

SECOND AMENDMENT TO THE DEVELOPMENT AND ANNEXATION AGREEMENT

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.

RECITALS

WHEREAS, the City and Owner entered into that certain Development and Annexation Agreement (the “**Original 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 Original Agreement as revised by the First Amendment (collectively referred to herein as the “**Agreement**”) to account for changes in circumstances and to provide additional clarification of the Parties’ respective responsibilities; and

WHEREAS, Section 12.02 of the Original 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 Original Agreement as *previously revised* by the First Amendment as follows:

A. Exhibits. Exhibit “**B**” to the Agreement is hereby deleted and replaced by a new Exhibit “**B**” attached to this Second Amendment as “**Attachment One**”. Exhibit “**C**” to the Agreement is hereby deleted. All references in the Agreement to “Informational Land Plan”, specifically in Sections 2.01 and 4.01(a), are deleted and have no further effect. Exhibit “**H**” to this Agreement is hereby deleted.

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 Lovers Lane as shown on **Exhibit "B"**. The Public Frontage Plan, in detailing the privacy fencing and wall along Lovers Lane, shall describe the extent that native stone materials, street lighting, and landscaping will be incorporated into the design. Until such time as the Perimeter Roadway is constructed, Owner shall erect an eight-to-ten foot fence with vertical live vegetative screening along the current boundary of the Property within the future location of the Perimeter Roadway. The installed fence along the Perimeter Roadway shall consist of galvanized, solid-knot wire game fence with metal t-posts and metal corner, line and stretch posts ("**Metal Fencing**"). Crawling, vertical vegetation will be installed along the Metal Fencing in a manner that encourages attachment to the Metal Fencing to provide visual screening. Owner agrees to remove, at Owner's sole expense, the Metal Fencing from the dedicated right of way for the Perimeter Roadway immediately following notice from the City of the intent to initiate construction of the Perimeter Roadway. Upon the City's

completion of construction of the Perimeter Roadway, Owner shall, along the new boundary of the Property after dedication of right of way for the Perimeter Roadway, erect privacy fencing and wall substantially similar to that built along Lovers Lane.

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 4.09 of the Agreement is hereby repealed in its entirety.

This section is intentionally deleted.

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

Perimeter Roadway. Owner shall dedicate, by final plat or separate instrument, (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 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 diligently 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 dedication, 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 dedication of any segment of the Perimeter Roadway or the City deems that the right of way no longer needed for a future roadway, the City shall vacate such right of way dedication and reconvey that property to the Owner. Furthermore, in the event the Perimeter Roadway is not removed from the Master Transportation Plan and the City does not complete construction of the Perimeter within ten (10) years of the Effective Date of this Second Amendment, the City shall vacate any right of way dedication for the Perimeter Roadway and reconvey that property to the Owner. The waiver and vacation of right of way provided under this section is limited to the Project described in and approved by the Original Agreement (as may be amended).

The only 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. Vehicular queuing is prohibited on Lovers Lane. Access will be prohibited from Margies Way. The Project shall not be required to construct additional access points for fire or other purposes, provided that the two points of access on Lovers Lane as shown on the Concept Plan are completed.

G. Section 4.12(b)(ii) of the Agreement is hereby repealed in its entirety.

This section is intentionally deleted.

H. 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 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.

I. 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 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.

J. Section 5.01 of the Agreement is hereby amended to read as follow:

Project Facilities and Public Facilities. Owner will finance (if applicable), design, construct and install all on-site water facilities, wastewater facilities, streets (subject to Section 4.12), drainage facilities and other amenities and improvements required within the Property to develop the Project ("**Project Facilities**") at Owner's sole cost and expense. Owner shall design and construct and install the Project Facilities in compliance with the Applicable Regulations (including, but not limited to, the posting of fiscal security and payment for fee-in-lieu as appropriate), the plans and specifications approved by the City, and good engineering practices. All lighting within the Project shall comply with applicable City Code. The "**Public Facilities**" shall consist of the Water Line Project and the Wastewater Line Project described in Section 5.02 and 5.03 below. The City will finance and construct the Public Facilities as capital improvement projects.

K. Section 5.02 of the Agreement is hereby amended to read as follows:

Water Line Project. The "**Water Line Project**" consists of approximately ten thousand eight hundred (10,800) linear feet of twelve-inch (12") water main and associated appurtenances, including approximately two hundred fifty (250) linear feet of twenty-four-inch (24") encasement pipe installed by bore, necessary to provide water service to the Property from the existing water line located at the City limits on Lovers Lane. The City shall take all necessary steps to establish the Water Line Project as a capital improvement project and shall construct the Water Line Project accordingly at its own expense. Owner agrees to transfer all right, title, and interest in the active plans and designs for the Water Line Project to the City and the City agrees to promptly and diligently pursue final approval

of the plans and to fully construct and install the Water Line Project within sixteen (16) months of the City's issuance of the Notice to Proceed.

L. Section 5.03 of the Agreement is hereby amended to read as follows:

Wastewater Line Project. The “**Wastewater Line Project**” consists of twelve (12) inch diameter wastewater gravity line and, as may be necessary, an offsite force main and lift station, and all the appurtenant facilities and equipment, necessary to provide wastewater service to the Property. The City shall take all necessary steps to establish the Wastewater Line Project as a capital improvement project and shall construct the Wastewater Line Project accordingly at its own expense. Owner agrees to transfer all right, title, and interest in the active plans and designs for the Wastewater Line Project to the City and the City agrees to promptly and diligently pursue final approval of the plans and to fully construct and install the Wastewater Line Project within sixteen (16) months of the City's issuance of the Notice to Proceed.

M. Section 5.04 of the Agreement is hereby amended to read as follow:

Modification of Public Facilities. At the City's discretion, the size and/or design of the Water Line Project and/ or the Wastewater Line Project may be adjusted as may be necessary to accommodate anticipated development in the surrounding area. However, in no event shall the Water Line Project and/or the Wastewater Line Project be modified in a manner that will interfere with the availability of necessary and adequate service for the Project as established in Section 7.01.

N. Section 5.06 of the Agreement is hereby amended to read as follows:

Timely Construction. Owner shall design, construct, install and obtain City acceptance of the Project Facilities in accordance with the terms and conditions of this Agreement. In the event the Public Facilities are not timely constructed as provided herein, Owner may exercise the options outlined in Section 6.04. Construction of the Public Facilities will not impact the timing or approval of the final plat (if applicable) of land out of the Property or the issuance of a certificate of occupancy as long as the Project is being served with adequate utilities through the utilization of Gap Services (as defined below).

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

Public Facilities Costs and Expenses. City shall construct and finance the Public Facilities to service the Project. In the event the City fails to complete the Public Facilities in a timely manner as provided herein, Owner may elect to assume the City's obligation to construct, and request reimbursement from the City at the City's discretion for some portion of the costs associated with the design, contract negotiation, installation, construction, and other associated expenses of the Public Facilities.

P. Section 6.03 of the Agreement is hereby repealed in its entirety.

This section is intentionally deleted.

Q. Section 6.04 of the Agreement is hereby amended to read as follows:

Owner's Options Regarding the Public Facilities.

- (a) In the event the City fails to timely complete the Public Facilities as provided herein, Owner may elect to (1) pump and haul necessary utilities from the City's plant, serve the Project with water (and meet fire flow) by private well or river water intake, and/or serve the Project (and meet fire flow) from available utilities in Tahitian Village ("**Gap Services**") in compliance with applicable regulations; or (2) assume the obligation to complete the Public Facilities and request reimbursement from the City at the City's discretion for costs and expenses associated with completion of the Public Facilities.
- (b) In the event Owner elects to utilize Gap Services, such use of the Gap Services shall be allowed by the City with issuance of necessary permits by Texas Commission on Environmental Quality and other required regulatory entities. Owner shall connect the City's water and/or wastewater system within twelve (12) months of receiving notice from the City that the Water Line Project and/or Wastewater Line Project is complete and that necessary and adequate water and/or wastewater service is available for the Project. Connection to either the water or wastewater system must be made regardless of the availability of the other service. For example, purposes only, if the Wastewater Line Project is still under construction, but the Owner receives notice from the City on December 1, 2023, that the Water Line Project is complete, Owner must successfully connect to the City's water system by December 1, 2024 and may continue using Gap Services for sewer until such time as the Wastewater Line Project is complete.
- (c) In the event the Owner elects to complete the Public Facilities, the City agrees that all of City's right, title, and interest in the plans and specifications, designs, easements, and improvements acquired, produced or installed in aid of or necessary for completing such Public Facilities by the City or its engineers or contractors before such default shall become Owner's and, in such event, the City will provide all necessary documentation to the Owner within five (5) business days of the Owner's request. To ensure that the Owner has all necessary rights to the plans and specifications for the Public Facilities and any other engineering services in the event of a default, City hereby assigns all its rights, title, and interest in the professional services agreements necessary for completion of the Public Facilities, expressly conditioned on City's default. The City agrees that the Owner will have the right to use such plans and specifications to complete the Public Facilities.

R. 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.

S. 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. Nothing herein shall be construed as a release or waiver by the City of Owner's obligations to pay then-current Impact Fees as per applicable City policies.

T. **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

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COUNTY OF BASTROP

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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 _____

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COUNTY OF _____

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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 _____