

**RESOLUTION NO. R-2020-27**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AN AGREEMENT BETWEEN THE CITY OF BASTROP AND BASTROP RIVER COMPANY PROVIDING FOR A FIVE YEAR LEASE OF A .52 ACRE PORTION OF A11 BASTROP TOWN TRACT, ACRES 5.100 (CITY PARK) LOCATED IN FISHERMAN'S PARK WITH AN OPTION TO RENEW FOR THREE ADDITIONAL TWO-YEAR TERM UPON MUTUAL AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bastrop owns a certain parcel of real property that is located at Fisherman's Park in Bastrop, Bastrop County, Texas, and more particularly shown in Exhibit "A", of the proposed lease agreement attached hereto and incorporated herein by this reference ("The Agreement"); and

**WHEREAS**, the City of Bastrop City Council and City of Bastrop Parks Board and Tree Advisory Committee understand the value private vendors providing recreational opportunities enhance the city of Bastrop Park's system as a whole; and

**WHEREAS**, the City of Bastrop deems it advantageous to itself and to its operations to lease and demise certain rights, privileges and uses of the Premises as hereinafter contained; and

**WHEREAS**, the City of Bastrop Parks Board has expressed interest in finding opportunities to help fund park maintenance and improvements.

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

**Section 1.** The attached Lease Agreement between the City of Bastrop and Bastrop River Company, (the "Agreement") is hereby approved.

**Section 2.** The City Manager is hereby authorized to execute the Agreement on behalf of the City.

**Section 3.** This Resolution shall become effective immediately upon adoption.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 28<sup>th</sup> day of February, 2023.

**APPROVED:**

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Connie B. Schroeder, Mayor

**ATTEST:**

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Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

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Alan Bojorquez, City Attorney

This lease agreement ("Lease") is made as of the Effective Date set forth above, by and between the City of Bastrop, Texas, a municipal corporation (the "Lessor") and Bastrop River Co., LLC (the "Lessee"), a Texas Limited Liability Company.

**WHEREAS**, the Lessor owns a certain parcel of real property that is located at Fisherman's Park in Bastrop, Bastrop County, Texas, and more particularly shown in Exhibit "A", attached hereto and incorporated herein by this reference ("Premises"); and

**WHEREAS**, Lessee wishes to enter into a five (5) year lease with a five year renewal option for the Premises to manage and operate a River Outfitting Company; and

**WHEREAS**, the City of Bastrop deems it advantageous to itself and to its operations to lease and demise certain rights, privileges and uses of the Premises as hereinafter contained; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee (hereinafter "Parties") hereby agree as follows:

## **Article 1. Lease of Premises; Acceptance of Existing Conditions; Compliance with Regulations**

**1.1. Leased Premises:** In consideration of the obligation of the Lessee to pay rent and in consideration of the other terms, covenants and conditions of this Lease, the Lessor leases to the Lessee, and the Lessee leases from the Lessor that approximately 22,651 square foot portion described as 0.052 ACRE PORTION OF A11 BASTROP TOWN TRACT, ACRES 5.100 (CITY PARK) LOCATED IN FISHERMAN'S PARK as shown in Exhibit "A", attached hereto and made a part hereof for all purposes (the "Leased Premises") in Bastrop County, Texas. The Lessor agrees that the Lessee shall also have access to and shared use of the public parking lot adjacent to the leased Premises and the public restrooms in the City Park, all as shown in Exhibit "A", subject to Lessor's exclusive control and management of said public facilities.

**1.2. No Warranty:** The Lessee acknowledges that 1) the Lessor makes no representations or warranties regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; and 3) the Lessee has inspected the Leased Premises to satisfy itself as to the suitability of the Leased Premises for its intended purposes.

**1.3. Compliance with Rules:** In addition to other requirements in this Lease, Lessee agrees to comply with all ordinances, rules and regulations governing City Park within which the Leased Premises are located. Included herein is the limitation that Lessee's Hours of Operation are limited to the Park's Hours of Operation as established by the Lessor.

## **Article 2. Term and Rent**

**2.1. Term:** Subject to and upon the terms and condition set forth in this Lease, this Lease shall be in force for a term of five (5) years, with two three (3) year renewal options upon mutual agreement of Lessor and Lessee. The renewal option shall be exercised by providing the Lessor sixty (60) days written notice of Lessee's desire to renew. Renewal shall be subject to City Council approval and be denied at Council's discretion.

**2.2. Rent:** The Lessee agrees to pay to the Lessor a fixed rental in the sum of one thousand dollars and zero cents (\$1,000.00) per month, The first monthly rent shall be due and payable on the Effective Date of the Lease. Subsequent monthly rental amounts shall be payable in advance on or before the first (1st) day of each respective month for the entire Lease term.

**2.3.** Lessee shall collect on behalf of and remit to the City any fees, assessments or charges arising by virtue of or related to its activities under this Lease as may be required by any ordinance, law, order or regulation. Additionally, the City may submit an invoice or invoices to Lessee for the above mentioned or other fees, assessments or charges due and payable to the City. Such invoice or invoices must be paid by the Lessee with the next monthly rent payment, except when earlier payment may be due under applicable ordinance, law, order or regulation.

**2.4.** Delinquent Rent/ Late Payment: In the event the monthly rent (including any additional rent due hereunder) is not paid on or before the fifteenth (15th) day of the month, an amount equal to five percent (5%) of that month's rent shall be added to such rent and shall be considered additional rent hereunder. The addition of such amount and the collection thereof shall not operate to waive any other rights of Lessor hereunder for nonpayment of rent or for any other reason.

**2.5.** Termination: Lessee shall surrender and vacate the Leased premises on the last day of the term of this Lease. Upon termination of the lease, Lessee shall also remove all personal property, equipment from the Leased premises within 14 days. Lessor may retain, destroy, or dispose of any property left on the Leased Premises at the end of the Term. In the event the Lessee is in arrears of sixty (60) days in the payment of any amount that is owed to the Lessor hereunder, the Lease shall automatically terminate unless an exception is approved in writing prior to the 60th day by the City Council of the City of Bastrop.

### **Article 3. Use and Care of Premises**

**3.1.** The use of the Leased Premises by the Lessee shall be restricted to conducting a river outfitting operation (with related equipment), together with the activities of selling snacks, non-alcoholic beverages, T-shirts and other items related to river recreation. Use of the Leased Premises for any purpose other than permitted by this Lease without prior written consent of the Lessor shall constitute a default.

**3.2.** The Lessee shall not place or keep anything on the Leased Premises or use the Leased Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises without the Lessor's prior written consent. The Lessee agrees that the risk of loss and damage for all property kept, stored or maintained by it within the Leased Premises shall be the Lessee's.

**3.3.** The Lessee shall not use or permit the use of the Leased Premises in any manner that results in waste of the Leased Premises, or constitutes a nuisance, or violates any statute, ordinance, rule or regulation that applies to the Leased Premises.

**3.4.** The Lessee shall keep the Leased Premises used by Lessee, neat, clean, and free from spoils and trash at all times.

**3.5.** The Lessor shall be responsible for cleaning and maintaining the public restrooms in the City Recreation Building to be used by Lessee in connection with its authorized activities according to Lessor's usual and customary cleaning schedules and standards, as determined by Lessor in its sole discretion. Although Lessor has primary responsibility to clean and maintain the restrooms, Lessee agrees to and will clean the restrooms on an as needed basis between the Lessor's regular cleanings. The Lessor shall provide trash bin liners, paper towels, and toilet paper to the Lessee, and the Lessee shall replace these items in the public restrooms as necessary.

**3.6.** The Lessee shall store all equipment, materials and supplies within the confines of the Leased Premises. Outside storage is specifically prohibited without the advance written consent of the Lessor. Staging of vehicles shall be allowed within the premises for shuttle operations. When the premises is not suitable for staging due to inclement weather the lessee shall contact the Director of Public Works to coordinate a temporary solution that causes minimal disruption to the public parking areas.

**3.7.** Failure to use the Leased Premises for any purpose other than that permitted by this Lease shall constitute a default.

**3.8.** The Lessee shall give prompt notice to the Lessor of any accident on the Leased Premises, and of defects in the Leased Premises of which the Lessee is aware.

**3.9.** Lessee agrees to allow Lessor to enter the Leased Premises to perform Lessor's obligations, inspect the Leased Premises. When the Premises are not in use by Lessee, the Lessor may conduct activities in the Premises that do not interfere with the Permitted Uses with prior written consent from the Lessee.

#### **Article 4. Maintenance and Repair of Premises**

**4.1.** The Lessee shall keep the Leased Premises in good, clean condition and will maintain the personal property, removable fixtures, and equipment owned or controlled by Lessee in good repair and condition. The Lessee shall comply with all governmental laws, ordinances and regulations that apply to the Leased Premises, at its sole cost and expense. At the expiration of this Lease, the Lessee shall surrender the Leased Premises in good condition, reasonable wear and tear excepted.

**4.2.** Lessee shall repair and pay for any damage to the Leased Premises caused by negligence of Lessee or Lessee's directors, officers, employees, contractors, agents, invitees or guests. Lessor shall have no obligation to clean, maintain, repair, or replace any portion of the Premises or any alterations made by Lessee, and Lessee accepts the Leased Premises in its "AS IS", "WHERE-IS" condition, with all faults and without any warranty or representation (express or implied) by the Lessor as to the condition of the Leased Premises or its fitness or suitability for any purpose.

**4.3.** Lessee shall at its sole expense clean, maintain, replace and repair the Leased Premises, including, without limitation, any temporary structures and mowing and maintenance of the site.

## **Article 5. Alterations and Fixtures**

**5.1.** The Lessee shall not make any alterations, modifications, additions, or improvements, (including, but not limited to, structural, electrical, plumbing and painting) to the Leased Premises without the prior written consent of Lessor.

**5.2.** The Lessee shall ensure that no lien or similar obligation is imposed upon the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and the Lessee shall immediately discharge any lien or charge after the lien occurs or charges become due and payable. The Lessee shall hold harmless, indemnify and defend the Lessor, its officers, agents and employees from and against any claims, demands or suits related to such liens or obligations.

**5.3.** The Lessee shall not install any exterior lighting, shades or awnings, or any exterior decorations or paintings on the Leased Premises or erect, permanently install or change any signs, window or door lettering, placards, decorations, or advertising media of any type without the prior written approval of the Lessor. Notwithstanding temporary signage such as price boards, safety notices or rules. Temporary signage shall be taken in every day at the end of business,

## **Article 6. Utilities/Taxes**

**6.1.** The Lessee shall promptly pay all charges for electricity, telephone service, and other utilities furnished to the Leased Premises. No such utilities shall be connected or installed until the Lessor approves in writing the location and specifications for such connections and installations.

**6.2.** The Lessor shall not be liable for any interruption or impairment whatsoever in utility services to the Leased Premises for non-payment or acts of God outside of the utility provider's control.

**6.3.** The Lessee shall pay when due all taxes and assessments, if any, against the Leased Premises or underlying real property attributable to the Lessee's use of the Leased Premises under this Lease. The Lessee shall pay when due all sales, excise, income and other taxes, if any, levied upon its business operations on the Leased Premises.

## **Article 7. Insurance and Indemnity**

**7.1. Insurance:** Lessee shall be responsible for providing, at Lessee's own expense, insurance coverage insuring Lessee's goods, furniture or property against loss or damage from fire or other causes. Lessee's coverage shall provide a waiver of subrogation for the benefit of the Lessor.

The Lessee will purchase and maintain in full force and effect during the term of the lease insurance as provided below, proof of which will be in a form acceptable to the Lessor:

- A.** Commercial General Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, written on an occurrence form, and an annual aggregate not less than Two Million Dollars (\$2,000,000);
- B.** Commercial Automobile Liability insurance at minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage, written on an occurrence form; and
- C.** Workers compensation insurance within statutory limits, if applicable.

All of this insurance shall be primary over any other insurance coverage the Lessor may have and shall be written so that the Lessee and the Lessor will be notified in writing at least 30 calendar days in advance in the event of cancellation, restrictive amendment or non-renewal. Commercial general liability and business automobile insurance coverage will be written with the City of Bastrop, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City of Bastrop.

**7.2. Approval Before Occupancy:** The Lessee will submit certificates of insurance to the Lessor for approval prior to taking occupancy of the Premises.

**7.3. Continuing Responsibility:** In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease whether or not the losses are covered by insurance. The Lessor's acceptance of insurance certificates that do not comply with these requirements will not release the Lessee from compliance with these provisions.

**7.4. Indemnity, Hold Harmless, and Waiver of Claims:**

**A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF BASTROP, TEXAS, TOGETHER WITH ITS RESPECTIVE OFFICERS, DIRECTORS, FORMER AND PRESENT ELECTED AND APPOINTED OFFICIALS, LEGAL REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES (IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES), VOLUNTEERS, SUCCESSORS, AND ASSIGNS (HEREINAFTER COLLECTIVELY *BASTROP*), OF, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEFENSE COSTS, OR LIABILITY OF ANY KIND OR NATURE (COLLECTIVELY REFERRED TO HEREINAFTER AS "CLAIMS") ASSERTED BY ANY PERSON OR ENTITY AGAINST *BASTROP* WHETHER ARISING OUT OF, TOUCHING UPON OR IN ANY WAY RELATING TO LESSEE'S (OR LESSEE'S CONTRACTORS', SUBCONTRACTORS', AGENTS', EMPLOYEES', SERVANTS', INVITEES', OR LICENSEES') (I) ACTS, ERRORS, OR OMISSIONS, (II) PERFORMANCE OR FAILURE TO PERFORM, (III) GOODS OR SERVICES PROVIDED, (IV) WORK PERFORMED BY, OR ON BEHALF OF LESSEE, OR (V) USE OF THE LEASED PREMISES, RELATIVE TO THIS LEASE, EXCEPT ANY SUCH CLAIMS, DAMAGES, CAUSES OF ACTION, COSTS AND EXPENSES ARISING OUT OF THE SOLE NEGLIGENCE OR WILLFUL ACT OF *BASTROP*, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES.**

**B.** The Lessee shall use the Leased Premises and use, occupy and store property on the Leased Premises at its own risk, and the Lessee agrees to hold harmless and release the Lessor, and its officers, agents and employees from all claims, suits and actions by the Lessee for loss of life, personal injury or property damage resulting therefrom.

**C.** In case the Lessor is made a party to any litigation commenced by or against the Lessee that is covered by this paragraph, then the Lessee shall hold the Lessor harmless from and pay all costs and expenses of the Lessor related to the litigation, including the fees of attorneys and expert witnesses.

**D.** Waiver of Claims. Anything in this Lease to the contrary notwithstanding and to the extent permitted by applicable law, Lessee hereby releases and waives all claims, rights of recovery and causes of action that such party or any party claiming by, through, or under such party (including Lessee's insurers), by subrogation or otherwise, may now or hereafter have against Lessor or any of Lessor's directors, officers, employees, contractors or agents for any loss or damage that may occur to the Property, or any of the contents by reason of fire, act of God, the elements, or any other cause, excluding gross negligence or willful misconduct, but including negligence of the Lessor or its directors, officers, employees, or agents, that could have been insured against under the terms of customary fire and extended coverage insurance policies. Lessor shall not be liable to Lessee for any inconvenience or loss to Lessee in connection with any repair, maintenance, damage, destruction, restoration, or replacement referred to in this Lease. Lessor shall not be obligated to insure any of Lessee's goods, furniture, or otherwise be liable for any damage to or destruction of any of the foregoing.

## **Article 8. Hotel Occupancy Data**

Lessee agrees to record at the point of rental, in a method and on a form approved by the City Manager of the Lessor: The information collected if appropriate allows the lessee an opportunity to request Hotel Occupancy Tax funds.

## **Article 9. River Clean Up**

The Lessee shall assist in the cleanup of the Colorado River in and around the area of the lease premises during City of Bastrop designated river cleanup events.

## **Article 10. Condemnation**

**10.01. Total:** If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the proceeding.

**10.2 Partial:** If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the remaining portion unsuitable for the business of the Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the premises unsuitable for the business of the Lessee, then this Lease shall continue in effect, except that the fixed monthly rent amount shall be reduced and adjusted in an appropriate manner.

**10.3 Rent Payments:** If this Lease is terminated as provided in this section, rent shall be paid up to the date that possession is taken by the condemning authority, and the Lessor shall make an equitable refund of any rent paid by the Lessee in advance.

**10.4 Division of Award:** The Lessor and the Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. The termination of this Lease under this Paragraph shall not affect the rights of the respective parties to such awards.

## **Article 11. Damage by Casualty**

**11.1.** The Lessee shall give immediate verbal notice, and prompt written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

**11.2.** If the Leased Premises are damaged by casualty and can be restored within 30 days, Lessor will, at its expense, restore the Leased Premises to substantially the same condition that existed before the casualty and Lessee will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any authorized leasehold improvements installed by Lessee. If Lessor fails or is unable to complete the portion of the restoration for which Lessor is responsible within 30 days from the date of written notification by Lessee to Lessor of the casualty, Lessee may terminate this lease by written notice delivered to Lessor before Lessor completes Lessor's restoration obligations.

**11.3.** To the extent the Premises are untenantable after the casualty, the Rent will be prorated for the period of time that the Premises cannot be used by Lessee. The request shall be submitted to the Public Works Director for review and approval of the adjusted monthly rate. The formula for calculating adjusted monthly rate shall be the monthly rent divided by the number of active days within the defined season as shown in exhibit B

**11.4.** Any insurance or risk pool coverage against casualty loss which may be carried by either the Lessor or the Lessee shall be under the sole control of the party carrying the insurance or risk pool coverage, and the other party shall have no interest in any proceeds thereof. Lessor and Lessee expressly waive any cause of action or right of recovery which either of them may have against the other for any loss or damage to the Leased Premises or to the contents caused by fire, explosion, or other risk covered by the casualty insurance or risk pool coverage.

## **Article 12. Assignment and Subletting**

Lessee may not assign this Lease or sublet the Leased Premises without prior written consent of the Lessor. Any such unauthorized assignment or subletting shall constitute a default.

## **Article 13. Events of Default and Remedies**

**13.1.** Default: The following events shall be events of default by the Lessee under this Lease:

**A.** The Lessee fails to pay when due any rental or any other sums or charges due under this Lease.

**B.** The Lessee fails to comply with any other term, provision, or covenant of this Lease, and does not cure the failure within 30 days after written notice to the Lessee. For any subsequent default by the Lessee for the same or any other reason, the Lessor may terminate the Lease if that subsequent default continues for more than three days after notice of the subsequent default.

**C.** The Lessee commences, or another party commences against the Lessee, proceedings in bankruptcy, for reorganization, or for the readjustment or arrangement of its debts under the bankruptcy laws of the United States or under any other law. The acceptance by the Lessor of the Lessee's monthly payments subsequent to the occurrence of this event of default, or that set forth in subparagraph E below, shall be as compensation for use and occupancy of the Leased Premises, and shall in no way constitute a waiver by the Lessor of its right to exercise any remedy provided for any event of default.

**D.** A receiver or trustee is appointed for all or substantially all of the assets of the Lessee.

**E.** The Lessee abandons or vacates all or any substantial portion of the Leased Premises for more than 30 consecutive days during the periods of conducting its authorized activities under paragraph 3.01.

**13.2. Remedies:** Upon the occurrence of any of the events of default, the Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

**A.** Terminate this Lease. In this event the Lessee shall immediately surrender the Leased Premises to the Lessor, and if the Lessee fails to do so, the Lessor may enter and take possession of the Leased Premises and remove the Lessee and any other person occupying the premises, without prejudice to any other remedy it may have for possession or arrearages in rent, and without being liable for any resulting damages. The Lessee agrees to pay to the Lessor the amount of all resulting costs, losses and damages incurred by the Lessor within 30 days of the Lessor's issuance of a statement to the Lessee.

**B.** Relet the Leased Premises to any lawfully approved tenant and receive the rent. The Lessee agrees to pay to the Lessor any resulting costs, and any deficiency that may arise by reason of reletting, within 30 days of the Lessor's issuance of a statement to the Lessee.

**C.** The Lessor's pursuit of any of these remedies will not preclude pursuit of any other remedies provided under this Lease or by law, nor will pursuit of any remedy constitute a waiver of any rent due to the Lessor or of any damages caused to the Lessor by any violation of this Lease by the Lessee. Any failure by the Lessor to enforce a remedy upon an event of default shall not be deemed to constitute a waiver of the default or of the Lessor's right to insist on strict compliance with this Lease.

**13.3. Attorney Fees:** If it becomes necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies because of any breach or default by the Lessee under this Lease, the Lessee agrees to pay all reasonable attorney's fees incurred by the Lessor, within 30 days of the Lessor's issuance of a statement for the fees to the Lessee.

#### **Article 14. Prohibited Use**

Lessee shall not use or permit any other party to use any part of the Leased Premises for any purpose not authorized in this Lease. Lessee shall not do or permit anything to be done in or about the Leased Premises, or bring or keep or permit anything to be brought to or kept therein, which is prohibited by or which will in any way conflict with City's insurance, any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated. Lessee shall not cause, maintain, or permit any nuisance in, on or about the Leased Premises or commit or suffer to be committed any waste to, in or about the Leased Premises. Lessee additionally agrees that the Leased Premises shall only be used in compliance with this Lease, and in the interest of avoidance of waste. Lessee further agrees that should Lessee for whatever reason allow the Leased Premises to remain in a state of abandonment, the penalty of such shall be rescission of this lease.

#### **Article 15. Holding Over**

If Lessee does not vacate the Leased Premises following termination of this Lease, Lessee will become a tenant at will and must vacate the Premises on receipt of notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term.

During the period of holding over the Lessee shall be liable for the payment of rent on a prorated basis equal to two times the annual rent in effect as of the last lease term before the lease termination date.

## **Article 16. Mechanic's Liens**

Lessee shall not permit a mechanic's lien or other lien to be placed upon the Leased Premises or the improvements constituting a part thereof.

## **Article 17. City's Access**

Lessor shall have the right, at all reasonable times during the Term of the Lease or any extension to enter the Leased Premises to inspect the condition thereof, to determine if Lessee is performing its obligations, to cure any defaults of Lessee hereunder that Lessor elects to cure, and to remove any improvements or property placed on the Leased Premises in violation of this Lease.

## **Article 18. Legal Interpretation and Severability**

Each paragraph and provision hereof is severable from the entire Lease and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect. Any clause or provision of this Lease found to be illegal, invalid, or unenforceable; under the present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable. All obligations of either party requiring any performance after the expiration of the Term shall survive the expiration of the Term and shall be fully enforceable in accordance with those provisions pertaining thereto. Section titles are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this lease.

## **Article 19. Miscellaneous**

**19.1. Words and Phrases:** When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

**19.2. Amendment:** This Lease may be amended only by an instrument in writing signed by both parties.

**19.3. Waiver:** Either party's failure to insist at any time on the strict performance of any covenant or agreement, or such party's failure to exercise any option, right, power or remedy contained in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. The waiver of or failure to seek redress for any violation of any term, covenant, or condition contained in this Lease shall not prevent a subsequent act from being a violation. A party shall be considered to have waived a provision of this Lease only if specifically expressed in writing signed by such party. No expressed waiver shall affect any matter other than the one specified in the waiver and only for the time and in the manner specifically stated.

**19.4. Force Majeure:** Whenever a period of time is prescribed for action to be taken by the Lessor, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of the Lessor shall be excluded from the computation of any such period of time.

**19.5. No Joint Venture:** This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is only that of Lessor and Lessee.

**19.6. Law and Venue:** The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Bastrop County, Texas.

**19.7. Notice:** Each notice required or permitted to be given hereunder by one party to the other shall be in writing with a statement therein to the effect that notice is given pursuant to this Lease, and the same shall be given and shall be deemed to have been delivered, served and given if placed in the United States mail. Postage prepaid, by United States registered or certified mail, return receipt requested, addressed to such party at the address provided for such party herein. Wherever any notice is required or permitted under this Lease, the notice shall be in writing and sent by certified mail, return receipt requested, addressed to the respective party at the following addresses. The Lessee shall provide the Lessor with advance written notice of any change in its address.

**Lessor:**

City of Bastrop Attention:  
City Manager 1311  
Chestnut Street  
Bastrop, Texas 78602

**Lessee:**

**EXECUTED** to be effective as of ----- 2023

**Point of Contact for the City of Bastrop:**

**Director of Public Works or Designee**

**1311 Chestnut Street Bastrop, Texas 78602**

**Phone # 512 332-8920.**

**Point of Contact for Bastrop River Co.,LLC**

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EXHIBIT "A"

Exhibit B

Winter Hours (December – February ... 7 days a week)

Open by reservation / appointment

Regular Season (March – November)

Saturday & Sunday

8AM to 5PM

Monday thru Friday

Open by reservation / appointment

DRAFT