

Deleted: 6.

SECOND AMENDMENT TO THE DEVELOPMENT AND ANNEXATION AGREEMENT

Commented [AB1]: This version (Draft "B") was prepared in response to feedback from the Owner's team

This Second Amendment to the Development and Annexation Agreement (this "Second Amendment") is made and entered into by and between the City of Bastrop, a Texas home-rule municipal corporation (the "City"), and Bastrop Colorado Bend, LLC, a Texas limited liability company ("Owner"). The City and the Owner are sometimes referred to herein collectively as the "Parties" or individually as a "Party." The Parties hereby contract, covenant and agree as follows.

Deleted: (the "Effective Date")

RECITALS

WHEREAS, the City and Owner entered into that certain Development and Annexation Agreement (the "Agreement") on or about June 22, 2021 regarding development and annexation of certain property described in the Agreement adopted by City Resolution No. R-2021-57; and

WHEREAS, the City and Owner agreed to the First Amendment to the Development and Annexation Agreement (the "First Amendment") on or about July 12, 2022, approved by City Resolution No. R-2022-56; and

WHEREAS, the City and Owner desire to modify the Agreement as revised by the First Amendment to account for changes in circumstances and to provide additional clarification of the Parties' respective responsibilities; and

WHEREAS, Section 12.02 of the Agreement allows for an amendment to the Agreement provided that the written amendment is approved by the City Council of the City and executed by the Parties.

NOW, THEREFORE, in exchange for the mutual promises and consideration herein expressed, other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and subject to the terms and conditions of this Second Amendment, the Parties agree to modify the Agreement as *previously revised* by the First Amendment as follows:

A. Concept Plan. Exhibit "B" to the Agreement is hereby deleted and replaced by a new Exhibit "B" attached to this Second Amendment as "Attachment One".

B. Section 3.04 of the Agreement is hereby amended to read as follows:

Initial Structures. Notwithstanding the foregoing, City acknowledges that Owner intends to build a metal building of up to 40,000 square feet and a barn with stables, a 2,500-3,000 square-foot private residence for Owner's use along with accompanying OSSF and water well improvements, and two (2) one acre (1-acre) Backlots (as defined in Section 4.05(c)) (collectively referred to herein as the "Initial Improvements") for purposes of storage,

property management and maintenance, the existing farm/ranch operation, residential (private), and Backlots for temporary props and sets. Owner intends to continue farm and ranch activities on the Property until such time as the Project is fully built out. Provided that the Initial Improvements are related to such provided purposes, some or all of the Initial Improvements may be constructed on the Property through the appropriate permit process and will not require an approved site plan or be considered Development Commencement triggering the annexation provisions of Section 3.01. The Initial Improvements shall only require those City approvals, if any, that are otherwise normally required for projects on land located within the ETJ. Following annexation, any permits required by the City for the two Backlots shall be waived as long as a permit application has been submitted with Bastrop County and is actively in review prior to approval of annexation, and Owner demonstrates appropriate drainage, fire flow, and accounts for impervious cover. The installation or erection of Temporary Structures (as defined below) on the Backlots (regardless of the status of a site plan including the Backlots) shall be constructed, assembled, installed, disassembled, and removed with an expedited temporary permit issued by the City as provided in Section 4.05(b). Notwithstanding the foregoing, if construction of the first phase of the Project is not initiated by December 1, 2023, the Backlots constructed as Initial Improvements must terminate any use of the Backlots related to filming until the public improvements related to traffic are complete as described in Section 4.12, or at such time the City determines the traffic improvements are sufficient to manage the traffic generated by the Project.

C. Section 4.03(b) of the Agreement is hereby amended to read as follows:

The Concept Plan hereby approved by the City is also approved for use as an exhibit for the Zoning Concept Scheme required by the City Code. To complete the zoning application to be submitted to the City for final zoning of the Property upon annexation, the Zoning Concept Scheme shall include details regarding the public frontage plan along Lovers Lane ("Public Frontage Plan"). When determining the base standards, the Public Frontage Plan shall align with the intent of the City Code and B3 Technical Manual Standards and include the proposed privacy fencing to be constructed adjacent to Lover's Lane as shown on **Exhibit "B"**. The Public Frontage Plan, in detailing the privacy fencing along Lover's Lane, shall describe the extent that native stone materials, street lighting, and landscaping will be incorporated into the design. Until such time as Segment 2 is constructed, Owner shall erect an eight to ten foot (10') "game-fence" or similar fencing along the boundary of the Property within the future location of Segment 2. Owner agrees to remove, at Owner's sole expense, the fencing from the dedicated right of way for Segment 2 immediately following notice from the City of the intent to initiate construction of Segment 2.

Deleted: Installation of the frontage improvements identified in the Public Frontage Plan are not required until such time as the public roadway adjacent to such portion of the Public Frontage Plan is fully constructed. Specifically, public improvements identified in any approved Public Frontage Plan along Segment 2 (as defined below) are not required to be constructed until or unless Segment 2 is built.

D. Section 4.08 of the Agreement is hereby amended to read as follows:

Plat Approvals. Approval of a final plat and site plans shall be deemed to also be an update of the Concept Plan. Final Plats shall only be approved if they are consistent with this Agreement and meet the Applicable Regulations.

E. Section 4.12(b)(i) of the Agreement is hereby amended to read as follows:

Perimeter Roadway. Owner shall dedicate, by final plat, (i) a fifty-five and half (55.5) foot wide public right of way along the boundary of the Property ("**Perimeter Roadway**") in accordance with the City's Transportation Plan at the time of final plat and (ii) the width of right of way necessary to total forty (40) feet from the center line of Lovers Lane along Lovers Lane adjacent to the Property, as depicted in **Exhibit "G"** (collectively, "**Dedicated ROW**"). City agrees to pursue necessary approvals, including those that might be required from other interested state agencies, for removal of the Perimeter Roadway from the City's Master Transportation Plan. If the Perimeter Roadway is removed from the Master Transportation Plan prior to final plat, Owner is released from any obligation for right of way dedication for the Perimeter Roadway. If the Perimeter Roadway is removed from the Master Transportation Plan any time after final plat, the City shall vacate the right of way dedication and reconvey that property to the Owner.

The only required access points for the Project shall be on Lovers Lane as shown on the Concept Plan. The minimum setback for any gated entrances or affiliated guard shacks shall be one hundred fifty feet (150') from the public right of way to allow vehicular queuing. Access is not required from Margies Way or El Camino Real River Road.

F. Section 4.12(b)(ii) of the Agreement is hereby amended to read as follows:

South Street Monetary Obligation. The Owner shall make a fee-in-lieu payment toward the cost of constructing a new bridge across the railroad tracks in order to connect Lovers Lane to Martin Luther King Jr Street and Technology Drive by way of South Street ("**South Street Improvements**") to the City Transportation Fund. The fee-in-lieu payment shall be in an amount equal to the Owner's roughly proportional traffic impact on the South Street Improvements as determined at the time of construction of the South Street Improvements ("**South Street Monetary Obligation**").

G. Section 4.12(b)(iii) of the Agreement is hereby amended to read as follows:

Traffic Mitigation. The City and Owner agree that the Dedicated ROW and the South Street Monetary Obligation (collectively, "Traffic Mitigation") shall satisfy all rough proportionality requirements under City Code for Owner's traffic mitigation or new transportation improvements that are required to accommodate the additional traffic demands created by the Project as proposed herein and in the TIA under full buildout. No additional payments or traffic improvements will be required of Owner by the City as long as there is no increase in intensity or density of the proposed Project and the Project is constructed in accordance with an approved site plan that aligns with this Agreement and the TIA.

H. Section 4.12(d) of the Agreement is hereby amended to read as follows:

Transportation Master Plan. Concurrently with consideration of the Annexation Petition by the City Council, the City will approve an amendment to the City Transportation Master Plan. The amendment is reflective of roadways depicted on the Concept Plan and

Deleted: ¶

¶ Owner shall remit to the City as a fee-in-lieu the Owner's proportionate share of the costs of designing and constructing the northern portion of the Perimeter Roadway running from Lovers Lane parallel to Margies Way as a Local Collector; Rural Street (such portion being shown on Exhibit "G" as "**Segment 1**"). Owner shall pay Owner's Segment 1 Monetary Obligation within fifteen (15) years of the City's approval of the final plat unless prior to construction the roadway is removed from the City's Master Transportation Plan, which would relieve Owner of the obligation to construct the roadway and provide a basis for the City to vacate the right of way dedicated by the Owner for the right of way and reconvey it to the Owner. ¶

¶ Owner shall pay fee-in-lieu in the amount of \$250,000 to the City Transportation Fund ("**Segment 2 Monetary Obligation**") for construction of two lanes of the southern portion of the Perimeter Roadway running from Margies Way to El Camino River Road (such portion being shown on Exhibit "G" as "**Segment 2**"), which is an amount roughly proportional to the ten percent (10%) of traffic impact identified in the Traffic Impact Analysis by BGE, Inc. dated February 2022 ("**TIA**"). The Segment 2 Monetary Obligation shall be re-calculated at the time Segment 2 is constructed to accurately determine the roughly proportional obligation of Owner at ten percent (10%) of two lanes of Segment 2 as a multi-modal arterial; however, in no event shall the Segment 2 Monetary Obligation exceed \$350,000. The re-calculation may only occur once, and Owner shall be obligated to pay any additional Segment 2 Monetary Obligation to the City Transportation Fund immediately following notification from the City of an increase in the amount. Owners shall remit to the City payment of the Segment 2 Monetary Obligation within fifteen (15) years of the City's approval of the final plat unless prior to construction the roadway is removed from the City's Master Transportation Plan, which would relieve Owner of the obligation to construct the roadway and provide a basis for the City to vacate the right of way dedicated by the Owner for the right of way and reconvey it to the Owner. The specific terms, conditions, and other provisions related to timing of the payments shall be negotiated by the Parties and executed as a separate infrastructure agreement. Notwithstanding the forgoing, the Segment 2 Monetary Obligation shall not include any costs associated with a bridge over the Colorado River or any roadway or other infrastructure associated with such bridge, provided that that the project developed on the Property is substantially similar to that depicted on the Concept Plan.

Deleted: Primary access

Deleted: The Owner's monetary obligation to fund public improvements for South Street is contingent on negotiation and execution of a separate, related agreement with the Bastrop Economic Development Corporation, as may approved by the City Council.

Deleted: provisions in this Agreement and subsequent ancillary agreements mentioned herein regarding Segment 1, the Segment 2 Monetary Obligation,

Deleted: Notwithstanding the foregoing, the Traffic Mitigation shall not include any obligations or costs associated with a bridge over the Colorado River or any roadway or other infrastructure associated with such bridge, unless future development within the Project generates additional impact on the City's transportation network....

Deleted: 6.

specifically includes provisions that (1) the proposed bridge across the Colorado River on the west side of the Property be relocated to outside the boundaries of the Property, and (2) the roadway grids shown with the Property shall be eliminated in favor of private internal roadway network as provided by this Agreement. The internal roadways cannot be used to subdivide the property into smaller parcels without public street access or a Major Amendment to the Agreement.

Deleted: ;

I. Section 6.02 of the Agreement is hereby amended to read as follows:

Reimbursable Costs. In the event the City requires Owner to construct Oversized Project Facilities, Owner shall be entitled to dollar-for-dollar reimbursement of all costs associated with the design, contract negotiation, installation, construction, and other associated expenses of the Oversized Project Facilities (not only limited to the specifications beyond that required to serve the Project), as provided in a mutually agreeable agreement providing for such reimbursement which will be negotiated by the parties at a later date. Reimbursement by the City shall be its proportional share, based on living unit equivalents (LUEs), of the Oversized Project Facilities. Specifically, for a twelve (12") water main ("Oversized Water Main"), the proposed service capacity of the Oversized Water Main is seventeen hundred eighty-three (1,783) LUE's (2,450 gpm total system capacity). Owner will only require approximately three hundred (300) LUEs of water capacity (450 gpm required system capacity) to serve the Project. Based on these values, the City would be responsible for one thousand four hundred and eight-three (1,483) LUEs of water capacity. Therefore, the City's proportionate share of the entirety of the Oversized Water Main (not only the differential of varying line sizes) shall be 83.2% of the actual costs associated with the construction of the entirety Oversized Water Main. Owner shall not receive or be entitled to receive any waivers or reimbursements from the City for any of the costs attributable to any portion of the Project Facilities that are not constructed in accordance with this Agreement, or that are not installed and constructed by Owner.

Deleted: Owner shall contract for, fund and pay for the design, contract negotiation, installation and construction of the Project Facilities ("Reimbursable Costs") and shall be entitled to reimbursement of one hundred percent (100%) of the Reimbursable Costs pursuant to an Incentives Agreement with the City or Bastrop Economic Development Corporation.

Deleted: for the City's portion of

Deleted: beyond

J. Section 7.01 of the Agreement is hereby amended to add subsections (f) and (g) to read as follows:

Additional City Agreements. The City hereby agrees: ...

(f) To engage and utilize the services of third-party plan reviewers and inspectors on an expedited basis to process and administer permit applications submitted by the Owner in accordance with this Agreement.

(g) To compile all review comments to Owner in a Master Report that is provided to Owner within twenty-one (21) days of Owner's submittal of an application that is administratively complete.

K. Section 7.02(c) of the Agreement is hereby amended to read as follows:

Additional Owner Agreements. Owner hereby agrees: ...

The City's fees and charges currently provided for in the Applicable Regulations may be amended by the City from time to time, and Owner, its grantees, successors and assigns, shall pay to the City such fees and charges, as amended, for or with respect to the development of the Property, including, but not limited to, subdivision application fees, building permit fees, and water and wastewater impact, tap and use fees, except as may be otherwise provided in this Agreement. The City's fees and charges that apply to the above shall be those in effect at the time the application is submitted to the City.

L. General Provisions.

1. **Interpretation of this Second Amendment.** This Second Amendment supersedes all prior agreements and understandings (oral and written) between the Parties with respect to the subject matter hereof to the extent in conflict therewith. The provisions of this Second Amendment, including, without limitation, all exhibits attached to this Second Amendment, are hereby incorporated into and made a part of the Agreement. As modified in this Amendment, the terms and conditions of the Agreement shall continue in full force and effect.
2. **Counterparts.** This Second Amendment may be executed simultaneously in one or more counterparts (including, without limitation, counterparts transmitted by facsimile or other electronic means (e.g., .PDF via email)), each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
3. **Severability.** The provisions of this Second Amendment and the Agreement, as amended, are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Second Amendment and the Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Second Amendment and the Agreement to other persons or circumstances shall be not be affected thereby.
4. **Effective Date.** The Effective Date of this Second Amendment is the date upon which it is finally executed by the Parties.

[Signature pages follow]

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

CITY:

City of Bastrop, Texas
a Texas home-rule municipal corporation

by: _____
Sylvia Carrillo, City Manager

THE STATE OF TEXAS

§
§
§

COUNTY OF BASTROP

This instrument was acknowledged before me on this, the ____ day of _____, 2023, by *Sylvia Carrillo*, City Manager of the City of Bastrop, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

OWNER:

BASTROP COLORADO BEND, LLC,
a Texas limited liability company

by: _____
Alton Butler, Manager

THE STATE OF CALIFORNIA §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this, the ____ day of _____ 2023,
by **Alton Butler**, Manager of Bastrop Colorado Bend, LLC, a Texas limited liability company, on
behalf of said limited liability company for the purposes set forth herein.

(SEAL)

Notary Public, **State of California**

DRAFT