

AGREEMENT FOR SUBDIVISION PLAT REGULATION IN THE CITY OF BASTROP'S ETJ IN BASTROP COUNTY

PREAMBLE & RECITALS

THIS AGREEMENT for Subdivision Plat Regulation in the City of Bastrop's ETJ in Bastrop County ("Agreement"), is by and between **Bastrop County**, Texas ("County"), a duly organized and operating county of the State of Texas, and the **City of Bastrop**, Texas ("City"), a duly organized Home-Rule municipality of the State of Texas. The County and City may be referred to jointly as "Parties" and individually as a "Party".

WHEREAS, the City has properly identified its incorporated municipal boundary ("City Limits") and its Extraterritorial Jurisdiction ("ETJ") within the County; and

WHEREAS, the County has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 232; and

WHEREAS, the City has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 212; and

WHEREAS, the Parties are governmental entities authorized to enter into an interlocal cooperation agreement pursuant to Texas Government Code Chapter 791 ("Chapter 791"); and

WHEREAS, Texas Local Government Code Chapter 242 ("Chapter 242", commonly referred to as *House Bill 1445*) mandates that a municipality and a county enter into an agreement providing for the regulation of the subdivision of land and approving of related permits in the ETJ; and

WHEREAS, pursuant Chapter 242, the City and the County may apportion the area within the ETJ each entity may regulate subdivision plats and approve related permits; and

WHEREAS, the Parties intend implementation of this Agreement to ensure fair, reasonable, effective, and efficient administration of development regulations and procedures related to subdivision plats and infrastructure, which the Parties agree are worthwhile and important public objectives that will be accomplished through this Agreement; and

WHEREAS, the Parties concur that this Agreement is reasonable, prudent, and necessary for the public health, safety, and general welfare, and provide for safe, orderly, and responsible development.

NOW, THEREFORE, in consideration of the representations, obligations, promises, warranties, and conditions of this Agreement, and the consideration herein described, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

TERMS & CONDITIONS

1. INTRODUCTION

1.1 Definitions

City Limits: The "City Limits" shall mean the incorporated municipal boundary.

City's Area: The "City's Area" shall mean the following:

- (a) Statutory ETJ; or
- (b) Area of the Voluntary ETJ covered by a Development Agreement in which the City is a party; or
- (c) Area of the Voluntary ETJ in which the City holds a Certificate of Convenience and Necessity ("CCN") for Water or Wastewater service; or
- (d) Area of the Voluntary ETJ in which the City is a party to a Wholesale agreement for Water or Wastewater service (e.g., with a MUD, WCID, Aqua, Corix, etc.); or

Area of the Voluntary ETJ within three hundred feet (300') of a City utility connection. Or in accordance with Chapter 13 Sec 13.04.008- Development of organized disposal systems latest approved version.

County's Area: The "County's Area" shall mean the remainder of the City's ETJ that is not encompassed by the "City's Area".

Developer: A "Developer" shall mean the owner of real property for which subdivision plats or related permits are sought in the City's ETJ. The term shall also include any agent, prospective buyer, or builder acting on behalf of the owner or the real property pursuant to a lawful Power of Attorney filed with the City.

Development Agreement: A "Development Agreement" shall mean a contract authorized under Texas Local Government Code Chapter 43 and/or 212.

Extraterritorial Jurisdiction (ETJ): The ETJ shall mean the unincorporated area that is contiguous to the City Limits of the City in which the City has certain regulatory authority, including the regulation of subdivision plats.

- (a) **Statutory ETJ:** The City's ETJ determined by Texas Local Government Code Chapter 42 ("Statutory ETJ"), that is located within one mile of the City Limits, as shown on the attached Exhibit "A" ("ETJ Map").

- (b) **Voluntary ETJ:** The unincorporated areas of the County outside of the City's Statutory ETJ that have been designated by the City as ETJ upon request of the property owners ("Voluntary ETJ").

- 1.2 **Purpose.** It is the general objective of the Parties to detail their roles and responsibilities and to identify the applicable regulations that will be applied by each,

to all subdivisions that are developed in the City's ETJ. The purpose of this Agreement is to ensure consistent regulation, clarity of applicability, and governmental responsibility and oversight of landowners and developers in the City's ETJ regarding the platting of subdivisions and the approval of related permits. This Agreement is intended to promote the public health, safety, and general welfare, and provide for safe, orderly, and responsible development.

1.3 Public Benefits. In addition to providing for the orderly and healthful layout and development of land, this Agreement fosters the responsible planning and construction of vital infrastructure, including drainage, recreation, transportation, and utility improvements.

1.4 Applicability. This Agreement shall apply to the unincorporated land located in Bastrop County, Texas, that is within the City's ETJ, as now existing or hereafter expanded or diminished as allowed by law. In the event that the City's ETJ changes during the term of the Agreement, the City will promptly notify the County of such change providing documentation related to same.

2. IN CITY'S AREA

2.1. Assignment, Delegation & Acknowledgment. The County hereby assigns, delegates, and acknowledges that the City has exclusive regulatory authority and responsibility to administer subdivision plats and related authorizations for land in the City's Area, except as provided by this Agreement.

2.2. Standards. The City shall be responsible for performing its standard review for acceptance and approval of subdivision plat applications and related plat documentation pursuant to applicable state, federal and City regulations set forth in the Bastrop Code of Ordinances, as amended, except as specifically otherwise noted herein. All required documents for a plat application and related plat approval for subdivisions shall be filed with the City, unless exempted from filing by the proper application of a federal or state statute, or authorized local regulation.

2.3. Infrastructure. For all subdivisions that will be annexed into the City, the City shall require Owners to comply with the City's public road, drainage and other public infrastructure development standards and subdivision standards and requirements. For all subdivisions that not scheduled to be annexed into the City, the City shall require Developers to comply with the City's public road, drainage and other public infrastructure development standards and subdivision standards and requirements.

2.4. Maintenance. When the City's ordinances or regulations require a Developer to dedicate, construct, install, or improve public road, drainage, or other public infrastructure (including but not limited to lighting, signage, traffic lights, sidewalks, parking areas, storm sewers or other drainage infrastructure), and when the subdivision infrastructure will require future maintenance by a governmental entity after acceptance, the City shall require an expressly worded 'plat note' to be shown

on the final, approved plat documentation stating that all public infrastructure shall be maintained by the Developer, until such time that it is accepted, if at all, by a governmental entity for maintenance. The City shall provide for the administration of all required forms of fiscal security (e.g., fees, certificates of deposit, letters of credit, warranty or bonds, etc.) for infrastructure covered by this Agreement.

- 2.5. Address for Submittals.** Developers shall submit all subdivision applications and construction plans subdivisions and plats for land in the City's Area to the City of Bastrop's Department of Planning and Development, at 1311 Chestnut Street, Bastrop, Texas 78602, for review and processing by the City.
- 2.6. Copies to County.** The City shall deliver a courtesy copy of same to the County, complete with copies of all attached or related documents within 10 calendar days of its receipt of a subdivision plat application or related permit.
- 2.7. County Comments.** The City shall include any written recommendations or comments received from the County in the agenda backup materials and administrative record for plat or related permit approvals.
- 2.8. Notice of City Action.** The City shall deliver written notice of the action to the County, complete with copies of all documents which memorialize that action within 10 calendar days from its action on a subdivision plat application or related permit.
- 2.9. Application Fees.** The City shall provide for the administration of all required fees and deposits from the Developer, and the remittance of the County's funds to the County as applicable. Applicable fees shall be in accordance with the City and County's most recently approved fee schedules.
- 2.10. Inspections.** The City shall be responsible for scheduling all inspections on the subdivision construction, retaining all inspection fees paid by the Developer related to the subdivision, and providing the County with copies of inspection reports. These inspections include those performed by the County for infrastructure intended for public dedication to the County. The City shall allow County inspectors access to constructions sites as necessary.
- 2.11. Administration of Ancillary Agreements.** The City shall provide for the administration and completion of any required subdivision construction agreement, phasing agreement and other planning and construction issues.
- 2.12. Fiscal Assurances.**
- 2.12.1. Fiscal Security Deposits.** The City shall be responsible for any requisite fiscal security deposits made by developers and for holding any applicable escrow fees deposited by developers for same, for the joint benefit of the Parties, as applicable.

2.12.2. Performance Bonding & Assurance. Unless otherwise approved as an exception to the City's standard fiscal assurance process, the City shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall post fiscal assurance in a form and amount approved by the City, to assure final and complete construction of all required subdivision infrastructure. As appropriate and applicable, such fiscal assurance shall conform to the standards of the City's subdivision regulations.

2.12.3. Infrastructure Warranty & Maintenance Guaranty. The City shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall provide to the City a post-inspection/post-acceptance infrastructure warranty and maintenance guarantees, made to the City and County as co-beneficiaries, as set forth in the City's Code of Ordinances. As appropriate and applicable, such fiscal assurance shall conform to the standards of the City's subdivision regulations.

3. IN THE COUNTY'S AREA

3.1. Assignment, Delegation & Acknowledgment. The City hereby assigns, delegates, and acknowledges that the County has exclusive regulatory authority and responsibility to administer subdivision plats and related authorizations for land in the County's Area, except as provided by this Agreement.

3.2. Standards. The County shall be responsible for performing its standard review for acceptance and approval of subdivision plat applications and related plat documentation pursuant to applicable state, federal and County regulations, as amended, except as specifically otherwise noted herein. All required documents for a plat application and related plat approval for subdivisions shall be filed with the County, unless exempted from filing by the proper application of a federal or state statute, or authorized local regulation.

3.3. Infrastructure. The County shall require Owners to comply with the County's public road, drainage and other public infrastructure development standards and subdivision standards and requirements. The County shall require Developers to comply with the County's public road, drainage and other public infrastructure development standards and subdivision standards and requirements.

3.4. Maintenance. When the Counties orders or regulations require a Developer to dedicate, construct, install, or improve public road, drainage, or other public infrastructure (including but not limited to lighting, signage, traffic lights, sidewalks, parking areas, storm sewers or other drainage infrastructure), and when the subdivision infrastructure will require future maintenance by a governmental entity after acceptance, the County shall require an expressly worded 'plat note' to be shown on the final, approved plat documentation stating that all public infrastructure

shall be maintained by the Developer, until such time that it is accepted, if at all, by a governmental entity for maintenance. The County shall provide for the administration of all required forms of fiscal security (e.g., fees, certificates of deposit, letters of credit, warranty or bonds, etc.) for infrastructure covered by this Agreement.

3.5. Address for Submittals. Developers shall submit all subdivision applications and construction plans subdivisions and plats for land in the County's Area to the Bastrop County Engineer, 211 Jackson Street, Bastrop, Texas 78602, for review and processing by the City.

3.6. Copies to City. The County shall deliver a courtesy copy of same to the City, complete with copies of all attached or related documents within 10 calendar days of its receipt of a subdivision plat application or related permit.

3.7. City Comments. The County shall include any written recommendations or comments received from the City in the agenda backup materials and administrative record for plat or related permit approvals.

3.8. Notice of County Action. The County shall deliver written notice of the action to the City, complete with copies of all documents which memorialize that action within 10 calendar days from its action on a subdivision plat application or related permit.

3.9. Application Fees. The County shall provide for the administration of all required fees and deposits from the Developer, and the remittance of the City's funds to the City as applicable. Applicable fees shall be in accordance with the County and City's most recently approved fee schedules.

3.10. Inspections. The County shall be responsible for scheduling all inspections on the subdivision construction, retaining all inspection fees paid by the Developer related to the subdivision, and providing the County with copies of inspection reports. These inspections include those performed by the City for infrastructure intended for public dedication to the City. The County shall allow City inspectors access to constructions sites as necessary.

3.11. Administration of Ancillary Agreements. The County shall provide for the administration and completion of any required subdivision construction agreement, phasing agreement and other planning and construction issues.

3.12. Fiscal Assurances.

3.12.1. Fiscal Security Deposits. The County shall be responsible for any requisite fiscal security deposits made by developers and for holding any applicable escrow fees deposited by developers for same, for the joint benefit of the Parties, as applicable.

3.12.2. Performance Bonding & Assurance. Unless otherwise approved as an exception to the County's standard fiscal assurance process, the County shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall post fiscal assurance in a form and amount approved by the County, to assure final and complete construction of all required subdivision infrastructure. As appropriate and applicable, such fiscal assurance shall conform to the standards of the County subdivision regulations.

3.12.3. Infrastructure Warranty & Maintenance Guaranty. The County shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall provide to the City a post-inspection/post-acceptance infrastructure warranty and maintenance guarantees, made to the City and County as co-beneficiaries, as set forth in the County's regulations. As appropriate and applicable, such fiscal assurance shall conform to the standards of the County's subdivision regulations.

4. TRI-PARTY AGREEMENTS

4.1. Requirement. The Parties shall be required to mutually enter into negotiations with a Developer in a good faith effort to draft and execute the appropriate agreement covering the subdivision plat, or related permits, in the following instances:

- (a) The subdivision is in the City's Area, but public infrastructure will be dedicated to the County; or
- (b) The subdivision is in the County's Area, but:
 - (1) Developer intends to utilize on-site sewage facilities (OSSFs); and
 - (2) City or the City's wholesale customer has water and/or wastewater utilities in proximity to the subdivision.

5. ADMINISTRATIVE PROVISIONS

5.1. Entire Agreement. This instrument is intended by the Parties as the final, complete and exclusive statement of the terms and conditions of this Agreement and is intended to supersede all previous agreements and understandings between the Parties relating to its specific subject matter. No prior stipulation, agreement, understanding or course of dealing between the Parties with respect to the specific subject matter of this Agreement shall be valid or enforceable unless embodied in this Agreement. No amendment, modification or waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by all Parties. Each of the Parties shall pay all of its own costs and expenses (including travel expenses and attorney's fees) incurred in negotiating and preparing this Agreement and carrying out the transactions contemplated by this Agreement.

- 5.2. Severability.** If any provision of this Agreement is held to be illegal, unenforceable or invalid, it shall be severed and the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
- 5.3. Attorney Fees, Interest & Expenses.** In the event a Party commits a default of this Agreement, and litigation is filed regarding this Agreement, the prevailing Party in the litigation shall be entitled to recover its reasonable and necessary attorney's fees, court costs, interest, and expenses allowed by law and incurred by said Party in that litigation.
- 5.4. No Waiver & Assignment.** The failure of a Party in any one or more instances to insist upon the performance of any provision of this Agreement shall not be construed as a waiver of that Party's rights with respect to that or any continuing or subsequent default of the Agreement, and the Agreement shall remain in full force and effect. This Agreement is not assignable without the express written consent of all Parties.
- 5.5. Governing Law & Venue.** This Agreement shall be construed and interpreted in accordance with the law of the State of Texas, with venue being in Bastrop County.
- 5.6. Signatory Authority, Representations & Warranties.** This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors and permitted assigns, subject to the proper application of the doctrine of governmental immunity which protects both Parties. Each Party warrants and represents to each other the following:
- (a) The Party has read the Agreement in its entirety and understands all of its terms and provisions.
 - (b) The person signing this Agreement on behalf of the Party has the authority and power to execute it on behalf of the Party.
 - (c) This Agreement was approved by the governing body of the Party at a public meeting properly noticed and conducted pursuant to Texas Government Code Chapter 551 (the Texas Open Meetings Act).
 - (d) Pursuant to Texas Government Code Chapter 791 (the Interlocal Cooperation Act), as amended, this Agreement:
 - (1) is an authorized inter-local governmental contract;
 - (2) provides for a governmental function and service that each Party is authorized to perform for the other Party; and
 - (3) all monetary payment required by this Agreement to be paid from one Party to the other Party:
 - (a) shall constitute payment for the performing Party's performance of a governmental function and service to the paying Party,
 - (b) shall be paid from current revenues available to the paying Party, and
 - (c) are for an amount that fairly compensates the performing Party for said governmental function and service.

- 5.7. Notices.** All notices required by this Agreement shall be in writing, correctly

addressed to the required addressee, and delivered by: (a) certified United States mail, return receipt requested; or (b) courier or hand-delivery. No notice required by this Agreement shall be effective if delivered only by facsimile, e-mail, or other electronic transmission. The addresses and designated notice representatives of the Parties for notice under this Agreement are as follows, and a Party may revise this information by giving the other Party 3 days advance written notice of the change:

If to the County:

County Judge
Bastrop County Courthouse
804 Pecan Street
Bastrop, Texas 78602

If to the City:

City Manager
City Hall
1311 Chestnut Street
Bastrop, Texas 78602

Any notice required by this Agreement must be correctly addressed to the required addressee, and shall be deemed to have been given on the day the notice is delivered to the addressee by: (a) hand-delivery or courier service; or (b) United States certified mail, return receipt requested.

5.8. Document Creation, Usage & Preamble Interpretation. The rule of construction that ambiguities in a document are construed against the Party who drafted it shall not apply in interpreting this Agreement. As used in this Agreement, singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, and vice versa, where necessary for a correct meaning. If not specifically defined in this Agreement, words and phrases used in this Agreement shall have their ordinary meaning as defined by common usage. All statements made in the preamble and preliminary recitals of this Agreement, and all attached documents, are incorporated by reference for all purposes. The Parties agree that to the full extent possible, each has a duty to mitigate damages.

6. TERM, TERMINATION & DEFAULT

6.1. Term. The term of this Agreement shall begin on the Effective Date and shall run for a 2- year term unless otherwise terminated by the Parties, and shall *automatically renew* on its anniversary date every 2 years, unless otherwise amended or terminated by the Parties.

6.2. Termination. This Agreement may be terminated as follows:

6.2.1. The Parties may unilaterally or mutually agree to terminate this Agreement, for cause or no cause, by giving the other party a minimum of 90 days written notice of the desire to terminate. During the period prior to the termination the Parties shall work together to wind-up any then-existing subdivision matters and pending issues. However, because an agreement of this type is required by State law to be in place between the Parties, in the event either or both Parties provide notice of termination, both Parties agree that they will voluntarily initiate good faith discussions to negotiate the provisions of a new

agreement to take the place of the terminated contract, if such is required by law at that time, within 30 days of the termination date of the then existing Agreement, or as soon as is feasible thereafter.

6.2.2. Should a Party commit a default of this Agreement, the Parties shall communicate with each other in good faith to resolve the default. Should resolution not occur, the non-defaulting Party may terminate this Agreement by giving written default/termination notice to the defaulting Party at least 90 days prior to the termination date chosen by the non-defaulting Party. During that 90 day period, the Parties shall reasonably work together to wind-up and conclude all pending issues related to the Agreement.

6.3. Mediation. This Agreement shall be performed in Bastrop County, Texas, The Parties agree that prior to initiating the mandatory dispute resolution remedy set forth in Chapter 242 of the Texas Local Government Code, as amended, the Parties shall jointly participate in non-binding mediation to resolve any disputes related to this Agreement. In the event of such mediation, each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties; however, should the Parties fail to agree on a mediator, the dispute shall be submitted to the Center for Public Policy Dispute Resolution, School of Law, University of Texas at Austin, 727 East Dean Keeton Street, Austin, Texas 78705, for mediated resolution. Notwithstanding the above, a Party may file suit solely for injunction or mandamus relief regarding this Agreement without first submitting that dispute to mediation.

6.4. Counterparts & Captions. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signed counterparts of this Agreement may be delivered by facsimile or by scanned pdf image, each of which shall have the same force and effect as an original signed counterpart. Copies of signatures to this Agreement are effective as original signatures. The captions of the paragraphs or subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect the provisions of this Agreement.

6.5. Default Survives Termination. Notwithstanding anything to the contrary stated in this Agreement, and subject to the proper application of the doctrine of governmental immunity which protects both Parties, should a Party commit a default regarding any obligation, promise, representation, or warranty contained in this Agreement, including the payment or use of funds, that default event, any related default claim, and this provision, shall survive the termination of this Agreement and can be asserted in litigation against the defaulting Party. A defaulted payment amount or other monetary default shall accrue prejudgment interest in favor of the non-defaulting Party at the highest amount allowed by law until the default is paid in full.

- 6.6. Time.** Time is of the essence. Unless otherwise designated in this Agreement, all references in this Agreement to "days" shall mean calendar days. Business days, if used in this Agreement, shall exclude Saturdays, Sundays, and legal public holidays as then recognized and observed by the County. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday as then recognized and observed by the County, the date for performance will be the next following regular business day.
- 6.7. No Immunity Waiver.** By signing this Agreement, neither Party waives or relinquishes any protection afforded by the proper application of the doctrine of governmental immunity. Nothing in this Agreement shall be construed or interpreted as waiving or attempting to waive any protection afforded a Party by the proper application of the doctrine of governmental immunity.
- 6.8. No Third Party Beneficiaries.** This Agreement is not intended to confer any rights on any third parties, and it shall not be construed as doing so.
- 6.9. No Special Relationships.** There are no third-party beneficiaries regarding this Agreement. The Parties' relationship is that of an ordinary, arms-length contractual relationship, and the Parties do not intend by this Agreement or otherwise to create the relationship of principal and agent, partner(s), joint venture(s), or any other special relationship.
- 6.10. Ratification & Validation.** The County and City hereby ratify all plats approved by the County and the City pursuant to, and in accordance with, the Interlocal Agreement effective on January 10, 2006, executed by the City and the County for the review of subdivision applications in Bastrop County and in the City's ETJ ("2006 Interlocal Agreement"). A plat approved since January 11, 2011, is conclusively presumed valid, and in full force and effect, and to have been approved in accordance with all applicable statutes, orders and ordinances, if a lawsuit to annul or invalidate the plat was not filed on or before the Effective Date of this Agreement.

THIS AGREEMENT is executed by the Parties and will become effective on the later of the dates shown below (the "Effective Date").

BASTROP COUNTY:

by: _____
Gregory Klaus, County Judge
Bastrop County, Texas
_____, 2023

CITY OF BASTROP:

by: _____
Connie Schroeder, Mayor
City of Bastrop, Texas
_____, 2023

**EXHIBIT A
(ETJ Map)**

DRAFT