in accordance with Chapter 551, Texas Government Code.

SECTION 3. Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 5. Two Readings Required. Pursuant to Texas Local Government Code Section 505.158(b), this Resolution shall take effect immediately from and after its passage upon a subsequent second reading and passage, and it is duly resolved.

This resolution shall be in full force and effect from and after its final adoption.

READ and ACKNOWLEDGED on First Reading on the 9th day of October 2018.

READ and APPROVED on the Second Reading on the 23rd day of October 2018.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Performance Agreement ("Agreement") is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Bastrop Economic Development Corporation, located in Bastrop County, Texas (hereinafter called "Corporation"), a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act and 921 Bastrop, LLC, a Texas corporation (hereinafter called "Company"), otherwise known as the "Parties" to this Agreement.

RECITALS

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

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

WHEREAS, Company desires to develop infrastructure improvements and construct a retail and professional businesses Building on Main Street in downtown Bastrop, Texas; and

WHEREAS, the location of the Building, as proposed, will contribute to the infrastructure needs and economic development of the City of Bastrop by creating new jobs and increasing employment, promoting and developing expanded business enterprises, increasing development, increasing real property values and tax revenues for the City of Bastrop, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, the Corporation desires to offer an incentive to Company to enable Company to construct and operate the Building pursuant to this Agreement in substantial conformity with the Act; and

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

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

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

WHEREAS, on September 17, 2018 at the Corporation's regularly scheduled meeting of the Board of Directors the Corporation voted unanimously to authorize the Corporation's Executive Director into this Agreement; and,

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

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

ARTICLE I RECITALS

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

ARTICLE II AUTHORITY AND TERM

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

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

3. **Purpose.** The purpose of this Agreement is to formalize the agreements between the Company and the Corporation for the granting of property and funds to cover certain costs associated with the Project and specifically state the covenants, representations of the Parties, and the incentives associated with Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement, which has been approved by the Corporation and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Company may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the Corporation unless an alternative penalty or remedy is provided for herein.

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

ARTICLE III DEFINITIONS

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

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

“Building/Property” these terms, interchangeably, mean the approximately 9,000 square foot commercial building (“Building”) and leased area proposed for construction or occupancy as retail, restaurant and/or professional businesses; more specifically, the term “Property” or “Real Property” references the unimproved lot that is 0.1439 acres located at 921 Main Street, Bastrop, Texas.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Bastrop Planning & Development Department granting the Company the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

“Commencement Date” means the date the Property is legally deeded and transferred from the Corporation to the Company.

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

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

“Expiration Date” shall mean date of termination, provided for under Article VII of this Agreement.

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

“Infrastructure Improvements” means the infrastructure, utilities, sidewalk, drainage, telecommunications and other capital improvements the Company is making to the Property as incentive for the dedication of the Property as part of this Project.

“Lease Agreement” means the lease to be entered into as part of this Performance Agreement by and between Company and Corporation (Exhibit A hereto).

“Project” shall mean the infrastructure improvements, construction, and leasing of the retail business Building on the lot with 0.1439 acres located at 921 Main Street, Bastrop, Texas.

ARTICLE IV CORPORATION OBLIGATION

1. Capital Investment.

Corporation shall convey, transfer and dedicate the Real Property to the Company and pay ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED THIRTY-FIVE DOLLARS AND (\$123,535.00) ZERO CENTS to Company as a Capital Investment and Infrastructure Improvements upon the Property. Corporation shall also dedicate, convey and transfer to Company title to the Property within thirty (30) days the Effective Date.

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

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

4. Reservation of Public Use Easement & Sidewalk Construction. Corporation will reserve out of any dedication and transfer of the Property to Company a public use easement for the exclusive use and benefit for the City of Bastrop, of which, Company is to construct and maintain a sidewalk on that portion of Real Property on 921 Main Street in conformance with the downtown plan of Bastrop and recommendation from the City’s engineer.

ARTICLE V PERFORMANCE OBLIGATIONS OF COMPANY

The obligation of the Company is to Commence Operations and repay the funds in the form of a Capital Investment in Real Property and needed Infrastructure Improvements set forth below in this Agreement.

1. Commencing Operations.
 - (a) Within ninety (90) days of the Commencement Date, Company must secure all necessary financing to begin construction of the Building; and,
 - (b) Within twelve (12) months of the Commencement Date obtain a Certificate of Occupancy for the Building.
2. Real Property Dedication & Infrastructure Improvement. Commencing upon the receipt the ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED THIRTY-FIVE DOLLARS AND (\$123,535.00) ZERO CENTS, Company is to immediately begin all necessary pre-construction processes to construct the Building; but, in no event shall the architectural and engineering documents be finished no later than one hundred twenty (120) days after receipt of any said funds. The Building is to be constructed as follows:
 - (a) Minimum two-story commercial building with masonry and steel construction in a historic style to match downtown Bastrop with design to be approved by the Corporation within thirty (30) days of presentment by Company for approval;
 - (b) Relocation of utilities, foundation slab work, and possible roof top deck;
 - (c) Common area elevator with stair wells both to serve the second story tenant and possible rooftop area;
 - (d) Exterior is to be brick with glass storefront to be designed in conjunction with the tenant and to keep with the historic look of downtown Bastrop; and,
 - (e) A balcony on the second floor overlooking Main Street.
3. Payment of Legal Fees. Company commits to reimburse the Corporation for the necessary legal fees in the preparation of any amendment to this Agreement requested by Company. Timely payment shall be made within sixty (60) days of submittal of invoice to Company by the Corporation or its assigns. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement.
4. Extension beyond Term. In recognition of the fact that the verification of Company's compliance hereunder is, by necessity, verified in the calendar year following the Company's obligations herein, the Expiration Date of this Agreement will be extended until any and all verification of Performance Obligations and covenants have been satisfied. The Parties hereto agree that the Corporation's right to the Recapture Amount shall survive the Expiration Date of this Agreement.
5. Lien Execution. In recognition of the \$123,535.00 cash payment and dedication of the Real Property, Company shall execute a Lien in the amount of TWO HUNDRED TEN THOUSAND (\$210,000.00) DOLLARS within thirty (30) days of obtaining financing on the Project. This lien shall be subordinate to any liens, deeds of trust, and/or mortgages necessary to construct the Project that are made the basis of the Company's financing of the Project. This lien shall remain in full force and effect as security for the completion of the Project and shall be enforced and foreclosed upon immediately upon default by Company.

**ARTICLE VI
COVENANTS AND DUTIES**

1. **Company's Covenants and Duties.** Company makes the following covenants and warranties to the Corporation, and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.
 - (a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
 - (b) The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.
 - (c) Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary Bankruptcy proceedings.
 - (d) To its current, actual knowledge, and subject to the Certificate of Occupancy (or other approvals and permits to be obtained under subpart (f) immediately below), Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Bastrop and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
 - (e) Company shall timely and fully comply with all of the terms and conditions of this Agreement.
 - (f) Company agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City of Bastrop and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Building.
 - (g) Company shall be responsible for paying, or causing to be paid, to the City of Bastrop and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City of Bastrop in effect on the date the Project was designated, unless specified otherwise in this Agreement. Company, in its sole discretion, may choose to comply with any or all City of Bastrop rules promulgated after the Effective Date of this Agreement.

- (h) Company agrees to commence and complete the Project in strict accordance with the Agreement.
 - (i) Company shall cooperate with the Corporation in providing all necessary information to assist them in complying with this Agreement.
 - (j) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default (subject to the obligations in Article V and the remedies in Article VIII). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts; provided, however, that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.
 - (k) Company shall not be in arrears and shall be current in the payment of all City taxes and fees.
 - (l) Corporation has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement.
2. Corporations' Covenants and Duties. Corporation agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Corporation.
3. Compliance and Default. Failure by Company to timely comply with any performance requirement, duty, or covenant shall be considered an act of Default and shall give the Corporation the right to terminate this Agreement and collect the Recapture Amount, as determined by the Board of Directors of the Corporation.

ARTICLE VII TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:
- (a) The written agreement of the Parties; or
 - (b) Twelve (12) months following the Certificate of Occupancy being issued on the Project; or,
 - (c) Default by Company, whichever occurs first.

**ARTICLE VIII
DEFAULT**

1. Company Events of Default.

- (a) Failure of Company to perform any term, covenant or agreement contained in Article V;
or
- (b) Corporation determines that any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to Corporation in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
- (c) Any judgment is assessed against Company or any attachment or other levy against the property of Company with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of thirty (30) days; or
- (d) Company makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of Company or any substantial part of its property, commences any action relating to Company under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against Company any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or Company by any act indicates its consent to or approval of any trustee of Company or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or
- (e) Company substantially changes its present ownership without written notification to Corporation within thirty (30) days of such change; or
- (f) Company changes the general character of the Business as conducted at the date hereof, or engages in any type of business not reasonably related to its business as presently and normally conducted.

2. Corporation Events of Default.

- (a) Corporation materially fails to fulfill an obligation set forth within Article IV.

3. Remedies for Default.

- (a) Company's sole remedy under this Agreement is specific performance for Corporation's default of its obligation under Section IV of this Agreement, and only in the event Company has met all obligations satisfactory to Corporation.

- (b) Corporation may foreclose upon its Lien under Section V and/or request Company to immediately repay Corporation the sum of TWO HUNDRED TEN THOUSAND (\$210,000.00) DOLLARS secured by the Lien.

4. Limitation on Use of Funds & Property in the Event of Default.

- (a) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City of Bastrop or the Corporation.
- (b) Corporation shall have the right to rescind and is no longer legally obligated under the Lease Agreement between the Parties in the event the Company defaults herein.

**ARTICLE IX
MISCELLANEOUS**

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director or Board Chair of the Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the Corporation, on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of Bastrop at the Building under the terms of this Agreement.
2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
3. Representations and Warranties. The Corporation represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement.
4. Assignment. Company shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the Corporation. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve Company of any liability to the Corporation, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The Corporation may demand and receive adequate assurance of performance including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

5. Independent Contractors.

- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the Corporation and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the Corporation will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the Corporation.
- (b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (c) No employee of the Corporation, or any board member, or agent of the Corporation, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

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

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

If to the Company: 921 Bastrop, LLC.
5900 Balcones Drive, Suite 160
Austin, Texas 78731

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

7. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.
 - (a) **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Bastrop County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
 - (b) **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the Corporation and paid for by the Company.
8. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the Corporation.
10. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
11. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
12. **Exhibits.** Any Exhibits attached hereto are incorporated by reference for all purposes.
13. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

14. Indemnification.

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

15. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.
16. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by the Company, the Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

[SIGNATURE PAGE FOLLOWS]

Executed on this 25 day of September, 2018

COMPANY

921 Bastrop, LLC, a Texas corporation

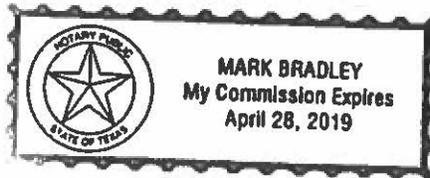
By: 
Edward E. Dudley, III

Title: Managing Member

STATE OF TEXAS }
COUNTY OF TRAVIS }

This information was acknowledged before me on this 25th day of September, 2018, by Edward E. Dudley, III, Managing Member of 921 Bastrop, LLC a Texas corporation, on behalf of said agency.


Notary Public, State of Texas



MARK BRADLEY
Notary's typed or printed name

04-28-2019
My commission expires

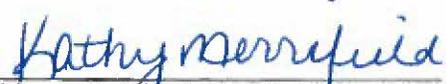
Executed on this 26th day of September, 2018.

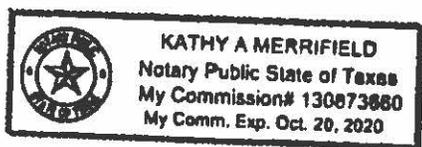
**BASTROP ECONOMIC
DEVELOPMENT CORPORATION**

By: 
Mike Kamerlander
Title: Executive Director

STATE OF TEXAS }
COUNTY OF BASTROP }

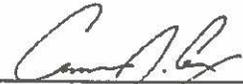
This information was acknowledged before me on this 26th day of September 2018 by Mike Kamerlander, Executive Director for the Bastrop Economic Development Corporation, a Texas non-profit industrial development corporation, on behalf of said agency.


Notary Public, State of Texas



Kathy Merrifield
Notary's typed or printed name
10-20-2020
My commission expires

APPROVED AS TO FORM:

By: 
Cameron J. Cox, BEDC Counsel
DNRB&Z P.C.

**Performance Agreement
Exhibit A**

LEASE AGREEMENT

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**OFFICE LEASE AGREEMENT
BETWEEN**

**921 BASTROP, LLC.
(Landlord)**

AND

**BASTROP ECONOMIC DEVELOPMENT CORPORATION
(Tenant)**

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LEASE AGREEMENT

(Office)

This lease agreement (this "Lease") is made effective _____, 2018 between 921 BASTOP, LLC., a Texas Corporation ("Landlord"), and BASTROP ECONOMIC DEVELOPMENT CORPORATION, a Texas Corporation ("Tenant"), who hereby agree as follows:

§1. LEASE OF PREMISES

On the terms and subject to the conditions described in this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, approximately 4,500 square feet of rentable area, to be exactly determined upon completion and measurement of a final space plan prepared by Tenant and submitted to Landlord, measured in accordance with the current standards for measuring Rentable Area as established by the Building Owners and Managers Association ("BOMA"). The location of the 4,500 rentable square feet is the real property commonly known as 921 Main Street, Bastrop, Texas 78602 (the "Real Property"). Wherever used in this Lease, the term Leased Premises shall include the non-exclusive use of and access to the parking areas, and sidewalks adjoining or proximate to the Building. A depiction of the Leased Premises is attached hereto as Exhibit A.

§2. TERM; RENEWAL OPTIONS

- (a) Term. The term of this Lease (the "Term") shall commence on the Commencement Date (_____ 1, 2019) and shall end ten years to the date on _____, 2029 (the "Termination Date").
- (b) Renewal Options. Provided no "event of default" (as hereinafter defined) shall have occurred and remain uncured at the time of Tenant's exercise of its renewal right, Tenant shall have the right and option to extend the Term for one (1) additional consecutively occurring five (5)-year renewal term exercisable at the end of the Term. The Renewal Term shall be exercisable by delivery of a notice not later than one hundred twenty (120) days prior to the expiration of the Term, which states that Tenant thereby exercises its right and option to extend the Term for the Renewal Term under this Section 2(b). All terms and conditions of this Lease applicable during the Term shall also be applicable during the Renewal Term except that (i) no further renewals beyond the renewal granted herein shall be permitted, and (ii) the Rent for the Renewal Term shall be at a "Base Rent", hereinafter defined, of \$25.50 per square foot ("psf") per year (\$2.125 psf per month) for the Leased Premises.

§3. BASE RENT

During the Term, Tenant shall pay to Landlord base rent in United States dollars (the "Base Rent"), based upon the rentable square footage of the Leased Premises, in the following amounts:

	<u>Per Square Foot</u>
Months 1-60 (and any partial month at the beginning of the Term)	\$22.50 annually/ \$1.875 monthly
Months 61-120	\$24.00 annually/ \$2.00 monthly

All payments of Base Rent due under this Lease shall be due and payable in advance on or before the Commencement Date for the first month during the Term and on or before the first day of each calendar month thereafter, shall be made by normal business methods without demand, set-off, or deduction

whatsoever except as specifically permitted herein, and shall be paid and addressed to Landlord at c/o Stone Development Group, Inc., 5900 Balcones Drive, Suite 160, Austin, Texas 78731, or at such other address as Landlord may designate to Tenant in writing from time to time. If the Commencement Date is not the first day of a calendar month, the Base Rent for the first month of the Term shall be prorated on a daily basis. Base Rent shall be determined based on the per square foot rent multiplied by the rentable square feet in the Leased Premises as finally determined pursuant to §1 hereof.

§4. ADDITIONAL RENT

In addition to the Base Rent, Tenant shall pay to Landlord as additional rent, in the manner provided for in §5, below, in United States dollars, during the Term, Tenant's Pro Rata Share (defined below) of all Operating Costs (defined below) relating to the Building and the Real Property ("Additional Rent"). For purposes of this Lease: (i) "Tenant's Pro Rata Share" shall be the percentage which the rentable square footage of the Leased Premises (i.e. 4500 sf) bears to the total rentable square footage of the Building (i.e., 9,000 sf), which Landlord and Tenant agree shall be exactly determined upon completion and measurement of the Space Plans and certification by Landlord's architect as contemplated in Section 1 subject to Tenant's right to confirm pursuant to §1 hereof; (ii) Base Rent and Additional Rent shall be referred to collectively hereinafter as "Rent"; and (iii) "Operating Costs" shall mean the costs of operating the Building and the Real Property including, but not limited to, all of the following:

- (a) all real estate taxes and assessments relating to the Building and/or the Real Property ("Real Estate Taxes and Assessments") becoming due during the Term (and with respect to assessments, only those installments of assessments becoming due over the Term of the Lease based on payment of the assessment over the longest period of time permitted by the appropriate governmental agency), or any taxes which may be levied upon or assessed in lieu of such taxes or assessments (but only payable by Tenant as they become due during the Term), but excluding any penalties or interest payable by reason of failure of Landlord to pay such taxes and assessments, unless such failure results from Tenant's failure to timely pay Additional Rent to Landlord and further excluding any net income taxes, capital gains taxes, stock taxes, succession taxes, transfer taxes, franchise taxes, gift taxes, estate taxes or inheritance taxes;
- (b) all reasonable costs of insurance maintained by Landlord relating to the Building and the Real Property including, without limitation, all-risk/hazard insurance, flood insurance, rent loss insurance, fire and extended coverage insurance, and comprehensive public liability insurance, including umbrella coverage in amounts and with insurance companies acceptable to Landlord;
- (c) all bills and charges for gas, electricity, water (but not those utilities that are separately metered for the Tenant's Premises), sewage, trash disposal, and all other utility services consumed or used in connection with the Building or Real Property;
- (d) maintenance and repair of the Building (including but not limited to electrical, plumbing, heating, air conditioning and mechanical equipment) or Real Property and all parking areas and access drives, sidewalks and grounds; and,
- (e) subject to the exclusions and limitations set forth below, improvements, including capital improvements, or repairs undertaken to maintain the value and condition of the Building and Real Property as a first-class facility or to comply with all applicable laws, ordinances or orders.
- (f) a building management fee not to exceed 3.5% of the Base Rents collected for the Building.

Notwithstanding anything in this Lease to the contrary, the term "Operating Costs" shall not include: (1) the cost of any addition to the Real Property or alterations or refurbishment of space leased to other tenants; (2) real estate commissions or brokerage fees; (3) legal fees and all other costs in connection with tenant leases and enforcing tenant obligations; (4) marketing and advertising expenses incurred with the leasing of the Building; (5) costs incurred by Landlord which are reimbursed by insurance; (6) financing transactions; (7) refinancing fees and any late penalties; (8) interest or amortization; (9) any payments under ground leases or master leases relating to the Real Property; (10) except to the extent permitted below, depreciation and amortization of the Building and any equipment; (11) special services performed by Landlord for the benefit of individual tenants; (12) charitable contributions; (13) expense for artwork; (14) except as permitted by (f) above, off site management and overhead and wages and salaries of supervisory and executive personnel; (15) all amounts paid to subsidiaries or affiliates of Landlord that are in excess of competitive costs for such services; (16) costs, penalties, fines or awards and interest incurred as a result of Landlord's negligence in Landlord's operation of the Real Property, violations of law, negligence or inability or unwillingness to make payments and/or to file any income tax or other tax or informational returns when due; (17) costs which are reimbursable under any contractor, manufacturer or supplier warranty or service contract; (18) the costs of installing, operating and maintaining any specialty service, observatory, broadcasting facilities, luncheon club, athletic or recreational club or child care facility; the cost of installing, operating and maintaining any other service operated or supplied by third party and Landlord; the cost arising from any commercial concession operated by Landlord; (19) the cost of any parties, ceremonies or other events for tenants or third parties which are not tenants of the Building, whether conducted in the Building, Real Property or other location; (20) reserves of any kind; (21) costs incurred by Landlord in connection with rooftop communications equipment of Landlord or other persons, tenants or occupants of the Building if such communications equipment is not generally available to all tenants or occupants of the Building; (22) lease "takeover" expenses, including but not limited to, the expenses incurred by Landlord with respect to space located in another building of any kind or nature in connection with the leasing of space in the Building; (23) any costs, fees, dues, contributions or similar expenses for industry associations or similar organizations in which the Real Property, Landlord of building manager is a member; (24) the entertainment and travel expenses of Landlord, its employees, agents, partners and affiliates; (25) any costs for which Landlord receives a reimbursement, credit, refund or discount; (26) costs of any removal, abatement, remediation or containment of any toxic or hazardous material; (27) costs and expenses incurred for repairs and replacements due to faulty workmanship or materials used in the construction of the Building, or due to structural or design defects; and (28) other expenses that under generally accepted accounting principles consistently applied would not be considered normal maintenance, repair, management or operation expenses.

All Operating Costs shall be determined on a modified accrual basis.

All Operating Costs shall initially be charged based on Landlord's reasonable estimates with a final reconciliation based on actual cost with no mark-up and Landlord shall in no event be entitled to recover more than one hundred (100) percent of the actual Operating Costs. Any savings by Landlord with respect to any tax abatements received by Landlord with respect to the Building or the Real Property will be appropriately passed through to Tenant.

Notwithstanding the foregoing, the total expenses computed for determining the Operating Costs relating to the Leased Premises shall not include any expenses charged or chargeable or directly related to another tenant in the Building because of such tenant's disproportionate consumption of any utilities (as determined by Landlord) or such tenant's breach of its lease agreement with Landlord.

§5. OPERATING COSTS BUDGET

Additional Rent shall be paid by Tenant to Landlord in accordance with this section.

(a) Annual Budget. Prior to the Commencement Date, Landlord shall provide to Tenant an estimate of the total projected Operating Costs and Tenant's Pro Rata Share thereof for the Building and Real Property for the first year of the Term, which is estimated to be approximately \$2,250.00 per month.

(i) For each calendar year after 2019, Landlord shall deliver to Tenant not later than sixty (60) days prior to each such calendar year a detailed estimate of the total projected Operating Costs and Tenant's Pro Rata Share thereof for the Building and Real Property for the next calendar year.

(ii) Tenant shall pay in advance on or before the first day of each calendar month during the Term at the time and in the manner of payment for the Base Rent described above, its Pro Rata Share of such projected Operating Costs in equal monthly installments.

(b) Reconciliation of Costs. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall provide Tenant an accounting of the actual Operating Costs incurred for the prior year ("Operating Cost Reconciliation").

(i) For purposes of reconciling the projected Operating Costs actually paid by Tenant versus the actual Operating Costs incurred by Landlord for each year which relate to the Leased Premises, if Tenant's Pro Rata Share of such actual costs exceeds the amount paid by Tenant for Additional Rent pursuant to this section (the "Deficiency"), Tenant shall pay to Landlord the Deficiency within thirty (30) days after notice from Landlord to Tenant detailing an accounting of the Deficiency and requesting payment of the Deficiency.

(ii) In the event the amounts actually paid by Tenant for Additional Rent exceeds Tenant's Pro Rata Share of such actual Operating Costs incurred by Landlord for that year which relate to the Leased Premises (the "Excess"), Landlord shall pay to Tenant the Excess within thirty (30) days after completing such accounting. In no event shall either party be required to pay any interest on any over-payment or under-payment made under this section. Landlord's and Tenant's obligations under this section shall survive the expiration or termination of this Lease.

(c) Tenant's Right to Audit. Landlord shall keep its books and records regarding Operating Costs for four (4) years after the end of the year to which such books and records relate.

(i) Upon reasonable notice to Landlord and by making request within sixty (60) days of receipt of the Operating Cost Reconciliation package, Tenant may elect to review the books and records of Landlord from the prior calendar year, and may elect to retain a licensed auditor or certified public accountant to perform an audit of such expenses ("Audit"). Such reviews and Audit will be performed during normal business hours.

(ii) In no event shall Landlord be obligated to cooperate with any party which engages in contingency-based audits, such parties herein stipulated by the Parties herein as being outside of the scope of the audit rights detailed herein. However, Landlord agrees to cooperate with a non-contingency based Audit paid for by Tenant as outlined in subsections (i) and (iii) herein.

(iii) Landlord shall reimburse Tenant for any overcharges revealed in the Audit regardless of the percentage overcharged. If the Audit reveals Landlord overcharged ten percent (10.00%) or more of the Operating Costs for the prior year, Landlord shall reimburse for the auditor's fees not to exceed Three Thousand Five Hundred Dollars (\$3,500.00). In the event the Audit reveals an overcharge of less than ten percent (10%), then Landlord shall reimburse all overpayments, but shall not reimburse Tenant for the costs of the Audit.

§6. SECURITY DEPOSIT

"Intentionally Omitted."

§7. INSURANCE

(a) Landlord Requirements. At all times during the Term and the Renewal Terms, if any, Landlord shall maintain all of the following insurance coverages: (i) fire and special perils coverage insurance insuring the full replacement value of the Building and all other

improvements to the Real Property, and (ii) commercial general liability insurance having a combined limit of not less than \$1,000,000, per occurrence. Each such insurance policy shall be issued by a reputable insurance company licensed to sell such insurance in the State of Texas. Landlord shall deliver to Tenant certificates evidencing that such insurance is in full force and effect.

- (b) Tenant Requirements. At all times during the Term, Tenant shall obtain and maintain: (i) workers' compensation insurance in compliance with statutory requirements; (ii) fire and extended coverage for Tenant's personal property on a replacement cost basis; and (iii) commercial general liability insurance written on an occurrence basis (including bodily injury, broad form property damage and blanket contractual liability), insuring Tenant's liability for loss of, damage to, property and injury to or death of third parties with a limit of at least \$1,000,000 combined single limit bodily injury and \$500,000 property damage for each such occurrence. All such insurance must be issued by reputable insurance companies licensed to sell such insurance in the State of Texas and include waivers of subrogation, provide that it may not be canceled except upon at least thirty (30) days prior written notice to Landlord, and name Landlord (and, if requested by Landlord, any mortgagee of the Building) as an additional insured or loss payee, as appropriate. Evidence of such insurance must be delivered to Landlord before Tenant is permitted to enter the Leased Premises and must be provided not less frequently than annually thereafter.

If Tenant does or permits anything to be done in the Leased Premises, Building, or Real Property, or brings or keeps anything therein which may in any way increase the rate of fire or other insurance on the Building or on the Real Property kept therein, or conflict with any insurance policy upon the Building or any part thereof, or with any statutes, rules or regulations enacted or established by the appropriate governmental authorities, then Tenant shall pay to Landlord as Additional Rent all amounts necessary to reimburse Landlord for such increase or otherwise remedy such situation.

- (c) Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action or cause of action against the other, its agent, officers, managers, directors, partners, members, shareholders or employees, for any loss or damage that may occur to the Leased Premises, the Building, the Common Areas and the Real Property, or any property therein, by reason of fire, the elements or any other cause which is insurable under fire and special perils coverage insurance policies, regardless of cause or origin, including negligence, and each covenants that no insurer shall hold any right of subrogation against such other party.

§8. QUIET ENJOYMENT

Provided that Tenant observes and performs the covenants and agreements under this Lease, Tenant shall, at all times during the Term and all Renewal Terms, peacefully and quietly have and enjoy possession of the Leased Premises without encumbrance, molestation or hindrance from Landlord, or any person or entity claiming by, through or under Landlord. Landlord represents that it has the full right and authority to enter into this Lease and the person executing this Lease on behalf of Landlord is authorized to bind Landlord.

§9. USE OF LEASED PREMISES; COMPLIANCE WITH LAWS

Tenant shall use the Leased Premises for general office use only, including uses incidental or related thereto, and shall not permit the Leased Premises to be used for any other purpose without the prior written consent of Landlord to that specific use, which shall not be unreasonably withheld. Tenant shall occupy and use the Leased Premises only in a careful, safe, and proper manner and shall not commit or permit any waste of or on the Leased Premises. Except to the extent the rules and regulations materially interfere with the exercise by Tenant of the benefits granted under this Lease, Tenant shall comply with the Rules and Regulations

attached hereto as Exhibit B and with all modifications adopted by Landlord from time to time, provided that such rules and regulations are enforced uniformly against all tenants in the Building. In the event that the terms of this Lease and the rules and regulations conflict, the terms of the Lease shall govern.

Landlord represents and warrants that the Leased Premises, the Building, the Common Areas and the Real Property shall comply with all applicable local, state and federal laws, regulations, orders, requirements and rules, including without limitation the Americans With Disabilities Act (the "Laws") and any covenants, conditions, restrictions and easements (the "Covenants") applicable to the Real Property on the Commencement Date. Landlord shall cause the Building, Common Areas and Real Property to comply with all Laws and Covenants during the term of this Lease. Landlord shall make all additions, alterations or improvements to the Leased Premises, Building, Common Areas and Real Property required by Laws and Covenants, except to the extent required as a result of Tenant's use which is not typical for an office use or as a result of alterations made by Tenant to the Leased Premises. The costs of any such additions, alterations or improvements that are required by Laws or Covenants which are not applicable on the Commencement Date shall be treated as Operating Costs. Except as is Landlord's obligation as aforesaid, Tenant shall, in its use of the Leased Premises, promptly comply or cause compliance with the Laws and Covenants.

Except as specifically set forth herein, no abatement or interruption in Rent or other charges required to be paid by Tenant pursuant to this Lease shall be claimed by or allowed to Tenant for any inconvenience or interruption or loss of business caused directly or indirectly by any present or future laws, ordinances, regulations, requirements, or orders of any lawful authority whatsoever.

§10. TEXAS LOCAL GOVERNMENT CODE CHAPTER 501 PERFORMANCE AGREEMENT

THIS LEASE IS SUBJECT TO THE TERMS OF THE CHAPTER 501 PERFORMANCE AGREEMENT ENTERED INTO BY THE PARTIES IN CONJUNCTION WITH THIS LEASE AND SECTION 501.160 OF THE TEXAS LOCAL GOVERNMENT CODE. SHOULD ANY PROVISIONS IN THIS LEASE CONFLICT WITH THE PROVISIONS OF THAT PERFORMANCE AGREEMENT, THEN THE TERMS OF THE PERFORMANCE AGREEMENT, AND ANY AMENDMENTS THERETO, CONTROL AND ARE BINDING UPON LANDLORD AND TENANT HEREIN.

§11. FORCE MAJEURE

In the event Landlord or Tenant shall be delayed or hindered or prevented in the performance of any obligations required under this Lease by reason of strike, lockout, fire, or acts of God, restrictive governmental laws or regulations, riots, insurrection, war or any other reason not within the reasonable control of Landlord or Tenant (herein called "Excused Causes"), the failure of performance of such obligations for such period of delay shall not be deemed a breach of or default under this Lease, and the period for the performance of any such act shall be extended for a period equivalent to the period of any such delay. Excused Causes shall not include (a) causes which result from a substantial fault or negligence of a party, or (b) the lack of sufficient funds.

§12. SUBLEASE PERMITTED

Landlord agrees to allow Tenant the exclusive right to sublease all or any portion of the Leased Premises. Tenant shall notify Landlord at least thirty (30) days prior to any sublease agreement being entered into and any subleasing tenant begins to occupy space within the Leased Premises, whichever shall occur first. The attached Exhibit C sublease shall be executed between Tenant, Landlord and the subleasing tenant within thirty (30) days of receipt by Landlord.

§13. MAINTENANCE AND REPAIRS

Except as is Landlord's obligation hereunder, Tenant shall maintain the interior of the Leased Premises and all Tenant's fixtures, signs, equipment, and personal property therein in good order and condition of repair, safety, cleanliness, and appearance, ordinary wear and tear excepted, and shall promptly make all repairs and replacements necessary or appropriate to so maintain the Leased Premises and such Tenant's fixtures, signs, equipment, and personal property. At the expiration or other termination of this Lease, Tenant shall

surrender and deliver up the Leased Premises in good order and condition as it shall be upon completion of construction of the Building, the Leased Premises and the Tenant Improvements, ordinary wear and tear, damage by fire, other casualty or condemnation or repairs required of Landlord, excepted.

Landlord shall keep and maintain in good order and condition of repair, in accordance with all applicable Laws, the Real Property, the Common Areas (and all improvements thereon) of the Building and all structural portions of the Leased Premises and all mechanical and utility facilities and systems serving the Leased Premises, or any portions of the foregoing, including without limitation any corridors, reception areas for the Building, common area restrooms, and other common areas available for use by all tenants and their invitees and the exterior sidewalks, owned parking lot (as applicable), and any grounds adjacent to the Building which are subject to this Lease.

§14. ALTERATIONS

For the purpose of this Lease, Alterations shall be herein defined as any amendment, modification, installation, construction, addition, or demolition of the Leased Premises, any portion thereof, or of the Building which touches, attaches to, or connects to the Building systems or structure. No Alteration or other change shall be made to the Building or to the Leased Premises by Tenant without Landlord's specific written permission. In the event the Tenant desires to undertake such Alterations, Tenant shall notify Landlord so that Landlord's engineer can review and advise the parties herein appropriately, and so that Landlord may conduct its own review of the impact of such Alteration prior to the commencement of work. In the event such Alteration is approved by Landlord, such approval not being unreasonably withheld, Tenant shall first obtain and pay for the cost of all designs, permits, and other costs to obtain authorization from all governmental authorities having jurisdiction.

Tenant shall cause such Alteration to be made promptly and in a good and workmanlike manner and in compliance with all Laws, keeping the Leased Premises free of all liens and claims for work, labor, or materials supplied or claimed to have been supplied to the Leased Premises. Any Alteration that requires Landlord's approval shall immediately become and remain the property of Landlord, unless Landlord otherwise agrees, in writing, subject to the rights of Tenant under this Lease; provided that upon termination of this Lease, Tenant shall remove any Alterations and restore the Leased Premises to the same condition as before the Alteration was made to the extent Landlord required such removal in its written consent to the Alterations. The provisions of this Section 14 shall not apply to the Tenant Improvements.

§15. DAMAGE OR DESTRUCTION TO LEASED PREMISES

(a) **Definition.** "Relevant Space" means:

- (i) the Leased Premises;
- (ii) access to the Leased Premises; and
- (iii) any part of the Building or the Real Property that provides Essential Services, as hereinafter defined, to the Leased Premises.

(b) **Repair of Damage.** If the Relevant Space is damaged in whole or in part from any cause and the Relevant Space can be substantially repaired and restored not later than one hundred fifty (150) days following the date of the damage using standard working methods and procedures, Landlord shall at its expense promptly and diligently repair and restore the Relevant Space to substantially the same condition as existed before the damage. This repair and restoration shall be completed not later than one hundred fifty (150) days following the date of the damage unless the delay is due to causes described in Section 11 hereof.

If it is determined that the Relevant Space cannot be repaired and restored not later than the expiration of the one hundred fifty (150) day period, which determination will be made within thirty (30) days after the date of such damage or destruction, then either party may cancel this Lease by giving notice to the other party.

- (c) **Abatement.** Unless the damage is caused by Tenant's willful misconduct, Rent shall abate in proportion to that part of the Leased Premises that is not reasonably fit for use in Tenant's business. The abatement shall consider the nature and extent of interference to Tenant's ability to conduct business in the Leased Premises and the need for access and Essential Services. The abatement shall continue from the date the damage occurred until ten (10) business days after Landlord completes the repairs and restoration to the Relevant Space and notice to Tenant that the repairs and restoration are completed, provided Landlord is receiving payments under its rent loss insurance policy through said date. Tenant shall have reasonable access to the Leased Premises during the repair or restoration in order to enable Tenant to repair or replace any equipment, wiring or cabling originally installed by Tenant.
- (d) **Tenant's Property.** Notwithstanding anything else in this Section 15, Landlord is not obligated to repair or restore damage to Tenant's trade fixtures, furniture, equipment, or other personal property.
- (e) **Damage to Building. If:**
 - (A) more than forty (40) percent of the Building is damaged and Landlord decides not to repair and restore the Building;
 - (B) any mortgagee of the Building shall not allow adequate insurance proceeds for repair and restoration;
 - (C) the damage is not covered by Landlord's insurance required by Section 7(a); or
 - (D) the Lease is in the last twelve (12) months of its Term,

then Landlord may cancel this Lease. To cancel, Landlord must give notice to Tenant not later than thirty (30) days after Landlord knows of the damage. The notice must specify the cancellation date, which shall be at least thirty (30) but not more than sixty (60) days after the date notice is given.

- (f) **Cancellation.** If either party cancels this Lease as permitted by this Section 15, then this Lease shall end on the day specified in the cancellation notice. The Rent and other charges shall be payable up to the cancellation date and shall account for any abatement. Landlord shall promptly refund to Tenant any prepaid, unaccrued Rent accounting for any abatement, if any, less any sum then owing by Tenant to Landlord.

§16. CONDEMNATION

If all or a material part of the Leased Premises are taken by any condemning authority under the power of eminent domain or by any purchase or other acquisition in lieu thereof, this Lease shall terminate as of the date possession is required by the condemning authority. In addition, if any portion of the Building (other than the Leased Premises) is so taken, and in Landlord's reasonable opinion the Building should be restored in a manner that materially alters the Leased Premises, Landlord shall have the right at its option to terminate this Lease at any time not later than thirty (30) days after the date possession is required by the condemning authority. In the event of any such termination, the Rent payable by Tenant shall be apportioned as of the termination date. In any event, Landlord shall be entitled to receive the entire appropriation award or consideration paid by the condemning authority, other than any part of such award or consideration which relates to Tenant's occupancy of the Leased Premises, or its moving and relocation expenses. In the event that any portion of the Leased Premises, the Building or the Common Areas are taken by any condemning authority under the power of eminent domain or by any purchase or other acquisition in lieu thereof, and such taking or acquisition results in a material interference with Tenant's ability to use the remaining portion of the Leased Premises, the Building or the Common Areas, Tenant may, at any time not later than thirty (30) days following Tenant's receipt of written notification from Landlord regarding such taking or acquisition, terminate

this Lease. In the event that this Lease is not terminated by either Landlord or Tenant as permitted hereunder, Landlord shall proceed to promptly and expeditiously repair the Leased Premises, the Building and the Common Areas to, as nearly as practicable, the condition existing prior to the condemnation or taking such that the Leased Premises, the Building and the Common Areas are a complete architectural unit. All Rent shall be equitably abated during the period of repair.

For purposes of this section, any negotiated sale to a public or quasi-public authority under the threat of condemnation shall be deemed to constitute a taking by such public or quasi-public authority under the power of eminent domain.

§17. SERVICES

During the Term and the Renewal Terms, if any, Landlord shall provide the following services:

- (a) landscaping,
- (b) maintenance of the structure, roof, mechanical and electrical equipment and architectural finish of the Building, and
- (c) air conditioning filters.

During the Term and Renewal Terms, if any, Tenant shall provide the following services for its Leased Premises:

- (a) electricity which will be metered separately to the Tenant;
- (b) water, which will be metered separately to the Tenant;
- (c) janitorial services; and,
- (d) interior maintenance including light bulbs.

The Parties agree that the services essential to the operation of the Building and the Leased Premises ("Essential Services") are elevator service, water and wastewater service, HVAC service and electrical service. If any Essential Services are interrupted for more than five (5) consecutive business days for any reason other than Tenant's negligence or willful misconduct, Landlord shall abate Rent retroactively to the date of such interruption, and such abatement shall continue until the Leased Premises can be used for the purposes established herein. If any Essential Service is interrupted for more than one hundred twenty (120) consecutive days for any reason other than Tenant's negligence or willful misconduct (if such interruption is not otherwise covered by Section 15 of the Lease), Tenant shall have the right but not the obligation to terminate this Lease by delivering written notice to Landlord.

Notwithstanding the foregoing, Landlord shall not be required to provide or maintain to the Leased Premises any specialized utility services. Tenant shall be solely responsible for obtaining any such specialized utility services but may do so only with the prior written consent of Landlord, which shall not be unreasonably withheld, and Landlord shall cooperate with Tenant to obtain such specialized utility services. Tenant shall be responsible for all damages resulting from any interruption of normal utility services caused by Tenant's specialized services.

§18. SUBORDINATION OF LEASE

This lease and Tenant's rights under this Lease are and shall at all times be subordinate to all mortgages, ground leases or master leases (collectively, "Mortgages") now encumbering or that may hereafter encumber the Building and/or the Real Property and to all advances made or to be made thereon and all renewals, modifications, consolidations, replacements or extensions thereof to the full extent of all sums secured thereby, but only if a subordination, non-disturbance and attornment agreement in form reasonably satisfactory to Tenant is entered into between Tenant and the holder of any such Mortgage. Prior to the Commencement Date, Landlord shall obtain from the holder of any Mortgages a nondisturbance agreement in form and substance reasonably satisfactory to Tenant. Tenant shall upon request of Landlord, or the holder of any such mortgage, execute and deliver to Landlord within ten (10) days after Landlord's request any instrument that would affect a subordination of this Lease to any Mortgages, provided such agreement is reasonably

satisfactory to Tenant, does not amend any provisions of this Lease and contains nondisturbance provisions reasonably satisfactory to Tenant.

§19. ESTOPPEL CERTIFICATES

Landlord and Tenant shall from time to time during the Term and Renewal Terms, if any, within fourteen (14) days following the request of the other, execute and deliver to the other a statement certifying that this Lease is in full force and effect, the date through which Base Rent, Additional Rent, and other charges under this Lease have been paid, and any other factual matter reasonably requested by the other.

§20. INDEMNIFICATION

Except to the extent provided in Section 7(c), Tenant shall indemnify and save harmless Landlord from and against any and all claims, liabilities, losses, damages, injuries, costs, and expenses that hereafter may occur or arise from or out of: (a) any cause whatsoever, on or in connection with Tenant's business on the Leased Premises during the Term, however or by whomever caused (except for Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements), including without limitation any use, misuse, possession, occupancy, or unoccupancy of the Leased Premises by anyone during the Term (except for Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements), or any failure by Tenant to perform and observe all obligations and conditions to be performed and observed by it under this Lease, and (b) any reasonable costs or expenses incurred or paid by Landlord in connection with the foregoing, including reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing whether litigated or unlitigated. Notwithstanding anything to the contrary in this Section 20 or the Lease, Tenant shall not be liable to Landlord for any consequential or incidental damages.

Except to the extent caused by the act or omission of Landlord, its agents, employees, contractors, subcontractors, licensees or invitees or occurring in connection with the construction of the Tenant Improvements, Landlord shall not be liable to Tenant for any losses, damages, injuries, costs, or expenses whatsoever relating to the Leased Premises, including without limitation any interruption or cessation of the business of Tenant or any subtenant or loss incurred as a consequence of damage to or destruction of the Leased Premises.

Tenant shall defend (including without limitation arbitrations and administrative proceedings) with respect to claims for losses, costs, expenses, or damages covered by Tenant's indemnification above, and shall pay all judgments and settlements relating thereto.

Except to the extent provided in Section 7(c), Landlord shall indemnify and save harmless Tenant from and against any and all claims, liabilities, losses, damages, injuries, costs and expenses that may hereafter occur or arise from or out of: (a) any failure by Landlord to make any payment to be made by Landlord hereunder or fully to perform or observe any obligation or condition to be performed or observed by Landlord hereunder, (b) any damage, personal injury, death or other matter arising out of any acts or omissions by Landlord, its agents, employees, contractors, subcontractors, licensees and invitees or in connection with the construction of the Tenant Improvements, and (c) any reasonable costs or expenses incurred or paid by Tenant in connection with the foregoing, including without limitation reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing whether litigated or unlitigated. Notwithstanding anything to the contrary in this Section 20 or the Lease, Landlord shall not be liable to Tenant for any consequential or incidental damages. Landlord shall defend all lawsuits (including without limitation arbitrations and administrative proceedings) with respect to claims or losses, costs, expenses or damages to which Landlord's indemnification hereunder applies, and shall pay all judgments and settlements relating thereto.

§21. LIMITATION OF LIABILITY

Notwithstanding any provision in this Lease to the contrary or any general rule of law, in no event whatsoever shall Landlord or any member, partner, director, officer, employee, agent, or other principal have any personal

liability whatsoever with respect to this Lease. Any liability of Landlord under this Lease shall be enforced solely against Landlord's equity interest in the Real Property, and any proceeds therefrom, and no other assets of Landlord shall be subject to this Lease, provided however that this limitation of liability shall not apply to any liabilities arising out of the gross negligence or wrongful misconduct of Landlord, its agents, employees, licensees, invitees, contractors or subcontractors.

§22. MUTUAL WAIVER OF SUBROGATION

All waivers of any claims and/or releases described within this Lease shall not be limited to the liability of Landlord and Tenant to each other; rather, such waivers shall also apply to the liability of any person claiming by, through, or under either Landlord or Tenant pursuant to a right of subrogation.

§23. PERSONAL PROPERTY

All personal property of Tenant used or located within the Leased Premises or in the Building shall be at the sole risk of Tenant. Landlord shall not be liable for any accident or damages to property of Tenant resulting from the use or operation of elevators or of the heating, cooling, electrical, mechanical, hydraulic, plumbing or other Building systems or components. Landlord shall not be liable for damages to property resulting from water, steam, or other causes.

§24. LIABILITY RELATING TO TENANT'S OPERATIONS

Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Leased Premises. Except to the extent caused by a defect in the Building, the Leased Premises or the Tenant Improvements or to the extent caused by the act or omission of Landlord, its agents, employees, licensees, invitees, contractors and subcontractors (as limited by the provisions of Section 7(c)), Landlord shall not be liable for any accident or injury to any person(s) or property in or about the Leased Premises which are caused by the conduct and operation of that business or by virtue of equipment or property of Tenant in the Leased Premises. The foregoing does not exculpate Landlord from its gross negligence or willful misconduct.

§25. EVENTS OF DEFAULT/REMEDIES UPON DEFAULT

Each of the following shall be deemed an "event of default" under this Lease:

- (a) failure by Tenant to make any payment of Rent to Landlord within seven (7) days after Tenant receives written notice from Landlord of Tenant's failure to pay Rent;
- (b) Tenant's failure to pay Rent within seven (7) days after such payment is due, at any time during any twelve (12) consecutive month period in which Tenant has already received a notice of its failure to pay Rent under paragraph (a) above;
- (c) failure by Tenant to make any other payment or perform or observe any other obligation or condition to be performed or observed by Tenant under this Lease and failure by Tenant to correct such default within thirty (30) days after Landlord gives Tenant notice to do so or, if because of the nature of such default it cannot be corrected within such thirty (30)-day period, failure by Tenant to commence correction within such thirty (30)-day period and thereafter to expeditiously and continuously prosecute the correction to completion;
- (d) the filing or execution or occurrence of any one or more of the following:
 - (i) petition in bankruptcy by or against Tenant and if against Tenant the failure to terminate such petition within sixty (60) days after filing;
 - (ii) petition or answer against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or relief relating thereto, under

any provision of the Bankruptcy Act or any statute of like tenor or effect and the failure to remove such petition within sixty (60) days after filing;

- (iii) adjudication of Tenant as a bankrupt or insolvent;
- (iv) assignment for benefit of creditors of Tenant, whether by trust, mortgage, or otherwise, or the execution of a composition agreement with Tenant's creditors;
- (v) petition or other proceeding by or against Tenant for the appointment of a trustee, receiver, guardian, conservator, or liquidator of Tenant, with respect to all or substantially all of Tenant's property and if against Tenant the failure to terminate such petition within sixty (60) days after filing;
- (vi) petition or other proceeding by or against Tenant resulting in the dissolution or termination of existence of Tenant and if against Tenant the failure to terminate such petition within sixty (60) days after filing; or
- (vii) the creation of a lien upon Tenant's leasehold interest under this Lease and the failure to remove such lien within sixty (60) days after Tenant has notice of the creation of such lien.

Immediately upon the occurrence of any event of default or at any time thereafter, unless that event of default has been cured with the written consent of Landlord or expressly waived by Landlord in writing, Landlord may at its option elect either to: (a) continue this Lease in full force and effect notwithstanding the occurrence of such event of default; or (b) terminate this Lease.

If Tenant fails to pay any Rent on or before the seventh (7th) day after any such payment becomes due and payable more than twice during any calendar year during the Term or any Renewal Term, Tenant shall pay to Landlord a late charge of ONE HUNDRED FIFTY-FOUR DOLLARS AND (\$154.00) ZERO CENTS.

The provisions of this section shall be cumulative in nature and nothing contained in this section shall in any manner impair or otherwise affect adversely any right, recourse, or remedy which otherwise would be available to Landlord at law or in equity. Notwithstanding anything in this Lease to the contrary, Landlord shall use commercially reasonable efforts to mitigate damages upon the occurrence of an event of default by Tenant.

§26. RIGHT TO CURE DEFAULTS

(a) **Tenant Default.** If Tenant fails to perform and observe all obligations and conditions to be performed and observed by it under this Lease, then Landlord may, but shall not be obligated to, cause the performance and observance of such obligations or conditions after written notice to Tenant and Tenant's failure to promptly commence to cure such failure or continue such cure with due diligence and in good faith and provided Tenant has not raised a bona fide dispute in connection with such failure, and all reasonable, actual costs and expenses incurred by Landlord in connection therewith and shall thereupon be due and payable immediately from Tenant to Landlord, with interest thereon from the time such costs and expenses were paid by Landlord until Landlord is reimbursed in full by Tenant at a rate equal to five (5) percent per annum.

(b) **Landlord Default.** If Landlord fails to make any necessary repairs to a) the structural components of the Building, b) preserve at least one functioning means of access to the Leased Premises, or c) major systems serving the Leased Premises and such failure continues for thirty (30) days after written notice from Tenant (as such thirty (30)-day period may be extended if it is not reasonably practicable for Landlord to complete such repairs within such period provided further that the provisions of Section 11 shall not extend such period for more than thirty (30) days in the aggregate irrespective of the actual duration of the force majeure event(s)), and provided Landlord has not raised a bona fide dispute in connection with such failure, then Tenant may make such repairs (so long as Landlord has not commenced and diligently pursued such repairs before Tenant). If Tenant makes such repairs, Landlord

shall reimburse Tenant for the actual, reasonable cost of such repairs, including without limitation attorneys' fees, together with interest thereon from the time such costs and expenses were incurred by Tenant until Tenant is reimbursed by Landlord at the rate of five (5) percent per annum. If Landlord fails to reimburse Tenant within thirty (30) days after notice from Tenant, Tenant shall be entitled to offset such amount against Rent becoming due thereafter.

§27. CUMULATIVE RIGHTS AND REMEDIES

Each right or remedy of Landlord under this Lease or now or hereafter available to Landlord by statute, at law, in equity, or otherwise shall be cumulative and concurrent and shall be in addition to every other such right or remedy, and neither the existence, availability, nor exercise of any one or more of such rights or remedies shall preclude or otherwise affect the simultaneous or later exercise by Landlord of any or all such other rights or remedies.

§28. HOLDING OVER

If Tenant retains possession of the Leased Premises or any part thereof after the expiration of the term of this Lease without the consent of Landlord, such holdover shall be deemed a month to month tenancy and Tenant shall pay to Landlord Base Rent in an amount equal to one hundred (100) percent of the monthly Base Rent rate in effect immediately prior to the termination of the Term for the first ninety (90) days Tenant retains possession of the Leased Premises and one hundred five (105) percent of the monthly Base Rent rate in effect immediately prior to the termination of the Term for the remaining time Tenant retains possession of the Leased Premises thereafter. Tenant shall also pay Additional Rent as required under Section 4, above. In the event Tenant pays the holdover monthly rate described above, Tenant shall not be liable to Landlord for consequential damages sustained by reason of Tenant's holding over. The provisions of this section do not exclude Landlord's rights of re-entry or any other right provided under this Lease or available at law or in equity. No such holding over shall be deemed to constitute a renewal or extension of the term hereof; however, all other provisions of this Lease, including the payment of Additional Rent, shall remain in full force and effect.

§29. ASSIGNMENT

Subject to the permitted transfers hereinafter set forth in this paragraph, Tenant shall be able to sublease the Leased Premises in accordance with Section 12 above. A sale or other conveyance of all or substantially all of the assets of Tenant or of a sufficient amount of the ownership in Tenant to constitute a change in control, shall constitute an assignment for purposes of this section. If Tenant desires to transfer or assign any of its rights under this Lease, Tenant shall give to the Landlord thirty (30) days written notice of Tenant's intention to do so, except with respect to assignments or subleases which are permitted hereunder without Landlord's consent. In no event whatsoever, and without limiting Landlord's right to reasonably reject any proposed assignment, shall this Lease be assigned in part without Landlord's prior written consent not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Tenant shall have the right (i) to assign the lease in all or any portion of the Leased Premises without Landlord's approval to a) any organization resulting from a merger or consolidation with Tenant, b) any organization succeeding to substantially all of the business and assets of Tenant, or c) any subsidiary or other entity controlling, controlled by or under common control with Tenant, provided, with respect to the transfer contemplated in c), the financial strength of such entity is comparable to that of Tenant, and (ii) sublease portions of the Leased Premises to vendors or others doing business with Tenant. Landlord will not unreasonably withhold, delay or condition its approval to an assignment to an unrelated party if the financial strength of such unrelated party is satisfactory to Landlord.

If the Leased Premises or any part thereof are sublet or occupied by anybody other than Tenant as permitted above, Landlord may, after default by Tenant, collect rent from the subtenant or occupant, and apply the net amount so collected to the Rent due from Tenant under this Lease, but no such subletting, occupancy or collection shall be deemed a waiver of any of Tenant's covenants contained in this Lease or the acceptance of such subtenant or occupant as Tenant, or a release of Tenant from further performance by Tenant of its covenants under this Lease. Tenant shall remain fully liable for all of its obligations under this Lease unless otherwise agreed to in writing to the contrary by Landlord, provided that Tenant shall be released by Landlord

from its duties and obligations under the Lease in the event of an assignment of the Lease approved by Landlord. Further any such subtenant or occupant shall unconditionally pay to Landlord all such rent in the event Landlord delivers notice to such subtenant, or occupant demanding the payment of rent to be made to Landlord.

Landlord shall have the right to assign or otherwise transfer any or all of its rights under this Lease without Tenant's approval, subject to the terms and notice provisions of the Performance Agreement.

§30. ACCESS AND OTHER RIGHTS OF LANDLORD

Tenant shall permit Landlord, its agents or employees, or any mortgagee of Landlord, to enter the Leased Premises, in such a manner so as to minimize any disruption of Tenant's use of the Leased Premises, at reasonable times after forty-eight (48)-hour prior notice to Tenant and, subject to the right of Tenant to have a representative of Tenant accompany such persons while on the Leased Premises, (a) to examine, inspect or protect the Leased Premises, (b) to make such repairs to the Leased Premises as Landlord is obligated to hereunder or has the right to do pursuant to Section 26(a), (c) to exhibit the Leased Premises to prospective tenants during the last six (6) months of the Term or following the commencement of any action to evict Tenant, and (d) to exhibit the Leased Premises to prospective mortgagees, purchasers and any other interested parties.

In addition to the foregoing, Tenant acknowledges that Landlord shall have the right at any time in the event of an emergency (without prior notice) to enter the Leased Premises to make all inspections, repairs, alterations, additions, and improvements to the Building, including without limitation the Leased Premises, as may be necessary for the safety, protection, or preservation of the Leased Premises or the Building or Landlord's interest therein.

In connection with this section, Tenant acknowledges that Landlord shall have the right to maintain a key (along with any key card or access codes) necessary to access the Leased Premises and that Tenant shall not change the locks or other security access cards or codes to the Leased Premises without providing Landlord with new keys and/or other access cards or codes necessary to enable Landlord such access. Notwithstanding anything herein to the contrary, Landlord shall have no right to keys to Tenant file cabinets or other personal property or to inspect Tenant's file cabinets or other personal property.

§31. FINANCIAL STATEMENTS

"INTENTIONALLY OMITTED"

§32. HAZARDOUS MATERIALS

- (a) For purposes of this Lease: (i) "CERCLA" means The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; (ii) "Hazardous Material" or "Hazardous Materials" means and includes petroleum (including, without limitation, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, oil mixed with wastes and any other petroleum related product), flammable explosives, radioactive materials, any substance defined or designated as a "hazardous substance" under Sections 101(14) and 102 of CERCLA or any other materials defined or designated as hazardous under any federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree; (iii) "Release" shall have the meaning given such term, or any similar term, in Section 101(22) of CERCLA; and (iv) "Environmental Law" or "Environmental Laws" shall mean any "Superfund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be in effect and as amended from time to time, including without limitation, the following (amended or replaced from time to time) and all regulations promulgated thereunder or in connection therewith: CERCLA; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); The Clean Air Act ("CAA"); The Clean Water Act ("CWA"); The Toxic Substances Control Act ("TSCA"); The Solid Waste Disposal Act ("SWDA"), as amended by the Resource

Conservation and Recovery Act ("RCRA"); and the Occupational Safety and Health Act of 1970 ("OSHA").

- (b) Tenant hereby covenants and agrees that (i) no activity shall be undertaken on the Leased Premises, nor shall any activity be undertaken within the Building or on the Real Property, by Tenant or its agents, employees, contractors, or invitees, which would in any event cause (A) the Leased Premises or the Building to become a hazardous waste treatment, storage or disposal facility regulated or subject to regulation under any Environmental Law, (B) a Release of any Hazardous Material into the environment at, on, in, under, above, through, or surrounding the Leased Premises or the Building, or (C) the discharge of pollutants or effluents into any water source or system, which would require a permit under any federal law, state law, local ordinance or any other Environmental Law pertaining to such matters; (ii) Tenant shall at its sole cost and expense comply with, and ensure compliance by its agents, employees, contractors, or invitees with, all applicable Environmental Laws relating to or affecting Tenant's business on the Leased Premises, and Tenant shall keep the Leased Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws arising out of Tenant's use of the Leased Premises, all at Tenant's sole cost and expense; (iii) Tenant will, at Tenant's sole cost and expense, obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with all applicable Environmental Laws which relate to Tenant's business (the "Permits") and Tenant at all times shall remain in full compliance with the terms and provisions of the Permits; (iv) Tenant shall immediately give Landlord oral and written notice in the event that Tenant receives any communication from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Leased Premises or the Building or on the Real Property or otherwise with respect to Tenant's use and occupancy of the Leased Premises or the operation of Tenant's business therein; and (v) Tenant shall, at Tenant's sole cost and expense, conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Leased Premises or on the Real Property to the extent resulting from acts or omissions of Tenant or its agents, employees, contractors and invitees in accordance with all applicable Environmental Laws.
- (c) Tenant hereby indemnifies Landlord and agrees to hold Landlord harmless from and against any and all liens, demands, suits, actions, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Landlord and/or the Leased Premises, the Building for, with respect to, or as a direct or indirect result of: (i) the Release or presence from, in, on, over or under the Leased Premises of any Hazardous Materials regardless of quantity where caused by Tenant or its agents, employees or contractors; (ii) the Release or presence from, in, on, over or under the Building or on the Real Property of any Hazardous Materials regardless of quantity where caused by Tenant or its agents, employees or contractors; (iii) the violation of any Environmental Laws relating to Tenant's business on the Leased Premises; and (iv) the failure by Tenant to comply fully with the terms and provisions of this section, provided that nothing contained in this section shall make Tenant liable or responsible for conditions (i) existing prior to the Commencement Date or first occurring after the expiration of the Term of this Lease except where caused by Tenant or its agents, employees or contractors, or (ii) not caused by Tenant, its agents, employees or contractors. Nothing in this Section 32 shall prohibit the use by Tenant of office supplies which may fall within the definition of Hazardous Materials.
- (d) Landlord hereby indemnifies, agrees to hold Tenant harmless and defend Tenant from and against any and all liens, demands, suits, actions, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including without limitation attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Tenant with respect to, or as a direct or indirect result of: (i) the Release or presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials regardless of quantity to the extent caused by

Landlord or its agents, employees or contractors; and (ii) the violation of any Environmental Laws relating to or affecting the Leased Premises, the Building or the Real Property to the extent caused by Landlord or its agents, employees, or contractors. Landlord represents to Tenant that, to its knowledge after due investigation except as set forth in the "Reports," as hereinafter defined (for purposes of this representation, due investigation shall be limited to Landlord's review of the Reports), there are no Hazardous Materials on the Real Property, and the Building and the Common Areas will not be constructed with any Hazardous Materials in violation of any applicable Environmental Laws. In the event of a breach of the foregoing representations, Landlord shall cure such breach at its sole cost and expense and no cost to Tenant.

- (e) Landlord shall be responsible, at its sole cost and expense, for paying all of the cleanup costs and expenses incurred in complying with an order of a governmental agency or entity with respect to a Release or the presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials or any violation of any Environmental Laws, except to the extent caused by Tenant, its agents, employees, contractors, invitees or anyone else related to Tenant's building operations. Landlord, on behalf of itself and its successors and assigns, hereby waives any and all rights it may have to sue or otherwise make a claim against Tenant under any applicable Environmental Laws, or otherwise, with respect to the costs of any cleanup required by order by a governmental agency or entity of any Release or presence from, in, on, over or under the Leased Premises, the Building or the Real Property of any Hazardous Materials not caused by Tenant or its agents, employees, contractors, invitees or anyone else related to Tenant's building operations.
- (f) The obligations and liabilities of Tenant and Landlord under this section shall survive the expiration of the Term or earlier termination of this Lease.

§33. SIGNAGE

Landlord shall have the right to install and maintain a sign (or signs) on the Real Property identifying the Building, which signage shall be professionally designed and constructed and consistent with quality signage for office buildings in Bastrop, Texas. The name of the Building shall not be the same as or similar to the name of a competitor of Tenant or a disreputable person or entity. No painted signage will be permitted. Landlord shall, at its sole cost and expense, on or before the Commencement Date, provide signage reasonably acceptable to Tenant on the directory of the Building, on or beside the door which enters into the Leased Premises and in elevator lobbies on entire floors occupied by Tenant; subject to reasonable standard signage criteria for the Building and in compliance with all applicable laws and ordinances. Landlord shall have the right to approve the location and type of signage which shall not be unreasonably withheld, conditioned or delayed. The cost for, and installation of, such signs shall be at Tenant's sole cost and expense, or, at Tenant's election, may be funded out of the Allowance. Tenant shall not have the right to maintain any other signs on the Real Property or within the Building without the prior written consent of Landlord (in Landlord's sole discretion). Landlord agrees, so long as Tenant is leasing not less than an entire floor of the Building, not to permit any other company to place a sign on the exterior of the Building.

§34. NOTICES

All notices and other communications required or desired to be given to either party under this Lease shall be in writing and shall be deemed given three (3) days after having been mailed by certified United States mail, postage prepaid (return receipt requested) to that party at the address for that party (or at such other address for such party as shall have specified in a notice to the other party), or one day after having been properly delivered to Federal Express, UPS, or any similar nationally-recognized express delivery service for overnight delivery to that party at that address:

If to Tenant:

BASTROP ECONOMIC DEVELOPMENT CORPORATION
921 Main Street

Bastrop, Texas 78602
ATTN: Executive Director

If to Landlord:

921 BASTROP, LLC.
c/o Stone Development Group, Inc.
3307 Northland Drive, Suite 240
Austin, Texas 78731

§35. SURVIVAL OF OBLIGATIONS

No termination of this Lease and no repossession of the Leased Premises or any part thereof shall relieve Tenant and Landlord of their respective liabilities and obligations accruing hereunder prior to the date of such termination, all of which shall survive such termination or repossession.

§36. MEMORANDUM OF LEASE

This lease shall not be recorded; however, at the request of either Landlord or Tenant, the other party shall execute, acknowledge, and deliver a memorandum of this Lease (which would exclude all economic terms of this Lease) in recordable form for purposes of giving public notice of the rights and obligations of Landlord and Tenant under this Lease.

§37. NON-WAIVER

No failure by Landlord to exercise any option hereunder or to enforce its rights or seek its remedies upon any default, and no acceptance by Landlord of any rent accruing before or after any default, shall affect or constitute a waiver of Landlord's rights to exercise that option, enforce that right, or seek that remedy with respect to that default or any prior or subsequent default.

§38. NO THIRD-PARTY BENEFIT

This lease is intended for the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, their respective successors and assigns, and nothing contained in this Lease shall be construed as creating any rights or benefits in or to any third party.

§39. LITIGATION

"INTENTIONALLY OMITTED"

§40. SEVERABILITY

The intention of the parties to this Lease is to comply fully with all laws governing leases, and this Lease shall be construed consistently with all such laws to the extent possible. If and to the extent that any court of competent jurisdiction is unable to so construe part or all of any provision of this Lease, and holds that part or all of that provision to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

§41. GOVERNING LAW; VENUE

This Lease has been negotiated and executed in the State of Texas and relates to real property located in the State of Texas.

All questions concerning the validity or intention of this Lease shall be resolved under the laws of the State of Texas. The parties to this Lease hereby designate Bastrop County, Texas, as the court of proper jurisdiction

and exclusive venue for any actions or proceedings relating to this Lease; hereby irrevocably consent to such designation, jurisdiction and venue; and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceeding initiated in Bastrop County, Texas.

§42. EXHIBITS

All exhibits attached to this Lease are incorporated herein by reference.

§43. COMPLETE AGREEMENT

This document (with its exhibits, which are hereby incorporated herein by reference) contains the entire Lease between the parties and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes, alterations, modifications, additions, or qualifications to this Lease shall be made or be binding unless made in writing and signed by each of the parties. EXCEPTION: The Performance Agreement supersedes this Lease and its terms control any conflicting terms between the Performance Agreement and this Lease.

§44. COUNTERPARTS

This lease may be executed in several counterparts and each executed counterpart shall be considered an original of this Lease.

§45. GENDERS AND NUMBERS

When the context permits, each pronoun used in this Lease includes pronouns of the same person in other genders or numbers and each noun used in this Lease includes the same noun in different numbers.

§46. TIME OF THE ESSENCE

Time is of the essence for this Lease and the performance of all obligations hereunder by all parties.

§47. CAPTIONS

The captions at the beginnings of the sections of this Lease are not part of the context of this agreement, but are merely labels to assist in locating those sections, and shall have no effect on the interpretation of this Lease.

§48. SUCCESSORS IN INTEREST

Except as otherwise provided in this Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this Lease.

§49. RIGHT OF FIRST OFFER

"INTENTIONALLY OMITTED"

§50. ROOF RIGHTS

"INTENTIONALLY OMITTED"

§51. EXCLUSIVITY

"INTENTIONALLY OMITTED"

§52. BROKERS

"INTENTIONALLY OMITTED"

[Signatures appear on the following page]

Signed and Acknowledged
in the presence of:

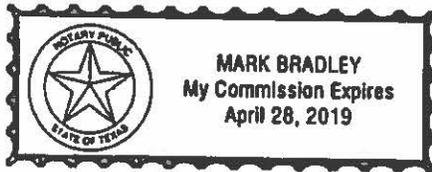
921 BASTROP, LLC.

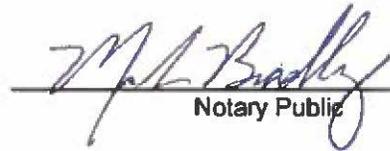
As to Landlord:

By 
Edward E. Dudley, III, Managing Member

STATE OF TEXAS
TRAVIS COUNTY

This document was acknowledged before me on September 25th, 2018, by Edward E. Dudley, III, the managing member of 921 BASTROP, LLC., a Texas Limited Liability Corporation, on behalf of the Company.




Notary Public

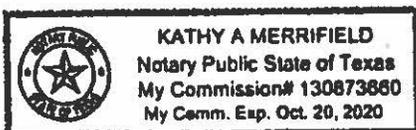
BASTROP ECONOMIC DEVELOPMENT
CORPORATION

As to Tenant:

By 
Mike Kamerlander, Executive Director

STATE OF TEXAS
BASTROP COUNTY

This document was acknowledged before me on September 27th, 2018, by Mike Kamerlander the Executive Director of BASTROP ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation, on behalf of said agency.




Notary Public

This lease was prepared by:
The 921 BASTROP, LLC., 3307 Northland Drive, Suite 240, Austin, Texas 78731

EXHIBITS

Exhibit A	Description of Leased Premises
Exhibit B	Building Rules and Regulations
Exhibit C	Sublease Agreement

EXHIBIT A
Description of Leased Premises

EXHIBIT B
Building Rules and Regulations

The sidewalks, entrances, passages, corridors, vestibules, halls, elevators or stairways in or about the Building shall not be obstructed by Tenant.

Tenant shall not place objects against glass partitions, doors or windows which would be unsightly from the Building corridor or from the exterior of the Building. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or fixed by Tenant on any window or part of the outside or inside of the Buildings without prior consent of Landlord.

Tenant shall not place a load upon any floor of the Building exceeding the lesser of the floor load which such floor was designed to carry or that allowed by law.

Tenant shall not waste electricity or water in the Building and shall cooperate fully with Landlord to assure the most effective operation of the Building HVAC system. All regulating and adjusting of HVAC equipment shall be done by the Landlord's agents or employees.

No additional or different locks or bolts shall be affixed on doors by Tenant. Tenant shall return all keys to Landlord upon termination of Tenant's lease. Tenant shall not allow peddlers, solicitors or beggars in the Building and shall report such persons to the Landlord.

Tenant shall not use the Premises so as to cause any increase above normal insurance premiums on the Building.

No bicycles, vehicles or animals of any kind shall be brought into or kept in or about the Premises. No space in the Building shall be used for manufacturing or for the sale of merchandise of any kind at auction or for storage thereof preliminary to such sale unless expressly authorized by Landlord in writing.

Tenant shall not engage or pay any employees of the Building without approval from the Landlord. Tenant shall not employ any persons other than the janitor or employees of Landlord for the purpose of cleaning Premises without the prior written consent of Landlord.

All removals from the Building or the carrying in or out of the Building or the Premises of any freight, furniture or bulky matter of any description must take place at such time and in such manner as Landlord may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of the rules and regulations or provisions of Tenant's lease.

Normal Building Operating Hours are 7:00 a.m. to 6:00 p.m. Mondays through Fridays and 8 a.m. to 12 p.m. on Saturdays excluding New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day (and the applicable weekday when any such day occurs on a weekend day) and all other federal, state, county or municipal holidays and all Sundays. Any day (other than a Saturday) on which Normal Building Operating Hours shall occur shall be a "Business Day". Outside of Normal Building Operating Hours, Landlord reserves the right to exclude from the Building all persons connected with or calling upon Tenant who do not present a pass to the Building signed by Tenant. Landlord will furnish passes to persons designated by Tenant and Tenant shall be responsible to Landlord for all acts of such persons.

Tenant shall cooperate with Landlord in minimizing loss and risk thereof from fire and associated perils.

Tenant shall, at Tenant's expense, provide artificial light and electric current for the Landlord and/or its contractors, agents and employees during the making of repairs, alterations, additions or improvements in or to the Leased Premises.

The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed and constructed and no sweepings, rubbish, rags, acid or like substance shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant.

Tenant may request HVAC service outside of Normal Building Operating Hours by submitting a request in writing to the Landlord by noon of the preceding workday. Landlord reserves the right to adjust the cost of providing after-hours air service to the tenants of the Building from time to time.

Landlord reserves the right to establish, modify and enforce parking rules and regulations.

All refuse from the Premises shall be disposed of in accordance with the requirements established therefore by Landlord and no dumpster shall be overloaded by Tenant.

Landlord reserves the right at any time to rescind, alter or waive any rule or regulation at any time prescribed for the Building and to impose additional rules and regulations when in its judgment Landlord deems it necessary, desirable or proper for its best interest and for the best interest of tenants and other occupants and invitees thereof. No alteration or waiver of any rule or regulation in favor of one Tenant shall operate as an alteration or waiver in favor of any other Tenant. Landlord shall not be responsible to any Tenant for the non-observance or violation by any other Tenant however resulting of any rules or regulations at any time prescribed for the Building.

EXHIBIT C
Sublease Agreement

History of 921 Main Street Project

The lot located at 921 Main Street has been empty since a fire destroyed the building in 2003. The City of Bastrop purchased the property in 2009 to gain control of the parking lot behind it. The site was used as a public space until progressive deterioration of the rear wall and the discovery of site drainage issues negatively affecting the structures on both sides of the lot prompted the City to rescind the use contract and bar access.

The walls of each of the neighboring buildings have been exposed to the elements for 15 years, interior walls which were never intended to be subjected to Texas weather. In June 2016, due to water damage sustained by the buildings on each side, the Bastrop EDC Board approved purchasing the lot in order to remediate the damage and determine its future use.

The City of Bastrop and EDC entered into an agreement on February 6, 2017, to transfer the property (the slab only, not the parking lot) to the EDC. Since that time, the EDC has completed studies and assessments and conducted public input sessions to determine the best use of the property. These included an assessment from KSA Engineers and a Town Square Initiative Study done by the Texas Historical Commission. Although there was public support for it to be used as a public meeting space, none of the studies suggested that. (These studies can be downloaded from the EDC's website: bastropedc.org/current-projects.)

Per direction of the BEDC Board, the EDC issued an RFQ for redevelopment of the lot in April 2017. There were two responses received. Stone Cobalt was selected and the EDC Board entered into a letter of intent (LOI) with them in October 2017 to market the project as a public-private partnership. (The Board later approved an extension of the original LOI to April 20, 2018, and another extension to December 31, 2018.)

At the June 2018 EDC board meeting, Stone Cobalt announced they had a possible tenant; if they could start on the building soon, it could be completed by April 2019. The EDC signed an LOI with Stone Cobalt (dba 921 Bastrop, LLC) on June 20th, specifying \$22.50/sq ft NNN for approximately 4,500 sq ft, plus \$6/sq ft for operating expenses, for the first five years; \$24/sq ft for the second five years, and a renewal option for an additional five years at \$25.50/sq ft.

Since that time, the Board has reviewed and approved a lease agreement and performance agreement with 921 Bastrop, LLC, which has now been agreed to by the developer. The EDC is now requesting approval by the Bastrop City Council.



STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 9D

TITLE:

Consider action to approve Resolution No. R-2018-104 of the City Council of the City of Bastrop, Texas confirming a board appointment of the Mayor, as required in Section 3.08 of the City's Charter; and establishing an effective date.

STAFF REPRESENTATIVE:

Lynda K. Humble, 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.

POLICY EXPLANATION:

Mayor Connie Schroeder has reviewed all applications and has reappointed Andrea Haschke to Place 4 of the Bastrop Arts in Public Places Board.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve Resolution No. R-2018-104 of the City Council of the City of Bastrop, Texas confirming a board appointment of the Mayor, as required in Section 3.08 of the City's Charter; and establishing an effective date.

ATTACHMENT:

- Resolution

RESOLUTION NO. R-2018-104

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS
CONFIRMING A BOARD AND COMMISSION APPOINTMENT OF THE MAYOR,
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 Connie Schroeder has reappointed Andrea Haschke to Place 4 on the Bastrop Arts in Public Places Board; and

WHEREAS, City Council must confirm this appointment 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 Connie Schroeder has reappointed Andrea Haschke to Place 4 on the Bastrop Arts in Public Places Board.

Section 2: That the City Council of the City of Bastrop confirms Mayor Schroeder's appointment of Andrea Haschke to Place 4 on the Bastrop Arts in Public Places 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 9th day of October, 2018.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: October 9, 2018

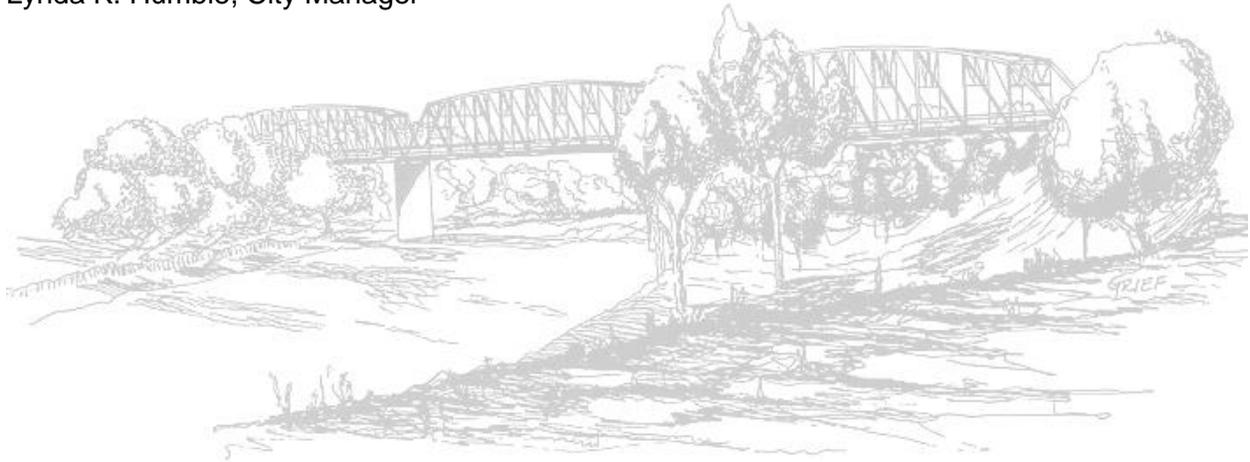
AGENDA ITEM: 10A

TITLE:

City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to confer with City Attorney regarding legal advice related to the status of the 1445 Interlocal Agreement between the City of Bastrop and Bastrop County for the review of subdivision applications in the City's extraterritorial jurisdiction.

STAFF REPRESENTATIVE:

Lynda K. Humble, City Manager





STAFF REPORT

MEETING DATE: October 9, 2018

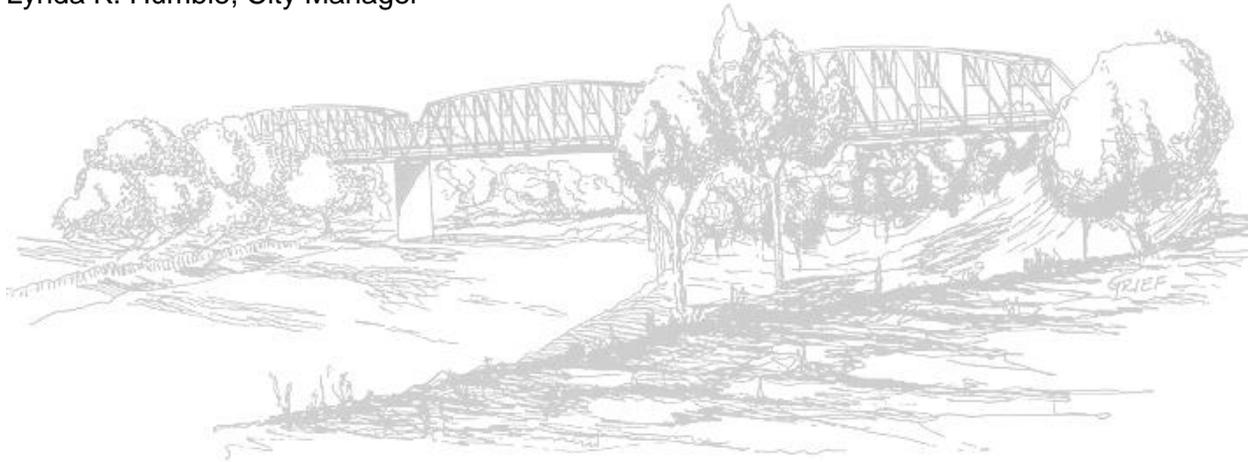
AGENDA ITEM: 10B

TITLE:

City Council shall convene into closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property and Texas Government Code Sec. 551.071 to consult with legal counsel on a matter within the attorney-client privilege, specifically, the acquisition of groundwater rights.

STAFF REPRESENTATIVE:

Lynda K. Humble, City Manager





STAFF REPORT

MEETING DATE: October 9, 2018

AGENDA ITEM: 11

TITLE:

Take any necessary or appropriate action on matters posted for consideration in closed/executive session

STAFF REPRESENTATIVE:

Lynda Humble, City Manager

