

**NOTICE OF MEETING OF BOARD OF DIRECTORS OF
BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
Monday, December 19, 2022 – 5:00 P.M.
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

1. CALL TO ORDER

The BEDC Board reserves the right to convene into Executive Session at any time during the meeting regarding any agenda item in compliance with the Texas Open Meetings Act, Chapter 551 Government Code.

2. PUBLIC COMMENT(S)

3. REGULAR BUSINESS & PRESENTATIONS

- 3.1. Approval of meeting minutes from the BEDC Regular Board Meeting of November 21, 2022. **(page 3)**
- 3.2. Receive financial report provided by City of Bastrop’s Chief Financial Officer for the period ending November 2022 and treasurer’s comments. **(page 6)**
- 3.3. Consideration, discussion and possible action to approve Resolution R-2022-0010 authorizing the execution of a new lease for the BEDC office located at 301 Hwy 71 W., Suite 214. **(page 14)**
- 3.4. Consideration, discussion and possible action to approve Resolution R-2022-0011 authorizing the execution of an agreement with Placer.ai location analytics. **(page 19)**
- 3.5. Discussion and possible action regarding the potential secondary funding of a Revolving Loan Fund and implementation date; and approval of Resolution R-2022-0012 authorizing matching funds in the amount of \$20,000 per year for a period not to extend five years. **(page 27)**
- 3.6. Update, discussion and possible action regarding Bastrop Business and Industrial Park infrastructure projects: Technology Drive and South Street. **(page 44)**
- 3.7. Update, discussion and possible action on proceeding with finalization of the sale of the 9.525-acre lot located at 108 S. Jackson Street, legally described as “Bastrop Business and Industrial Park, Phase 1, Block 8, Lot 1-A (Re-plat of Block 8 & Lot 3A, Block D)” (the “Property”), approved via Resolution R-2017-0024 on November 20, 2017. **(page 45)**
- 3.8. Discussion regarding the proposed Economic Development Forum 2023, scheduled for January 27, 2023. **(page 46)**
- 3.9. Presentation and update regarding infrastructure for the Moca Project. **(page 48)**
- 3.10. Discussion and possible action on a request by the City of Bastrop to fund an Intersection Improvement Study in the amount of \$22,500. **(page 49)**

4. EXECUTIVE SESSION

- 4.1. The BEDC Board of Directors will meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:

- (1) **Section 551.087** Deliberation Regarding Economic Development Negotiations – Project Triple Arrow and Project Walk of Fame
- (2) **Section 551.074** Personnel matters – To deliberate the salaries of the following individuals: Operations Manager; Business and Workforce Project Manager; and Marketing and Small Business Project Manager.

4.2. The BEDC Board of Directors will reconvene into open session to discuss, consider, and take any action necessary related to the executive sessions noted herein.

5. ADJOURNMENT

CERTIFICATE

I, Angela Ryan, Operations Manager of the Bastrop Economic Development Corporation (BEDC), certify that this Amended Notice of Meeting was posted at Bastrop City Hall, 1311 Chestnut Street, and on the BEDC’s website on this the 14th of December 2022 at 5:00 p.m. Copies of this agenda have been provided to those members of the media requesting such information.

Angela Ryan

Angela Ryan, BEDC Operations Manager

THE BASTROP ECONOMIC DEVELOPMENT CORPORATION IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS WILL BE PROVIDED UPON REQUEST. PLEASE CALL 512-303-9700.



Agenda Item: 3.1

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Approval of meeting minutes from the BEDC Regular Board Meeting of November 21, 2022.

Submitted by: Angela Ryan, BEDC Operations Manager

Attached for the Board's review are the minutes from the Regular Board Meeting of November 21, 2022.

Attachment:
Draft 11/21/22 Regular Board Meeting Minutes

Recommendation – Approve the meeting minutes as submitted.

[RECOMMENDED MOTION] – I move to approve the meeting minutes as submitted.



BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
BOARD OF DIRECTORS
Minutes of Monthly Meeting, November 21, 2022
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas

The Bastrop Economic Development Corporation (BEDC) met on Monday, November 21, 2022, at 5:00 p.m. for a Regular Board Meeting at Bastrop City Hall, 1311 Chestnut Street. Board members present: Ron Spencer, Jenn Wahl, Richard Smarzik, Charles Washington, and Connie Schroeder. Board members Jeff Haladyna and Lyle Nelson were absent. Staff members present: Bret Gardella, Ashley Allnutt, Angela Ryan and Jean Riemenschneider. BEDC attorney Charles Zech was also in attendance.

1. CALL TO ORDER – Board Chair Spencer called the special meeting to order at 5:00 p.m.

2. PUBLIC COMMENT(S) – There were no public comments.

3. REGULAR BUSINESS & PRESENTATIONS

- 3.1. Approval of meeting minutes from the BEDC Board Meeting of October 17, 2022. Mr. Smarzik made the motion to approve the minutes as submitted; Ms. Wahl seconded, and the motion passed.
- 3.2. Receive financial report provided by City of Bastrop's Chief Financial Officer for the period ending October 2022 and treasurer's comments. Board Treasurer Smarzik reported he had reviewed the financial reports and he didn't see any issues.
- 3.3. Presentation and possible action on a donation of funds to the BEDC from Roscoe State Bank from their merger with Cornerstone Home Lending. Ms. Schroeder made the motion to officially accept the \$100,000 over a five-year period. Mr. Smarzik seconded, and the motion passed.
- 3.4. Presentation and update about workforce education and training from BEDC partners: Bastrop Independent School District, Community Action and Austin Community College. Ms. Riemenschneider introduced Montie May with Community Action and Amanda Brantley with BISD. They each gave an update about the workforce education programs that they provide to the Bastrop community. The many programs offered by these entities include accounting classes, skilled trade courses, and EMT certifications.
- 3.5. Discussion and possible action on the funding of the 20% match on the grant for the Downtown Trail Project. Mr. Smarzik made the motion to approve the matching funds, Mr. Spencer seconded, and the motion passed.
- 3.6. Consideration, discussion, and possible action to approve Resolution R-2022-0010 authorizing the negotiation and execution of a new lease for the BEDC office located at 301 Hwy 71 W, Suite 214. There was no action taken on this item.
- 3.7. Update, discussion and possible action regarding Bastrop Business and Industrial Park infrastructure projects: replating the undeveloped portions of the Business Park and providing the City of Bastrop with a preliminary plat; submitting a warrant to change the cross section identified in the zoning scheme of Jackson Street to 38 feet of pavement and the unnamed street to 36 feet of pavement; and removing the requirements for sidewalks. BEDC Executive Director Gardella started the presentation by explaining that through meetings with City staff, they have been able to create a more efficient and cost-effective plan to develop the remainder of the Business Park. David Speicher with Doucet Engineering also gave an update on the changes to the plans for the project.

4. EXECUTIVE SESSION

4.1. At 5:48 p.m., the BEDC Board of Directors met in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:

- (1) **Section 551.087** Deliberation Regarding Economic Development Negotiations – Project Triple Arrow
- (2) **Section 551.072** Deliberation regarding purchase, exchange, lease, or value of real property.

4.2. At 6:33 p.m., the BEDC Board of Directors reconvened into open session to discuss, consider, and take any action necessary related to the executive sessions noted herein. There was no action taken.

5. **ADJOURNMENT** – Mr. Smarzik made the motion to adjourn, and Ms. Schroeder seconded. The meeting was adjourned at 6:33 p.m.

APPROVED: _____
Ron Spencer, Board Chair

ATTEST: _____
Angela Ryan, Operations Manager



Agenda Item: 3.2

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Receive financial report provided by City of Bastrop's Chief Financial Officer for the period ending November 2022 and treasurer's comments.

Prepared by: Tracy Waldron, City of Bastrop CFO

Attached for the Board's review and consideration is the BEDC financial summary report for the period ending November 2022.

Attachment:
November 2022 Financial Report

Recommendation – None; item presented for informational purposes.

[RECOMMENDED MOTION] – No motion required.



Bastrop Economic Development Corporation

Financial Summary
For Period Ending
November 2022

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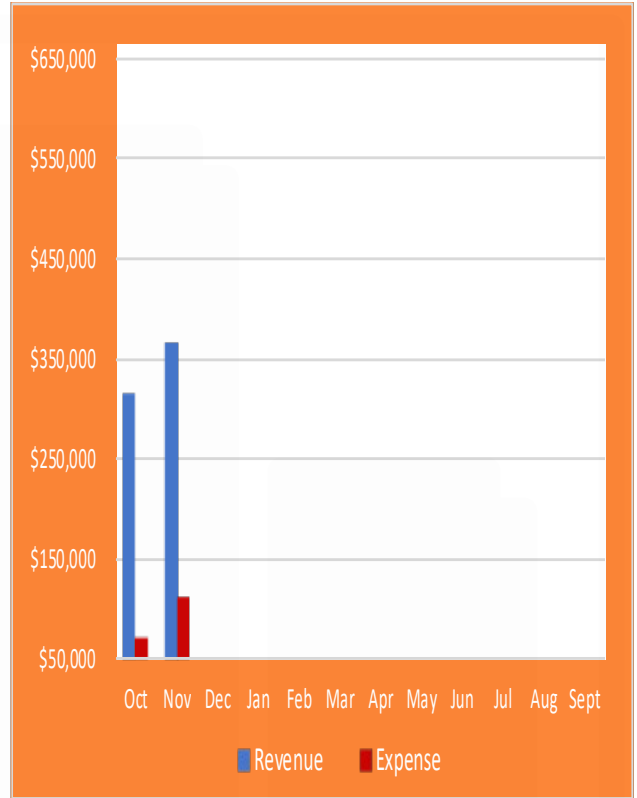




Summary of Revenues and Expenditures

As of Nov. 30, 2022

<u>Month</u>	FY2023 <u>Revenue</u>	FY2023 <u>Expense</u>	Monthly <u>Variance</u>
Oct	\$ 313,181	\$ 70,265	\$ 242,916
Nov	362,903	109,435	\$ 253,468
Dec			\$ -
Jan			\$ -
Feb			\$ -
Mar			\$ -
Apr			\$ -
May			\$ -
Jun			\$ -
Jul			\$ -
Aug			\$ -
Sept			\$ -
Total	\$ 676,084	\$ 179,700	\$ 496,384



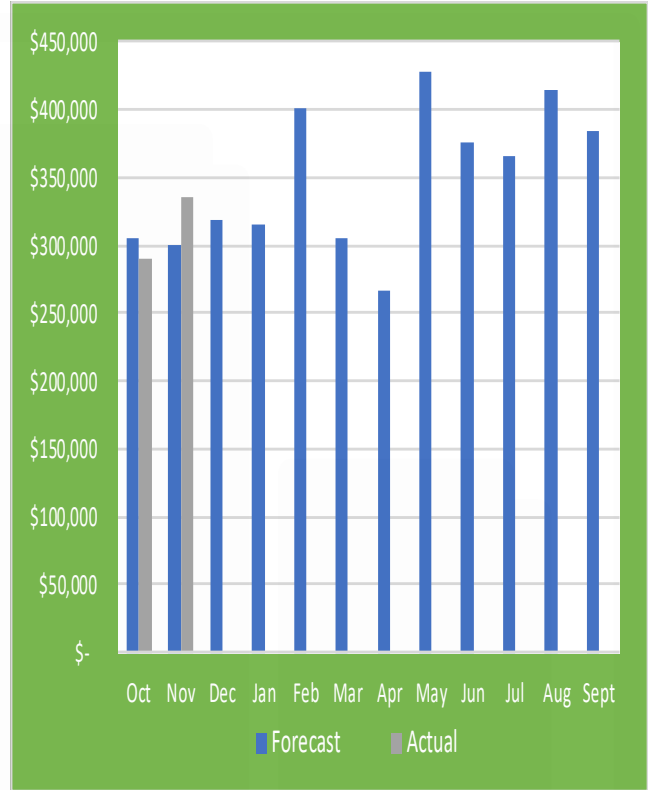
Positive



Summary of Sales Tax Revenue

As of Nov. 30, 2022

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 305,801	\$ 290,089	\$ (15,712)
Nov	299,756	335,415	\$ 35,659
Dec	319,130		
Jan	315,077		
Feb	401,618		
Mar	305,792		
Apr	266,253		
May	428,192		
Jun	376,203		
Jul	365,972		
Aug	414,169		
Sept	385,076		
Total	\$ 4,183,039	\$ 625,504	\$ 19,947
Forecast YTD	\$ 605,557		
Actual to Forecast	\$ 19,947	3.3%	



Positive Sales Tax revenue is 99% of total revenue. The amount in Oct. and Nov. are estimated due to the timing of receiving the payments. The State Comptroller has a two month lag between month earned and month distributed. The Actual to forecast year to date is a negative 3%. This budget was a 5% increase over FY2022 projected.



Expenditures Budget to Actual Comparison

As of Nov. 30, 2022

OPERATING EXPENDITURES COMPARISON

<u>Category</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Personnel	\$ 128,105	\$ 74,148	\$ 53,957
Supplies & Material	2,927	1,323	\$ 1,604
Maintenance & Repairs	5,657	4,220	\$ 1,437
Occupancy	13,133	10,860	\$ 2,273
Contractual Service	56,675	136,255	\$ (79,580)
Marketing/Advertising	61,935	16,507	\$ 45,428
Contingency	-	-	\$ -
Debt Service	-	-	\$ -
Total	\$ 268,432	\$ 243,313	\$ 25,119

Forecast to Actual % 9.36%

Positive

The forecast to actual comparison is a positive 9% year-to-date.



Expenditures Budget to Actual Comparison As of Nov. 30, 2022

CAPITAL OUTLAY PROJECTS

<u>Project</u>	<u>FY2023 Budget</u>	<u>FY2023 Actual</u>	<u>Budget Balance</u>
Jackson St Extension	\$ 2,000,000	\$ -	\$ 2,000,000
Bus. Ind. Park-Tech/MLK Infra*	2,000,000	-	\$ 2,000,000
Total	\$ 4,000,000	\$ -	\$ 4,000,000
CO, Series 2013			
Bus. Ind. Park-Tech/MLK Infra*	\$ 144,875	\$ 15,777	\$ 129,098

* This project funded by bond funds budgeted from the 2013 CO.



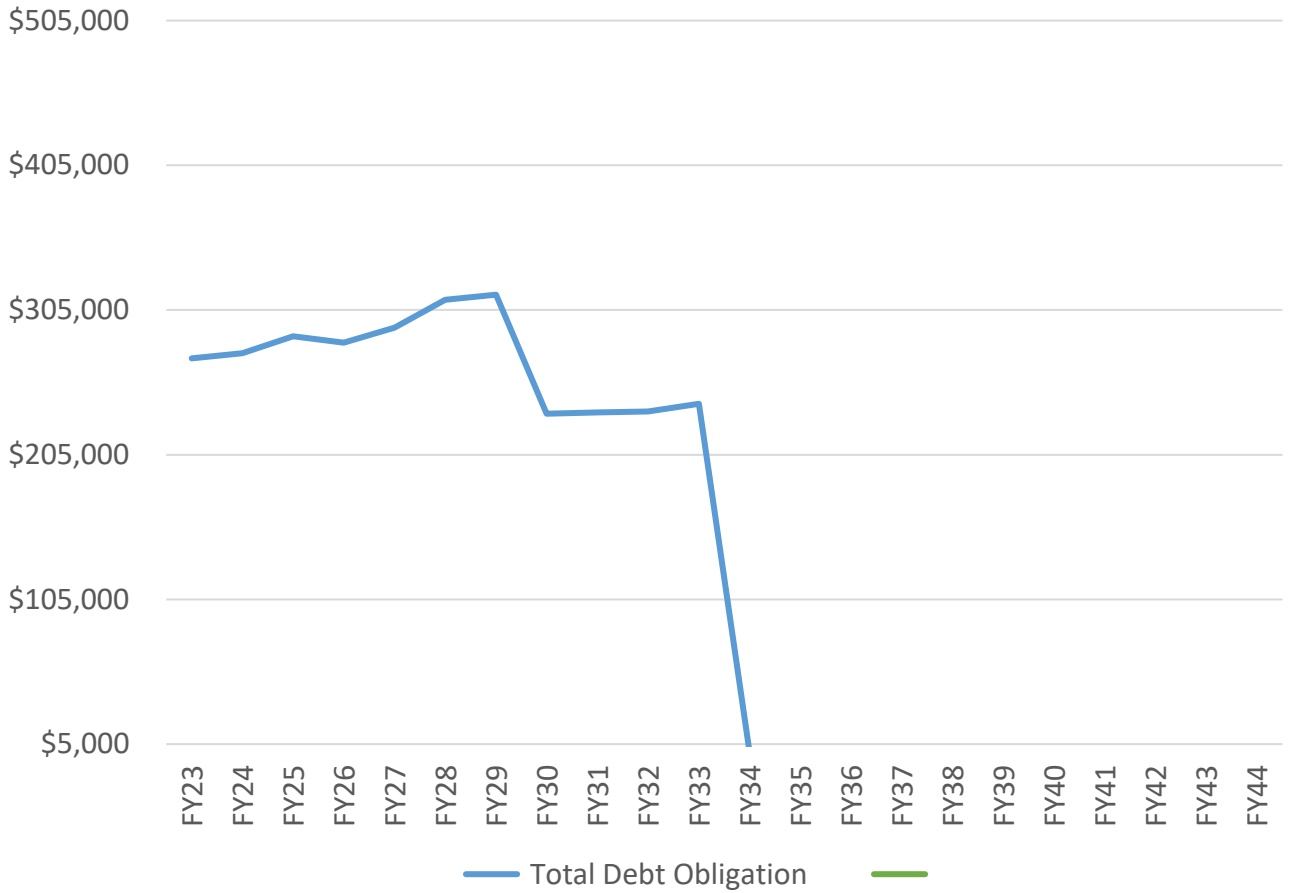
**BASTROP ECONOMIC DEVELOPMENT CORPORATION FUND
FY 2022-2023 BUDGET**

Working Capital 9-30-2022 Unaudited	\$	9,322,982
 FY 2022-2023		
Budgeted		
Revenues	\$	<u>4,213,909</u>
Total FY 2023 Resources	\$	13,536,891
 Budgeted Expenditures:		
Operating Expenses	\$	(5,137,634)
Capital Expenses	\$	(4,000,000)
Debt Service	\$	<u>(271,614)</u>
	\$	(9,409,248)
 Projected Working Capital Balance 09-30-2023		
	\$	4,127,643
 Reserve 25% of Operating Expense		
	\$	1,284,408



Debt Obligation

As of 9/30/2022





Agenda Item: 3.3

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2022-0010 authorizing the execution of a new lease for the EDC office located at 301 Hwy 71 W, Suite 214.

Submitted by: Bret Gardella, BEDC CEO

The BEDC CEO is requesting the authority to execute a new lease for the BEDC office at the current location.

The one-year lease agreement commences January 1, 2023, and expires on December 31, 2023. The monthly rental rate is \$3,600, with a one-year option to extend at the same rate.

Attachment:
Draft Resolution R-2022-0010
Extension and Amendments to Office Lease

Recommendation – Consider approving Resolution R-2022-0010 authorizing the BEDC CEO to execute a new office lease.

[RECOMMENDED MOTION] – I make the motion to approve Resolution R-2022-0010.



RESOLUTION NO. R-2022-0010**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE CEO OF THE BEDC TO EXECUTE AN UPDATED AGREEMENT WITH E&M PROPERTIES.**

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, in order to fulfill its public purpose in advancing qualifying projects under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, the BEDC requires an office space; and

WHEREAS, the owners of the building located at 301 Hwy 21 West (“E&M Properties”) where the BEDC currently has its offices, have requested the BEDC enter into a new lease agreement; and

WHEREAS, E&M Properties has provided the BEDC with a draft of said lease.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. The BEDC hereby approves the terms of the Lease Agreement, attached hereto as Exhibit “A”, between BEDC and E&M Properties.

SECTION 3. The Board authorizes the BEDC Executive Director to take all necessary actions, including the execution of all necessary and related documentation to finalize the lease agreement.

SECTION 4. This Resolution is effective upon passage.

PASSED AND APPROVED on the ____ day of _____ 2022, by the Board of Directors of the Bastrop Economic Development Corporation.

[SIGNATURE PAGE FOLLOWS]

RESOLUTION NO. R-2022-0010

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Ron Spencer, Board Chair

ATTEST:

Richard Smarzik, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

RESOLUTION NO. R-2022-0010

Exhibit "A"

Lease Agreement Between E&M Properties and BEDC

DRAFT

EXTENSION AND AMENDMENTS TO OFFICE LEASE

Date of Lease: July 1, 2015

Demised Premises: Suite Number **214** and being approximately **2006 square feet** of floor space out of a total building square footage of 26,000 located on the second floor of the Building. The term "Building" as used herein, shall refer to the Real Property described in Exhibit "A" to said lease, and any existing and future buildings, parking areas, sidewalks, service areas and other improvements thereon, and any additional Real Property and/or improvements which may be designated by Landlord, from time to time.

Landlord: E & M Properties

Lessee/Tenant: Bastrop EDC

The following terms and provisions as shown by the numbered paragraphs of the original lease are changed and amended as follows:

(h) LEASE TERM: The lease shall commence on **January 1, 2023**, and shall expire on ~~September 30, 2023~~.

December 31,

(i) OPTION TO EXTEND: At the end of this lease extension, the Lessee/Tenant may have a one (1) year option to extend at the same base rent. However, Landlord may end the lease at the expiration of the term by giving 60 (sixty) days' notice to Tenant before the end of the option period. If Tenant does not wish to renew the Lease, Tenant must give landlord sixty (60) days' notice before the end of the option period of intent to not renew.

j) BASE RENT: \$3,600.00 per month, payable on or before the first day of each month, during the term of this lease.

The covenants and conditions contained and described by all other numbered paragraphs in the Office Lease dated July 1, 2015, are hereby ratified and confirmed and shall be in full force and effect during the term of this Extension and Amendment Agreement.

IN TESTIMONY WHEREOF, the parties to this Extension and Amendment Agreement have been confirmed and ratified by the following parties to the lease, on the following date.

DATE: 11/28/22

LANDLORD:

E & M Properties

By:

Name: _____

Title: partner

TENANT:

Bastrop EDC

By: _____

Name: _____

Title: _____



Agenda Item: 3.4

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2022-0011 authorizing the execution of an agreement with Placer.ai location analytics.

Submitted by: Bret Gardella, BEDC CEO

After participating in a demonstration of the Placer.ai location analytics, BEDC staff are requesting Board approval to enter into an agreement with Placer.ai for a one-year subscription.

This is a new software for the BEDC and therefore was not included in the FY23 budget; however, a budget amendment is not anticipated in order to cover the subscription cost of \$12,000/year.

Please refer to the attached order form for additional information about what Placer.ai provides.

Attachments:

Draft Resolution R-2022-0011

Order form from Placer.ai

Recommendation – Consider approving Resolution R-2022-0011 to authorize the BEDC CEO to execute an agreement with Placer.ai.

[RECOMMENDED MOTION] – I make the motion to approve Resolution R-2022-0011.



RESOLUTION NO. R-2022-0011**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE BEDC EXECUTIVE DIRECTOR TO EXECUTE AN AGREEMENT WITH PLACER.AI, A LOCATION ANALYTICS FIRM.**

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, to fulfill its public purpose in attracting qualifying projects under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, the BEDC requires certain professional services, including without limitation, the contracting with and hiring of a location analytics firm to assist the BEDC in attracting businesses to Bastrop; and

WHEREAS, after careful evaluation and consideration by the Board, it has determined that these services and this support can be provided most beneficially, efficiently and economically under a third-party agreement with Placer.ai, in an amount not to exceed \$12,000.00, to be executed by the Executive Director on behalf of the BEDC.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board hereby finds that the provision of certain professional marketing services is necessary for the BEDC’s proper attraction and advancement of qualifying projects under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, and hereby authorizes the BEDC Executive Director to enter into an agreement attached hereto as Exhibit “A”.

SECTION 3. This Resolution is effective upon passage.

PASSED AND APPROVED on the _____ day of _____ 2022, by the Board of Directors of the Bastrop Economic Development Corporation.

[SIGNATURE PAGE FOLLOWS]

RESOLUTION NO. R-2022-0011

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Ron Spencer, Board Chair

ATTEST:

Richard Smarzik, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

RESOLUTION NO. R-2022-0011

Exhibit "A"
Agreement between Placer.ai and BEDC

DRAFT



PLACER LABS, INC.

ORDER FORM

Bastrop Economic Development Corporation	(“Customer”)	Placer Labs, Inc.	(“Placer”)
Address:	301 Hwy 71 W, Suite 214 Bastrop, Texas 78602	Address:	440 N Barranca Ave., #1277, Covina, California 91723
Contact Person:	Ashley Allnutt	Contact Person	Chris Duval
Email:	ashley@bastropedc.org	Billing Contact Person:	Melissa Anderson
Phone:	512-332-8870	Billing Email*:	billing@placer.ai
Billing Contact Email:	bret@bastropedc.org	Billing Phone*:	415-228-2444

*Not for use for official notices.

1. Services.

The services provided under this Order Form (the “**Services**”) include:

- Access, via Placer Venue Analytics Platform (“**Placer’s Platform**”), to all major venues within the United States
- Access, via Placer’s Platform, to reports, including Visits, Trade Areas, Customer Journey, Customer Insights, Dwell Times, and Visitation by Hour/Day
- Actionable insights include:
 - Accurate foot traffic counts and dwell time
 - True Trade Areas displaying frequent-visitors-density by home and work locations
 - Customers’ demographics, interests, and time spent at relevant locations
 - Where customers are coming from and going to, and the routes they take
 - Benchmarking of Foot Traffic, Market Share, Audiences, and other key metrics
 - Competitive insights
 - Void Analysis Reports
- Access to Xtra reports per ad hoc needs; in Excel, KML, Tableau, and other formats: Quarterly Maximum of 26 credits; Annual Maximum of 104 credits
- Ad hoc property visitor time lapse video generation upon request
- Premier Customer Support
 - Regular meetings with Placer’s Customer Success Team
 - Live, Virtual Training support as reasonably needed
- Access to STI Demographics Bundle + Mosaic Data Set. The applicable Advanced Demographics and Psychographics are generated using the Input Datasets from the data vendors as set forth below:

Description	Vendors	Input Datasets Used
STI Demographics Bundle	Synergos Technologies (STI)	PopStats
	Synergos Technologies (STI)	Spending Patterns
	Synergos Technologies (STI)	Workplace
	Synergos Technologies (STI)	Market Outlook
Experian Mosaic	Experian	Mosaic Segmentation

2. Permitted Uses

The data, information and materials accessible via the Services are referred to as “**Placer Data**”. Customer may use Placer Data solely for the following purposes (“**Permitted Uses**”): (a) Customer may use Placer Data for Customer’s

internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

“**Research Data**” means datasets and other materials created by Customer that result in any part from Customer’s use of Placer Data. The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information. Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

3. Term and Termination.

Initial Term: The initial term of this Order Form will begin as of the last signature date set forth below, and will continue for 12 consecutive months thereafter (the “**Initial Term**”). Each renewal or additional term, if any, is referred to as “**Additional Term**,” and the Initial Term and any Additional Terms are referred to collectively as the “**Term**.”

Additional Term: This Order Form shall continue on the same terms and conditions set forth herein for additional periods of the same duration as the Initial Term, if mutually agreed in writing by both parties (email would be sufficient).

Termination: Either party may terminate this Order Form upon thirty (30) days’ notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days. In addition, Placer may immediately suspend Customer’s access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

4. Fees.

\$12,000/year invoiced: in full upon signing this Order Form.

Invoice sent electronically to Customer’s billing contact email via NetSuite.

Customer shall pay the fees set forth above in this Order Form.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

If Customer believes that Placer has billed Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer’s customer support department at support@placer.ai.

In the event of any termination, Customer will pay in full for the Services up to and including the last day on which the Services are available to Customer.

All billing will be sent via electronic invoice to the Customer contact indicated above. Customer shall pay all fees within thirty (30) days of the invoice date.

5. Support.

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, please contact us at support@placer.ai.

6. Mutual NDA.

Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

7. Miscellaneous.

All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

Customer grants Placer the right to use Customer’s company name and company logo, for Placer’s promotional purposes.

This Order Form and Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of laws provisions, with venue for any suit to be Bastrop county.

This Order Form is entered into by and between Customer and Placer effective as of the date of the last signature below. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement located at <https://www.placer.ai/placer-license-agreement/> (the “**Agreement**”); provided, however, that in the event of any conflict between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

“Customer”

“Placer”

Bastrop Economic Development Corporation
By:
Name: Bret Gardella
Title: CEO
Date:

Placer Labs, Inc.
By:
Name: Jacov Ben-Zvi
Title: President
Date:



Agenda Item: 3.5

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Discussion and possible action regarding the potential secondary funding of a Revolving Loan Fund and implementation date; and approval of Resolution R-2022-0012 authorizing matching funds in the amount of \$20,000 per year for a period not to extend five years.

Submitted by: Bret Gardella, BEDC CEO

Providing Bastrop businesses with access to a Revolving Loan Fund program will contribute to the City of Bastrop by assisting small businesses and entrepreneurs in starting or expanding businesses, thereby creating a direct overall improvement/stimulus in the local economy.

The BEDC Executive Director has drafted the criteria for starting a Revolving Loan Fund program, which is attached.

Attachments:

Draft Resolution R-2022-0012

Revolving Loan Fund Program Guidelines

Recommendation – Approve the resolution as submitted.

[RECOMMENDED MOTION] – I make the motion to approve Resolution R-2022-0012.



RESOLUTION NO. R-2022-0012**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE IMPLEMENTATION OF A REVOLVING LOAN FUND; AUTHORIZING \$20,000 IN MATCHING FUNDS PER YEAR FOR A PERIOD NOT TO EXCEED FIVE YEARS; AND AUTHORIZING THE BEDC EXECUTIVE DIRECTOR TO EXECUTE NECESSARY DOCUMENTATION.**

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, economic development organizations commonly utilize Revolving Loan Fund programs to provide access to capital to achieve positive public outcomes such as community revitalization, economic growth, increased tax revenues, and job creation; and

WHEREAS, providing Bastrop businesses with access to such a program will contribute to the City of Bastrop by assisting small businesses and entrepreneurs in starting or expanding businesses, thereby creating a direct overall improvement/stimulus in the local economy; and

WHEREAS, the BEDC Executive Director has drafted and presented the criteria for starting a Revolving Loan Fund program; and

WHEREAS, after careful evaluation and consideration by the Board, it has determined that this Revolving Loan Fund program and annual matching funds of \$20,000 by the BEDC will benefit Bastrop businesses and the overall economy.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board approves the creation of a Revolving Loan Fund program as described in the guidelines attached hereto as Exhibit “A.”

SECTION 3. The Board approves an expenditure to fund a Revolving Loan Fund program in the amount of \$20,000 per year for a period not to exceed five (5) years.

SECTION 4. The Board hereby authorizes the BEDC Executive Director to execute the necessary documentation to establish and fund the program as detailed in Exhibit “A.”

SECTION 5. This Resolution is effective upon passage.

PASSED AND APPROVED on the _____ day of _____ 2022, by the Board of Directors of the Bastrop Economic Development Corporation.

RESOLUTION NO. R-2022-0012

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Ron Spencer, Board Chair

ATTEST:

Richard Smarzik, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

RESOLUTION NO. R-2022-0012

Exhibit "A"
Guidelines for BEDC Revolving Loan Fund Program

DRAFT



**BASTROP ECONOMIC
DEVELOPMENT CORPORATION
REVOLVING LOAN
PROGRAM**

Policies and Procedures

January 2023



INTRODUCTION

The Bastrop Economic Development Corporation (the "BEDC") has established the Bastrop Revolving Loan Program ("BRLP"). This economic development program provides low-interest, supplemental financing to assist with business start-ups and the expansion of existing businesses for the purposes of creating jobs and enhancing private capital investment within the City of Bastrop, Texas.

PART I

A. ECONOMIC OVERVIEW

1. Revolving Loan Fund Objectives

- a) Assist businesses that provide permanent employment opportunities in Bastrop, Texas;
- b) Support potential gains in property and sales tax;
- c) Stimulate private sector investment in commercial opportunities;
- d) Assist in the redevelopment of blighted properties and vacant land, as well as commercial, industrial, or service businesses that are located in or are relocating to Bastrop; and
- e) Provide financial assistance to those businesses that can document the need for financial assistance or where the use of these funds may be the determining factor in locating in a City of Bastrop location.

B. BUSINESS DEVELOPMENT STRATEGY

1. Business Needs

Entrepreneurs, existing small business owners and those interested in starting a small business in Bastrop, who are looking for financial assistance through the BRLP, must provide proof of business assistance need. This shall be provided in the form of a business plan for their project and application for the BRLP. Any project looking to borrow the \$10,000 Small Business Micro-loan must prove job creation equal to one (1) full-time equivalent position created for every \$10,000 borrowed. These full-time equivalent positions must be maintained for the life of the loan. Full-time positions created for project construction or renovation will not be considered.

2. Participation Incentive

Potential borrowers are encouraged to receive assistance from the Small Business Development Center ("SBDC") at Texas State University or another accredited small business assistance program. The BEDC will provide a \$500 incentive to be applied to the balance of the loan after successful completion of work with the SBDC.



C. FINANCE STRATEGY

1. Financing Needs and Opportunities

The key issue related to economic development financing for small businesses and entrepreneurs is typically the lack of equity they have to start or grow their business.

The BRLP is meant to assist those business owners and entrepreneurs who cannot obtain one hundred percent (100%) of economically feasible financing due to conventional interest rates and/or lending exposure limits applied by lending institutions. The BRLP is intended to supplement existing investment through the offer of low interest and subordinate financing that local lending institutions may view as "riskier" loans.

At the present time, the majority of lending institutions require a business to contribute twenty to twenty-five percent (20-25%) of the total costs for an expansion or start-up project. This figure may vary depending on the project and circumstances, the scope of the project and the financial strength of the company and its ownership. The existence of a supplemental loan program makes economic development viable for the city, the business and the commercial lenders. As a gap financing tool, the BRLP will directly address the risk equity problem. By providing this financing, the BRLP will effectively reduce the amount of required risk equity.

2. The BEDC staff will be responsible for the continued success of the BRLP. Responsibilities will include but are not limited to marketing the BRLP, application review and assistance, working with the lending institution on loan closing, loan servicing and monitoring the loans, and programmatic reporting to the BEDC Board. Fiscal responsibilities are managed by the BEDC in conjunction with the lending institution. The BRLP Committee will be responsible for the final application review as well as the approval or denial of the loan application. Additional responsibilities of the BRLP Committee include loan waiver recommendations, modifications of loan terms and the recommendation of policy changes. The BRLP Committee will also make recommendations to the lending institution on when to begin foreclosure actions or pursuit of defaulted loans.

3. BRLP Niche Financing

The BRLP Program will provide longer term, low interest rate loans to businesses that have the highest probability of successfully creating new jobs, competing in the local marketplace and diversifying the economy. Funds will be available to any size business and may fund start-ups or expansions. While funds will primarily be used for fixed assets, application for working capital will be considered.

D. FINANCING POLICIES

1. Lending Area

The eligible lending area includes all areas within the city limits of the City of Bastrop.



2. Allowable Borrowers

The loan program shall be available to private business only to include industrial, commercial, retail and service sectors. Private businesses in all stages of development shall be eligible for funding, so long as they meet the criteria specified herein. For the purposes of this program, a private business is defined as a "dba," "LLC," "LLP," "C" or "S" Corporation.

3. Allowable Lending Activities

Loans can be used for activities such as construction of buildings, reuse and modernization of facilities, purchase of machinery and equipment, purchase of inventory, and other similar activities approved by the BRLP Committee.

4. Prohibited Lending Activities

The following will not be funded by the BRLP:

- Speculative activities, such as land banking and the construction of speculative buildings, since they do not normally result in long-term job creation or retention.
- Loan activities and economic benefits resulting from activities that are not located within the eligible area. BRLP assistance must be withdrawn if for any reason the activity financed is moved from the eligible area. If any business that has received BRLP assistance relocates out of the Bastrop city limits, that business must repay the balance of the loan within thirty (30) days of relocation.
- Loans for the purpose of investing in high interest accounts, certificates of deposit or other investments.
- Loans used as a loan guarantee program.
- Loans used as a substitute for private capital.
- Loans of which would create a potential conflict of interest for any current member of the BRLP Committee, elected or appointed official, or staff who reviews, approves or otherwise participates in decisions on BRLP loans.
- Loans which will be used to acquire equity position in a private business.
- Loans which will be used to construct public buildings or infrastructure.
- Loans which will subsidize interest payments on an existing bond(s).
- Loans which will provide the equity contribution required of borrowers.
- Loans which will enable a borrower to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless the need for BRLP assistance is sufficiently justified.
- Loans which will refinance existing debt, unless in compliance with applicable program regulations.

5. Loan Size

There are two (2) loans available in this program:

- A micro-loan is meant for an initial start-up or expansion opportunity not to exceed \$10,000. This loan can help an entrepreneur get into business or



a small business get started or expand. This loan is meant to assist with inventory, F, F&E, leasehold improvements, etc. The applicant needs to meet the requirement of having ten percent (10%) equity into their project (for example purposes a \$10,000 loan would need \$1,000 of personal equity). It is expected that a micro-loan will create and retain one (1) full-time equivalent job throughout the life of the loan.

- The macro-loan has a maximum amount not to exceed \$100,000. This loan is meant for expansion or relocation of existing businesses within the City of Bastrop. It is expected that for every \$10,000 borrowed at least one (1) full-time equivalent job is created and retained for the life of the loan. The applicant needs to meet the requirement of having ten percent (10%) equity into the project and it would be expected that additional private financing would be required in addition to this loan.

A participant of either loan program must be in good standing with the BEDC and the City of Bastrop (e.g., not in litigation against the BEDC or City or owing monies for utilities, judgements, fines, having unresolved code enforcement issues, etc.) and may only carry one revolving loan at a time.

6. Interest Rate

The minimum interest rate of the program is four percent (4%). The interest rate shall be established at the time of the BRLP Committee approval of the loan. The Committee may vary the interest rate, within said limitations, as a function of the amount, equity security and purpose of that loan. Additionally, the Committee may vary the interest rate for applicants who exceed job creation and retention goals or hire displaced workers, women, minorities, disabled, long-term unemployed and underemployed, and/or low- and moderate-income employees.

7. Terms

The term of the micro-loan shall not exceed five (5) years. The term of the macro-loan shall not exceed ten (10) years. The BRLP Committee may approve an exception to this policy if unforeseen circumstances are met by the borrower. The term will vary as a function of the amount, equity, security and purpose of the loan. Loans made for fixed assets will generally have a longer term. Loans for working capital expenditures generally will not exceed three (3) years. Loans for machinery and equipment shall not exceed the established useful lifetime of the equipment. Payment shall be made on a monthly basis. Loans will be reviewed within a minimum of two (2) years and may be callable at the time of review if circumstances prove the loan is no longer required. In order to encourage early repayment of a loan, a borrower may repay a loan without incurring a prepayment penalty.

8. Fees

Administrative costs associated with this program will be paid from interest earned on the invested recaptured loans and loan closing fees.



9. Equity and Collateral

The borrower will be required to provide a minimum of ten percent (10%) equity into the project. All loans shall be secured by collateral in an amount equal to one hundred percent (100%) of the face value of the loan. Collateral requirements may vary as a function of the loan amount, equity and purpose. A secured subordinate position to another lender may be permitted. Assets other than cash that are used for collateral must be documented by appraisals or other appropriate valuation techniques. In projects involving direct working capital loans, the BRLP Program will obtain collateral, such as liens on inventories, receivables, fixed assets and/or other available assets of borrower(s). Such liens shall be subordinate only to existing liens of record and other loans involved in the project unless otherwise made subordinate by law. When appropriate, the borrower will be required to provide life insurance, fire hazard or normal business insurance on all assets for the term and in the amount of the loan, with the BEDC being the beneficiaries of the insurance proceeds should an incident arise where insurance proceeds are used. Where required, the borrower shall also obtain flood insurance on property assigned as collateral and in the amount of the loan with the BEDC being the beneficiaries of the insurance proceeds should an incident arise where insurance proceeds are used. In the event that the BRLP Committee determines it is necessary or desirable to act to protect or further the interest of the loan, the Committee will make such recommendation.

10. Start-ups

Funds will be available to any size business and may fund start-ups. The policies for start-ups will be considered on a case-by-case basis dependent on the apparent risk.

11. Working Capital

The loan program shall be available to private industrial, commercial, retail or service business borrowers needing fixed assets and/or working capital financing to locate, expand, or retain their operation within Bastrop. BRLP loans shall not subsidize or refinance existing business loans.

12. Credit Not Otherwise Available

To be approved for a loan greater than \$10,000, applicants must provide a signed bank letter demonstrating that full credit for their project is not otherwise available on terms and conditions financed.

E. PORTFOLIO STANDARDS AND TARGETS

1. Target Percentages

The policies for start-ups will be considered on a case-by-case basis dependent on the apparent risk. However, loans for start-ups are not to exceed fifty percent (50%) of the BRLP portfolio.

Loans for fixed asset financing are not to exceed twenty-five percent (25%) of the BRLP portfolio.



Loans for working capital may be considered. Working capital loans are not to exceed twenty-five percent (25%) of the BRLP portfolio.

2. Private Sector Leverage

The portfolio shall average a ratio of 2:1 private to public dollars. No funds shall be advanced from the loan fund if sufficient funds are available from other sources at terms which will permit the project to operate with satisfactory income and cash flow to sustain the business in a profitable manner. The loan will be the minimum necessary to assure project success. The applicant will be required to document, by correspondence from a lending institution, that they cannot otherwise finance the amount requested from the BRLP. Private investment can be classified as leverage if it is made within twelve (12) months prior to the approval of a BRLP loan and as part of the same business development project and may include capital invested by the borrower or others. Other investors may include financing from private entities.

F. LOAN SELECTION CRITERIA

BEDC staff will complete an initial review of each application. The review shall include an assessment of the business capacity to operate successfully, the extent to which the proposal meets the stated purposes of the program, credit and collateral analysis, cash flow analysis, and market feasibility of the proposed business to determine if an applicant is eligible for loan funds.

In support of the application, the applicant will also submit support documentation in the form of bank rejection letters or other outside documentation to determine if a financing gap exists and whether BRLP financing is necessary. BEDC staff will have the option of returning application packages which lack critical documentation or assurances, such as a loan commitment for the private share of the financing. Staff will be available to provide technical assistance or will provide appropriate referral assistance for businesses initially deemed ineligible under the BRLP Program.

After review, staff will present the application to the BRLP Committee for consideration. The staff presentation to the Committee will include a discussion of the strengths and weaknesses and any recommendations and suggestions they may wish to submit on each project.

The BRLP Committee shall review each application for financial feasibility, security and ability to satisfy the purposes and priorities of the program. The Committee shall approve, by majority vote of the full Committee, applications that meet program guidelines and that are financially sound. The Committee shall not approve any application, either tentatively or conditionally, if there are not sufficient funds currently in the program account. The decisions of the Committee are final and without right of appeal.



G. PERFORMANCE ASSESSMENT PROCESS

Annually, BEDC staff will review the goals and objectives of the Program to verify if it is meeting its objectives.

If, after the review of the goals and objectives, staff decides to the program needs modification, staff will prepare the modifications and present for Committee review and final approval.

PART II: REVOLVING LOAN FUND OPERATIONAL PROCEDURES

A. ORGANIZATIONAL STRUCTURE

1. BRLP Committee

The Committee shall be administered by a three (3) member loan committee which will have skills and experience in business and/or financial management. They are established as a delegated authority and appointed by the BEDC Board.

The BRLP Committee shall meet on an as-needed basis to review, approve or deny loan assistance. A majority vote of the Committee shall be required for loan approval. The Committee duties include the approval or denial of loans, recommending foreclosure actions, waivers and/or modifications of loan terms and the oversight of program policy. All recommendations and changes in program policy require approval from the BEDC Board. A quorum will be required for the BRLP Committee to conduct business. A quorum will consist of a majority of the three (3) committee members.

B. LOAN PROCESSING PROCEDURES

1. Standard Loan Application Requirements

The following list of information must be submitted prior to application consideration:

- Completed and signed application;
- Financial Balance Sheet for the last two (2) years, dated within ninety (90) days of application; if the applicant is a new business this can be waived by the Committee;
- Income statement for the last two (2) years, dated within 90 (ninety) days of application;
- Income and expense projections for at least two (2) years;
- Aging of Accounts Receivable and Accounts Payable, if available;
- Personal balance sheets for each principal owning ten percent (10%) or more of the company;
- Cost estimates for machinery and equipment purchases and new construction and/or renovations;
- Appraisal for purchase of building and/or land;



- Commitment letter for private financing; and
- Ten percent (10%) equity injection

Information that the Applicant believes is confidential shall be conspicuously marked "Confidential" on each page containing the confidential information.

2. Credit and Financial Analysis

Staff will work with the participating lending institution to determine the viability of an application. Upon receipt of a completed application, staff will review each application based on the requirements of this program and industry-accepted credit and financial analysis techniques. The staff may enlist the assistance of legal and financial professionals to complete the review. The credit and financial analysis may include but is not limited to the following:

- Review of Business Plan
- Review of Profit and Loss Statement
- Review of Balance Sheet
- Review of Personal Financial Statement
- Credit Check
- Operating Cycle Analysis
- Ratio Analysis
- Capital Expenditures Analysis
- Reconciliation of Net Worth

3. Loan Write-Up

Following the submission of a loan application, Economic Development staff will prepare a loan summary for submittal to the BRLP Committee. Information in the summary includes but is not limited to the following:

- Project description/use of funds
- Type of business
- Number of jobs created and retained
- Job/cost ratio
- Private to Public leverage ratio
- Collateral and BRLP position
- Source and use of funds
- Staff recommendation for loan application
- Commitment letter for private financing (attachment to Loan Summary)

The BRLP Committee shall receive the Loan Summary and Loan Application a minimum of seventy-two (72) hours prior to the meeting for review. The applicant will be invited to the meeting to present their case for funds to the committee. Each applicant is encouraged to bring their banker or developer to the committee meeting, so the committee can get a complete understanding of the project.

4. Loan Approval Procedures



Staff will present the application and loan summary to the BRLP Committee for consideration and action. The staff presentation shall include a brief analysis of the strengths and weaknesses and any recommendations or suggestions that may apply to the application. The business owner will make a presentation to the BRLP Committee. The Committee shall review each application for financial feasibility, security and the ability to satisfy the purposes and priorities of the BRLP Program. The Committee shall approve or deny, by majority vote of the Committee, all applications. The decisions of the BRLP Committee are final and without right of appeal. The BRLP Committee decisions are documented through minutes of the meetings.

Following the approval or denial of a loan application by the Committee, staff will contact the applicant in writing to notify of the Committee decision and to review conditions of the loan, if approved. A copy of the letter is also sent to the participating lending institution.

C. LOAN CLOSING AND DISBURSEMENT PROCEDURES

Loan recipients will receive draft closing documents prior to the loan closing. Staff will ensure the documents have been reviewed by the applicant for accuracy. A Closing Document Certification must be signed by the applicant. Also, the recipient shall provide evidence of final private financing. This will generally be in the form of a commitment letter from the participating financial institution. The loan recipient shall also provide evidence of their equity injection into the project, such as a copy of the check deposited at their financial institution. Loan recipients will be required to provide the documentation about the cash participation at least seven (7) days prior to the loan closing date.

1. Loan Closing Documents

Standard documents that are required for the closing of a loan through the BRLP program include the following:

- Original Signed Loan Application
- Contract/Agreement
- BRLP Committee Meeting Minutes Approving the Loan
- Personal and/or Corporate Guarantee/Promissory Note
- Security Agreement(s)
- Deed or Mortgage as Applicable
- Note

2. Loan Agreement Provisions

The contract and security agreement are executed by the loan recipient and staff. All other documents are executed by the loan recipient. These documents are completed for all loans involving the purchase of fixed assets, machinery/equipment, inventory and/or working capital.



In addition, a mortgage is completed and filed for businesses that receive funds for the purchase/renovation of land and/or building(s). Also, a Uniform Commercial Code (UCC) form is filed for those loans that utilize program funds for the purchase of machinery/equipment, inventory, furniture and fixtures. Staff works with the participating lender in conducting UCC searches, if needed. The mortgage and UCC are executed by the loan recipient and staff. Following the recording of the loan documents by the first party collateral holder, the mortgage and the UCC documents are filed with the appropriate parties. These documents are recorded as soon as possible by staff in order to secure collateral position.

3. Loan Disbursement Requirements

A form will be provided to the loan recipient at the loan closing in order to document fund disbursement.

D. LOAN SERVICING PROCEDURES

1. Loan Repayment

BRLP loan recipients will receive monthly statements from the lending institution administering the loan ten (10) days prior to the loan payment due date, the first of each month. Monthly payment amounts and collection procedures are detailed in the note executed by the loan recipient. Economic Development staff shall receive a monthly statement of each loan from the lending institution. Current loan status information will be included in the statement with the unpaid principal balance and payment status. If the loan recipient is delinquent on payments, the amount and the delinquent months will be indicated on the statement.

2. Loan Monitoring

As it would with any loan, the lending institution will monitor all aspects of the loan, including payment amounts, payments made on time, past due loans, etc.

To verify compliance with the BRLP goals, Economic Development staff may visit the business at any time to check on the progress of the business, the collateral used for the loan, the job creation and retention, and to provide the loan recipient an opportunity to discuss the progress of the business and to request answers to any questions that may arise.

3. Closing Loan Files

Standard documents that are required for the closing of a loan through the BRLP Program include but are not limited to the following:

- Loan Agreement
- Note
- Personal and/or Corporate Guarantee
- Security Agreement
- Tax ID
- D-U-N-S Number



The contract and security agreement are executed by the loan recipient and Economic Development staff. All other documents are executed by the loan recipient. These documents are completed for all loans involving the purchase of fixed assets, machinery and equipment, and/or working capital.

The BRLP loan files contain all pertinent information of the loan recipient and their project. The original loan application submitted to the BRLP Committee is placed in the loan file. Documents that are incorporated in this file section include: project description, private lender commitment letter, proposed project costs, description of collateral, personal financial statements of any individual owning ten percent (10%) or more of the business, and historical and projected financial statements. A copy of the BRLP commitment letter to the loan recipient is the final item in the loan application section.

For privacy purposes, all loan applications and files will be stored in a secured area at the BEDC office and the same will be expected at the lending institution.

4. Job Creation

Economic Development staff will monitor job creation and retention of the loan recipient each year.

5. Defaulted Loans Up to Ninety (90) Days

Loan payments are due on the first day of each month to the lending institution. Loan recipients are informed of the procedures used for delinquent payments at the time of closing. The information is also included in the contract and note, which the loan recipient receives. The BRLP Committee is kept informed of any loan recipient that is delinquent on loan repayments. Delinquent loan procedures from the lending institution administering the loan will be followed. The following are typical examples of procedures for delinquent loans:

- a) After a delinquency of thirty (30) days, a 30-day letter is sent to the loan recipient by the lending institution and followed up by a phone call.
- b) After a delinquency of sixty (60) days, a 60-day letter will be sent.
- c) Upon receipt of the copy of the written notice, staff will contact the business, determine the degree of the problem and take the necessary steps for payment compliance. If no resolution is made, a BRLP Committee meeting will be called to discuss actions that may be taken against the borrower, including foreclosure or restructuring of the loan or suspension of principal payments, with interest only payments, for a specified time period.

6. Procedures for Handling Loans Over Ninety (90) Days Delinquent

Loan recipients that continue to be delinquent on loan payments, even following assistance from the BRLP Committee and staff, shall be considered in default of the terms of the loan if the loan is not brought current within one (1) year. The BRLP Committee must approve to initiate default proceedings against the loan recipient.



Staff shall give notice to the lending institution to proceed against the borrower who is in default. The loan recipient shall be responsible for any and all attorney's fees and expenses to enforce collection of the loan.

7. Loan Write-Off Procedures

If a loan remains in default and proper legal efforts have been taken to collect payments but are unsuccessful, the BRLP Committee can proceed with a recommendation to the BEDC to request final approval to write off the debt. The loan will be reclassified as a Bad Debt Expense in the month the BEDC acts on the recommendation to write off the loan.

E. ADMINISTRATIVE PROCEDURES

1. Accounting

The lending institution shall provide Economic Development staff a combined monthly statement listing each loan. This report separates the principal and interest portion of the payment and provides information on payment fees. This information is then compiled into a monthly financial summary and provided to the BRLP Committee for their review. The summary shall include information on interest earned on the account and the amount of interest to be utilized to cover administrative expenses.

2. Audits

BRLP funds are subject to an annual audit. The full value of the BRLP (outstanding loans and available cash) must be shown every year.





Agenda Item: 3.6

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Update, discussion and possible action regarding Bastrop Business and Industrial Park infrastructure projects: Technology Drive and South Street.

Submitted by: Bret Gardella, BEDC CEO

BEDC Staff will give an update about the infrastructure projects in the Bastrop Business and Industrial Park.

Recommendation – None; item presented for informational purposes.

[RECOMMENDED MOTION] – No motion required.





Agenda Item: 3.7

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Update, discussion and possible action on proceeding with finalization of the sale of the 9.525-acre lot located at 108 S. Jackson Street, legally described as “Bastrop Business and Industrial Park, Phase 1, Block 8, Lot 1-A (Re-plat of Block 8 & Lot 3A, Block D)” (the “Property”), approved via Resolution R-2017-0024 on November 20, 2017.

Submitted by: Bret Gardella, BEDC CEO

The BEDC took action in November 2017 to sell a 9.525-acre parcel of property located at 108 South Jackson Street in the Bastrop Business and Industrial Park to Bastrop County. The purchase agreement was executed on January 8, 2018, with the property sold to the County “as-is” (the BEDC would not be responsible for any remediation on the property). The sale price was \$100,000.

Subsequent to the agreement, Bastrop County, the City of Bastrop, and the BEDC began the process of drafting an interlocal agreement (ILA) between the City, County, and BEDC, which to date has not been finalized.

The County is now ready to move forward with their project, and BEDC Staff requires approval from the Board to complete the terms of the ILA.

The BEDC Executive Director will work with legal counsel on completing the terms of the ILA and return a finalized draft to the Board within 60 days.

Recommendation – Staff recommends the Board authorize the completion of the interlocal agreement.

[RECOMMENDED MOTION] – No motion required. Board may give direction for the BEDC Executive Director to work with legal counsel to complete the terms of the ILA and return a finalized draft to the Board for consideration.





Agenda Item: 3.8

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Discussion regarding the proposed Economic Development Forum 2023, scheduled for January 27, 2023.

Submitted by: Bret Gardella, BEDC CEO

The BEDC is partnering with the Bastrop Chamber of Commerce and the City of Bastrop to host an Economic Development Forum at the Bastrop Convention Center.

The event is planned for 8:30 a.m. to noon on January 27, 2023. Topics will include an overview of economic development, economic development law, and an outlook for the future of economic development.

The forum will be open to the public and free of charge. Registration information will be posted on the BEDC website and social media. Stay tuned!

Recommendation – None.

[RECOMMENDED MOTION] – No motion required; item for information purposes only.



Save the Date

bastrop

E D C

**Economic
Development
Forum**

1.27.2023

08:30-Noon

Bastrop Convention Center

ED 101

ED Law

ED Outlook





Agenda Item: 3.9

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Presentation and update regarding infrastructure for the Moca Project.

Submitted by: Bret Gardella, BEDC CEO

BEDC Staff will give an update about the infrastructure for the Moca Project.

Recommendation – None; item presented for informational purposes.

[RECOMMENDED MOTION] – No motion required.





Agenda Item: 3.10

AGENDA MEMORANDUM

Meeting Date: December 19, 2022

Agenda Item: Discussion and possible action on a request by the City of Bastrop to fund an Intersection Improvement Study in the amount of \$22,500.

Submitted by: Tracy Waldron, City of Bastrop CFO

During the budget meetings for fiscal year 2022/2023, the Board agreed to include funds for certain City of Bastrop projects. The Intersection Improvement Project was one of the projects that was discussed and included in the budget, in the amount of \$230,000.

The City is ready to proceed with the study, and is requesting the Board approve an expenditure at this time in the amount of \$22,500.

CFO Waldron will be in attendance at the meeting to answer any questions.

Attachments:

Draft Resolution

Draft Agreement between the City of Bastrop and the BEDC

Exhibit A to the Agreement (Kimley-Horn contract)

Recommendation – Consider approving the agreement and resolution in the amount of \$22,500.

[RECOMMENDED MOTION] – I make the motion to approve the agreement with the City of Bastrop and corresponding resolution.



RESOLUTION NO. R-2022-0013**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE TERMS OF AN AGREEMENT WITH THE CITY OF BASTROP, TEXAS, TO FUND AN SH 71 INTERSECTION IMPROVEMENT STUDY IN AN AMOUNT NOT TO EXCEED \$22,500.00.**

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505 *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, the Bastrop City Council understands providing an enhanced quality of the services from City infrastructure should be cost effective; and

WHEREAS, the City of Bastrop (“City”) has requested funding from the BEDC for an SH 71 Intersection Improvement study; and

WHEREAS, Texas Local Government Code Section 501.103 authorizes expenditures that are found by a board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises related to street and road improvements; and

WHEREAS, the City has engaged Kimley-Horn & Associates as a subject matter expert in the area of traffic and intersection improvements; and

WHEREAS, the BEDC hereby finds and determines that requested funding will promote new and expanded business enterprises within the City limits of the City; and

WHEREAS, the BEDC and the City are authorized under the laws of the State of Texas to enter into this Agreement; and

WHEREAS, the Board has reviewed the Agreement by and between the City and BEDC, and determined that it fully complies with the statutory requirements that govern the BEDC and is in the best interest of the BEDC to enter into such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. On this date the BEDC approved the terms of the Agreement between BEDC and the City of Bastrop attached hereto as Exhibit “A.”

SECTION 3. The Board authorizes the Board Chair or Executive Director to take all necessary actions including the execution of all necessary and related documentation to finalize the Agreement.

SECTION 4. This Resolution is effective upon passage.

RESOLUTION NO. R-2022-0013

DULY RESOLVED AND ADOPTED by the Board of Directors of the Bastrop Economic Development Corporation, this ____ day of _____ 2022.

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Ron Chair, Board Chair

ATTEST:

Richard Smarzik, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.

RESOLUTION NO. R-2022-0013

Exhibit "A"

AGREEMENT FOR BROADBAND DEPLOYMENT FEASIBILITY STUDY SUPPORT
BETWEEN THE CITY OF BASTROP AND
THE BASTROP ECONOMIC DEVELOPMENT CORPORATION

**AGREEMENT FOR BROADBAND DEPLOYMENT FEASIBILITY STUDY SUPPORT
BETWEEN THE CITY OF BASTROP AND
THE BASTROP ECONOMIC DEVELOPMENT CORPORATION**

THE STATE OF TEXAS §
 § KNOWN ALL MEN BY THESE PRESENTS:
COUNTY OF BASTROP §

THIS AGREEMENT (“Agreement”) is entered into and executed the _____ day of _____, 2022 (“Effective Date”), by and between the Bastrop Economic Development Corporation (hereinafter referred to as “BEDC”) acting by and through its Chair of the Board, and, the CITY OF BASTROP, a municipal corporation, acting by and through its City Manager as authorized by its City Council, situated in Bastrop County, Texas (hereinafter referred to as “City”) and provides as follows:

WHEREAS, the City has requested funding from the BEDC for an State Highway 71 Intersection Improvement study; and

WHEREAS, the City of Bastrop City Council understands providing an enhanced quality of the services from City infrastructure should be cost effective; and

WHEREAS, Texas Local Government Code Section 501.103 authorizes expenditures that are found by a board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises related to street and road improvements; and

WHEREAS, the City has engaged Kimley-Horn & Associates as a subject matter expert in the area of traffic and intersection improvements; and

WHEREAS, the BEDC hereby finds and determines that requested funding will promote new and expanded business enterprises within the City limits of the City; and

WHEREAS, the BEDC and the City are authorized under the laws of the State of Texas to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to the following:

I. Findings

The foregoing recitals are hereby found to be true and correct and are hereby adopted and made a part of this Agreement for all purposes.

II. City Obligations

The City Agrees to utilize any funding provided under this Agreement to pay the contract fees to Kimley-Horn & Associates, in an amount not to exceed \$22,500.00, for services as described in the Kimley-Horn & Associates standard contract for general services (Exhibit A) attached herein.

The City Agrees to provide all paid receipts for reimbursement to the BEDC.

III. BEDC Obligations

As consideration for the above listed items to be provided by the City, BEDC shall reimburse funding to the City in an amount not to exceed \$22,500.00 (twenty-two thousand five hundred dollars), conditioned upon the City's commitment to dedicate and utilize said funds exclusively to pay the contract fees to Kimley-Horn & Associates, in an amount not to exceed \$22,500.00, as described in the Kimley-Horn & Associates standard contract for general services (Exhibit A) attached herein.

Reimbursements are limited to the amounts designated and upon the provision of paid receipts by the City, as follows:

1. SH 71 Intersection Traffic study as described in the contract (Exhibit A), and documented through paid receipts presented to the BEDC; and
2. No funding is provided for administrative purposes.

IV. General Provisions

1. **Term.** Subject to early termination as provided below, this Agreement shall be in effect for a period beginning on or about November 22, 2022, and ending on or about March 31, 2023.
2. **Termination.** Either party may terminate this Agreement upon giving prior written notice to the other party. Further, if any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
3. **Severability.** If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.
4. **Entire Agreement.** This Agreement constitutes the final and entire agreement between the Parties hereto and contains all the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to

bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement in the year and on the day indicated.

**BASTROP ECONOMIC
DEVELOPMENT CORPORATION**

CITY OF BASTROP, TEXAS

Bret Gardella, Executive Director

Sylvia Carrillo, City Manager

Exhibit A
Contract with Kimley-Horn & Associates

CITY OF BASTROP
STANDARD CONTRACT FOR GENERAL SERVICES

Less \$50K
(8-16-2021)

This General Services Contract (“Contract”) is entered by and between the **City of Bastrop**, a Texas Home-Rule Municipal Corporation (the “City”), and **Kimley-Horn and Associates, Inc.** (the “Engineer/Contractor”), and together with the City jointly referred to as the “Parties,” for the following work described on the Scope of Services, Exhibit A-1, attached and incorporated herein to this Contract (the “Work” or “Project”).

I. General Information and Terms.

Engineer’s/Contractor’s Name and Address:	Kimley-Horn and Associates, Inc. 10814 Jollyville Road Campus IV, Suite 200 Austin, Texas 78759 Attn: Matthew Gaal
General Description of Services:	SH 71 Intersection Traffic Studies
Maximum Contract Amount:	\$22,500.00
Effective Date:	On the latest of the dates signed by both parties.
Termination Date:	See II.D.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Standard Contractual Provisions
- III. Additional Terms or Conditions
- IV. Additional Contract Documents
- V. Signatures

II. Standard Contractual Provisions.

A. Contractor’s Services. The Contractor will provide to the City the professional engineering services (“Services”) described in the Scope of Services, Exhibit A-1 attached and incorporated herein to this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The Contractor will bill the City for the Services provided at intervals of at least 30 days of receipt of Contractor’s invoices, except for the final billing. The City will pay the Contractor within 30 days of receipt of Contractor’s invoices for the Services provided for

in this Contract with current revenues available to the City, but all of the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City shall have the right to withhold payment, or any part thereof, of any of invoice presented by Contractor until resolution providing reasonable verification of the correctness thereof of is reached. The City shall notify the Contractor, in writing, of the disputed amount within thirty (30) days. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Executed Contract. The "Notice to Proceed" will not be given nor shall any Services commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to this Contract.

D. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

- (a) On the termination date, if any, specified in the General Information in Part I, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
- (b) If there is no termination date specified in the General Information in Part I, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City Manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five (5) business days prior to the termination date, but the City will pay the Contractor for all Services rendered in compliance with this Contract up to the date of termination. The City may terminate the Contract anytime if the City does not have available funds pursuant to Texas Government Code Chapter 2251.

(3) If the City Council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution).

E. Delays. Contractor shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of Contractor, an extension of time shall be the Contractor's sole remedy.

F. Independent Contractor. It is understood and agreed by the Parties that the Contractor is an independent contractor retained for the Services described in the Scope of Services, Exhibit A-1, attached and incorporated herein. The City will not control the manner or the means of the

Contractor's performance but shall be entitled to work product as detailed in the Exhibit A-1. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture. Services performed by the Contractor under this Contract are solely for the benefit of the City. Nothing contained in this Contract creates any duties on the part of the Contractor toward any person not a party to this Contract. No person or entity not a signatory to this Contract shall be entitled to rely on the Contractor's performance of its Services hereunder, and no right to assert a claim against the Contractor by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Contractor's Services hereunder.

G. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

H. Assignment. The Contractor may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Bastrop County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

L. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

M. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND COST IN PROPORTION OF CONTRACTOR'S LIABILITY, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR

DAMAGE TO ANY PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT ACT, ERROR, OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANYONE WHOM THE CONTRACTOR IS LEGALLY LIABLE FOR UNDER THIS CONTRACT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WHETHER UNDER BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, ENHANCED, TREBLE (OR STATUTORY EQUIVALENT), OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK OR SERVICES PERFORMED OR TO BE PERFORMED HEREUNDER.

N. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON, AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, OR ALLEGED TO BE CAUSED BY, THE NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, VOLUNTEERS, EMPLOYEES, OR SUBCONTRACTORS..

O. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

P. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Documents and Data, Licensing of Intellectual Property, and Copyright. All Work progress and final documents and data produced by Contractor during the term of the Contract shall be and remain the property of the City. For purposes of this Contract, the term "Documents and Data" include any original work (the Work), reports, analyses, plans, drawings, designs, renderings, specifications, notes, summaries, charts, schedules, spreadsheets, calculations, lists, data compilations, documents, or any other material developed and assembled by or on behalf of the City in the performance of this Contract. It also includes any medium in which the Documents and Data are kept, including digitally, magnetically, or electronically. This Contract creates at no cost to the City, a perpetual license for the City to use any picture, video, music, brochure, writing, trademark, logo, or other work created by the Contractor for the use of the City, as a "work made for hire" as defined by federal copyright law. The City, as the author and owner of the copyright

to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate.

R. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

(1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;

(2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission), attached and incorporated herein as Exhibit A-1, that includes:

(a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and

(b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

T. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

U. Prohibition on Contracts with Companies Boycotting Israel. Certain contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89, as amended by H.B. 793). Specifically, contracts for goods and services that:

(1) are between the City and a company with ten (10) or more full-time employees; and

(2) have a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the City.

Under the provisions of this statute, if the above conditions apply the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

If this is a contract to which the verification requirement applies, the City has approved a verification form which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

III. Additional Terms or Conditions.

Insurance

At all times this Agreement is in effect, Contractor shall maintain insurance of the types and amounts as those required in Exhibit B-1. All of Contractor's insurance policies in any way relating to the Work, whether or not required by this Agreement and regardless of the enforceability or validity of any of the indemnities or other assumptions of liability by Contractor, shall, to the full coverage limits of all such policies without any limitations based on the minimum requirements set forth above: (a) other than the worker's compensation and professional liability insurance, name City as additional insureds on a broad form basis with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent; (b) provide for waiver of all rights of subrogation against City; and (c) be primary and noncontributory, for those policies in which the City is an additional insured, as to all other policies (including any deductibles or self-insured retentions) and self-insurance that may provide coverage to any member of City, and shall be fully applied and exhausted before application of any applicable indemnity obligations of City or of any applicable insurance coverage provided by City.

A. Audit

Contractor shall, and shall ensure that its affiliates, subsidiaries, contractors, subcontractors, consultants, agents, and any other person associated with Contractor including those in Contractor Group, keep full and accurate books and records with respect to all Work performed, and all payments and expenditures in connection with this Agreement. The records to be maintained and retained by Contractor Group shall include, without limitation, (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the Project, as well as canceled payroll checks or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all other unit inventory records for Contractor's stores, stock, or capital items; (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other Third Parties' charges, including, but not limited to, Equipment rental; (d) travel and entertainment documentation, including, but not limited to, employee expense reports and Contractor facility usage reports; and (e) all field tickets or similar documentation evidencing the Work. The City shall have the right at all reasonable times, for a period of five (5) years from the completion of the Work, to audit and inspect such books and records (excluding trade secrets, formulas, confidential data, proprietary information, or processes).

B. Reports of Incidents

Within twenty-four (24) hours upon occurrence, Contractor shall provide in writing to the City notice and details of any accidents or occurrences resulting in injuries to persons, property, or pollution arising in any way arising out of or related to the Work whether done by Contractor or any subcontractor of Contractor or any other member of Contractor Group performing Work pursuant to this Contract. Contractor shall in writing within twenty-four (24) hours of any claim, demand, or suit that may be presented to or served upon it arising out of or as a result of Work.

IV. Additional Contract Documents. The following documents attached to this Contract are part of this Contract:


- EXHIBIT A-1 Scope of Work, Schedule, and Payment Terms
- EXHIBIT B-1 Requirements for General Services Contract

V. Signatures.

KIMLEY-HORN AND ASSOCIATES, INC.

CITY OF BASTROP

By: 

By: 
Sylvia Carrillo (Nov 22, 2022 16:32 CST)

Printed Name: Scott R. Arnold

Printed Name: Sylvia Carrillo, ICMA-CM, CPM

Title: Vice President

Title: City Manager

Date: November 21, 2022

Date: Nov 22, 2022

EXHIBIT A-1

Scope of Services, Schedule, and Payment Terms **dated October 24, 2022**

(See Attached)



Exhibit A-1

Scope of Work, Schedule, and Payment Terms

SH 71 Intersection Traffic Studies

SCOPE OF WORK OVERVIEW

The City of Bastrop (City) is proposing to contract with Kimley-Horn (Engineer) to provide professional services to develop recommended improvements at multiple locations in the City of Bastrop through traffic analysis including identification of feasibility challenges. The project planning area is the City Limits of the City of Bastrop. Kimley-Horn will be responsible for the traffic analysis and identification of needs for the Project. The Project generally consists of completion of traffic analysis for roadway construction, striping, and signal improvements to the following 3 locations in the City of Bastrop:

- (1) SH 71 at Hasler Blvd
- (2) SH 71 at Childers St
- (3) SH 71 at SH 304

We have included in the following Scope of Service the services that are anticipated to meet the Client's needs for the Project.

RESPONSIBILITIES OF THE CITY

In conjunction with and in order for the completion of the professional services detailed below, the City of Bastrop agrees to complete the following tasks:

- Schedule and hold a Project Kickoff Meeting and assist in developing the project stakeholders list.
- Attend project coordination meetings, most will be held at the City offices.
- Participate in coordination meetings with TxDOT, Council, and stakeholders.
- Assist in scheduling and developing agenda items for Council and public meetings.
- Provide timely reviews and comments on interim and milestone submittals in order for the consultant team to maintain agreed upon schedules.
- Provide all available information requested by Engineer during the project, including but not limited to GIS data and information related to the 2015 Transportation Master Plan.



SERVICES TO BE PROVIDED BY THE ENGINEER

The Engineer's services consist of the services specifically described in Task 1 including traffic counts to be performed by Quality Counts, LLC as subcontractors to the Engineer:

1. TRAFFIC SERVICES & IMPROVEMENT IDENTIFICATION

This task includes traffic analysis to evaluate and confirm appropriate lane geometry at the three (3) intersections for the project and to identify potential improvements for consideration by staff, TxDOT, and City Council. The Engineer will:

- 1.1. Obtain existing traffic count data at the following intersections:
 - 4-hour (7a-9a, 4p-6p) Turning Movement Counts at three (3) locations along SH 71, assumed to include both the eastbound and westbound intersection at SH 304, Hasler Blvd, and Childers St
- 1.2. Obtain existing signal timing data from TxDOT at all three (3) intersections.
- 1.3. Develop a traffic model for all three (3) intersections to simulate existing conditions for AM and PM peak periods.
- 1.4. Evaluate level of service for turning movements at all three (3) intersections for potential lane configuration changes and addition of turn lane capacity, thru lanes, and signal equipment and signal timing adjustments.
- 1.5. Evaluate above ground utilities, city wet utilities as provided, and parcel boundaries for potential impacts of proposed improvements and summarize in the memo.
- 1.6. Summarize findings and recommendations of the traffic study in a Draft Technical Memorandum.
- 1.7. Conduct a meeting with City staff and the local TxDOT Area Office to refine the Draft Technical Memorandum.
- 1.8. Incorporate comments to the Draft Technical Memorandum as a Final Technical Memorandum.
- 1.9. Develop a presentation for and present to City Council findings of the Technical Memorandum and receive direction on improvements for consideration for further development.

The Engineer will provide the following deliverables during this task:

- Draft and Final Technical Memorandum summarizing findings and recommendations of the traffic analysis.
- Presentation to City Council



ADDITIONAL SERVICES

Any items requested that are not outlined in the above scope would be considered additional services and would be provided as requested and authorized by the Client. Compensation for additional services will be on a time and materials basis in accordance with our current hourly rates unless otherwise added to this agreement by amendment.

SCHEDULE

Services under this scope will be performed as expeditiously as practicable and assumes 90 calendar days for completion from date of notice to proceed. The Engineer has no control of scheduling with outside agencies or meetings with City Council, which may extend this assumed schedule.

PAYMENT TERMS

The Engineer will perform the services identified in the Scope of Services on a Reimbursable/Hourly basis not to exceed \$22,500.00.

The Engineer will provide the services on a labor fee plus expense basis. Direct reimbursable expenses (subconsultant fees, out-of-house printing, courier services, etc.) will be billed at a rate of 1.05 times cost. Labor fee will be billed on an hourly basis. A percentage of labor fee (6%) will be added to each invoice and is included in the not-to-exceed budgets, to cover certain other expenses such as telecommunications, printing, in-house reproduction, postage, computer expenses, supplies, and local mileage. Administrative time related to the project will be billed hourly.



HOURLY RATE SCHEDULE
KIMLEY-HORN AND ASSOCIATES, INC.

Classification	(Hourly Rate)
Analyst	\$150 - \$230
Professional	\$200 - \$275
Senior Professional I	\$240 - \$330
Senior Professional II	\$295 - \$350
Senior Technical Support	\$150 - \$260
Support Staff	\$105 - \$135
Technical Support	\$95 - \$140

FEE SUMMARY FOR PROFESSIONAL SERVICES

Project Name: SH 71 Intersection Studies
Prepared By: Kimley-Horn and Associates, Inc.

Task # Subtask Number	Task Name Subtask Name/Description	Assumptions	Direct Labor (Person-Hours)							Direct Expense (\$)
			Senior Prof II	Senior Prof I	Prof	Analyst	Technical Support	Project Controller (Support)	Admin (Support)	
1	TRAFFIC SERVICES									
	Obtain and review existing traffic counts & signal timing data			2		6				8
	Develop existing traffic model, timings, and counts			2		10				12
	LOS Intersection improvements	3 intersections		6		16				22
	Develop Tech Memo (including QA/QC)		2	6		15				23
	Meeting with TxDOT		4	4		4				12
	Council Presentation			6		6				12
	Project Management & Coordination			4	2		2	4	2	14
	Task Total (Hours)		6	30	2	57	2	4	2	103
	Task Total (Dollars)		\$1,920	\$7,800	\$400	\$8,550	\$250	\$460	\$200	\$19,580.00
	Reimbursable Expenses									
	Mileage & Meals	0.625/MILE & Meals								\$232.00
	Traffic Counts (Standard TMC - 2 Hours) - Quality Counts	8 EA @ \$180 + 5%								\$1,512.00
	Traffic Counts (High Volume TMC - 2 Hours) - Quality Counts	4 EA @ \$280 + 5%								\$1,176.00
	Task Total (Dollars)									\$2,920.00
	KIMLEY-HORN TOTAL (Hours)		6	30	2	57	2	4	2	103
	KIMLEY-HORN TOTAL (Dollars)		\$1,920	\$7,800	\$400	\$8,550	\$250	\$460	\$200	\$19,580.00
	SUBCONSULTANT (Quality Counts)									\$2,688.00
	REIUMBURSABLE EXPENSES (KH)									\$232.00
	GRAND TOTAL									\$22,500.00

ESTIMATE



TEX:TX

BILL TO : Kimley-Horn and Associates, Inc.
10415 Morado Circle
Austin, TX 78759
(512) 418-1771

CLIENT PROJECT # :

ESTIMATE DATE : 10/18/2022

ORDER DATE : 10/18/2022

ORDER No	PROJECT NAME	PAYMENT TERMS	ORDER BY
159888	Bastrop - SH 71 Intersections	PWP	Matthew Gaal

QTY	DESCRIPTION	RATE	TOTAL
8	Standard-Turn Count	\$180.00	\$1,440.00
	4 Location(s) for time period(s): 7:00 AM -- 9:00 AM-(Midweek) - 2 Hrs.		
	-SH 304--SH 71 WBFR, Bastrop, TX		
	-Hasler Blvd--SH 71 WBFR, Bastrop, TX		
	-Hasler Blvd--SH 71 EBFR, Bastrop, TX		
	-Childers St--SH 71 EBFR, Bastrop, TX		
	4 Location(s) for time period(s): 4:00 PM -- 6:00 PM-(Midweek) - 2 Hrs.		
	-SH 304--SH 71 WBFR, Bastrop, TX		
	-Hasler Blvd--SH 71 WBFR, Bastrop, TX		
	-Hasler Blvd--SH 71 EBFR, Bastrop, TX		
	-Childers St--SH 71 EBFR, Bastrop, TX		
4	High Volume-Turn Count	\$280.00	\$1,120.00
	2 Location(s) for time period(s): 7:00 AM -- 9:00 AM-(Midweek) - 2 Hrs.		
	-SH 304--SH 71 EBFR, Bastrop, TX		
	-Childers St--SH 71 WBFR, Bastrop, TX		
	2 Location(s) for time period(s): 4:00 PM -- 6:00 PM-(Midweek) - 2 Hrs.		
	-SH 304--SH 71 EBFR, Bastrop, TX		
	-Childers St--SH 71 WBFR, Bastrop, TX		
	TOTAL		\$2,560.00

Balances unpaid by end of Payment term (listed above) will be charged 1.5% interest per month

Quality Counts, LLC
15615 SW 74th Ave #100
Tigard, OR 97224
(877) 580-2212
qualitycounts.net

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Page 1 of 1

EXHIBIT B-1
REQUIREMENTS FOR GENERAL SERVICES CONTRACT

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City, including any delay periods. If the Project is not finalized and the insurance expires, Contractor is obligated to extend the insurance coverage. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A. The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**
- B. A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
- C. All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2016/03) Coverage must be written on an occurrence form.
- L. Contractual Liability endorsement under the Commercial Liability Insurance policy must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

City of Bastrop
Engineering and Capital Project Management Department
P. O. Box 427
1311 Chestnut Street
Bastrop, TX 78602

INSURANCE REQUIREMENTS

Items marked "X" are required to be provided if award is made to your firm.

Coverages Required & Limits (Figures Denote Minimums)

- Workers' Compensation Statutory limits, State of TX.
- Employers' Liability \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

Commercial General Liability:

	<input type="checkbox"/> Very High/High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

- Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)

<input type="checkbox"/> Very High/ High Risk	<input checked="" type="checkbox"/> Medium Risk	<input type="checkbox"/> Low Risk
Combined Single Limits \$1,000,000 Bodily	Combined Single Limits \$500,000 Bodily	Combined Single Limits \$300,000 Bodily

- Garage Liability for BI & PD
\$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto
\$2,000,000 General Aggregate

- Garage Keepers Coverage (for Auto Body & Repair Shops)
\$500,000 any one unit/any loss and \$200,000 for contents

Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

- Contract value less than \$1,000,000: **not required**
- Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**
- Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**
- Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**
- Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

- Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

- Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Bastrop) Limit is 100% of insurable value, replacement cost basis

- Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Bastrop)

- \$1,000,000 each occurrence
- \$2,000,000 aggregate

- Other Insurance Required: _____

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Engineering and Capital Project Management Department if you need assistance or need additional information.






SH 71 Intersection Studies - 20221121 PE

Final Audit Report

2022-11-22

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-  Email viewed by Sylvia Carrillo (scarrillo@cityofbastrop.org)
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-  Document e-signed by Sylvia Carrillo (scarrillo@cityofbastrop.org)
Signature Date: 2022-11-22 - 10:32:26 PM GMT - Time Source: server
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