

RESOLUTION NO. R-2021-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING A COST SHARE AGREEMENT BETWEEN THE CITY OF BASTROP AND WEST BASTROP VILLAGE MUNICIPAL UTILITY DISTRICT IN THE AMOUNT IS ESTIMATED TO BE: ONE MILLION TWO HUNDRED AND TWENTY-FIVE THOUSAND, THREE HUNDRED AND FIFTY-EIGHT DOLLARS AND 40/100 (\$1,225,358.40) TO INCREASE A TWELVE-INCH WASTEWATER TRUNK MAIN TO A TWENTY-FOUR-INCH WASTEWATER TRUNK MAIN ATTACHED IN EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, The City of Bastrop, Texas City Council understands the value of organized development; and

**WHEREAS**, The City anticipates future growth to the west of the city limits; and

**WHEREAS**, The City of Bastrop is the Wastewater wholesale provider to West Bastrop Village Municipal Utility District; and

**WHEREAS**, The City intends to use its discretion to guide the development within the extraterritorial jurisdiction to insure we create a fiscally sustainable community through land-use regulations that are authentic Bastrop and geographically sensitive; and

**WHEREAS**, the cost share agreement allows the City of Bastrop to extend wastewater service within the City of Bastrop Wastewater CCN at a reduced cost that can be recovered through impact fees and future development contiguous to the southwestern city limits.

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

**Section 1:** The City of Bastrop City Council has determined the City Manager of the City of Bastrop has the expertise and authority to require amendments and execute the cost share agreement as shown in, Exhibit A.

**Section 2:** That this Resolution shall take effect immediately upon its passage, and it is so resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 26<sup>th</sup> Day of January 2021.

**APPROVED:**

  
\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney

**COST SHARING AGREEMENT  
FOR THE OVERSIZING OF WASTEWATER MAIN  
IMPROVEMENTS**

**THE STATE OF TEXAS §  
COUNTY OF BASTROP §**

THIS AGREEMENT, made and entered into this 26<sup>th</sup> day of JANUARY, 2021, by and between CITY OF BASTROP, TEXAS, a Texas Home-Rule municipal corporation, of the County of Bastrop and State of Texas, acting through its City Manager, hereinafter referred to as CITY, West Bastrop Village Municipal Utility District of Bastrop County, hereinafter referred to as DISTRICT, and West Bastrop Village, Ltd., hereinafter referred to as DEVELOPER (collectively referred to herein as the "Parties").

**WITNESSETH:**

**WHEREAS**, DISTRICT proposes to construct a wastewater main connecting to an existing wastewater main owned by the CITY to serve property within the DISTRICT; and

**WHEREAS**, the CITY has reviewed the proposed improvements and desires to have the DISTRICT oversize the proposed wastewater main to provide capacity for future development in the area; and

**WHEREAS**, the CITY has requested the DEVELOPER to cause, and the DEVELOPER agrees to cause, the design, permitting, and construction of the MAIN (hereinafter defined) for which the CITY will pay for the CITY's portion of the costs; and

**WHEREAS**, CITY desires to set forth the terms for payment of the CITY's share of the construction costs for that portion of the wastewater main greater than twelve inches' diameter.

**NOW, THEREFORE**, for and in consideration of all of the premises and other good and valuable consideration, the Parties mutually agree:

I.

The DEVELOPER shall cause to be constructed a twenty-four inch (24") diameter wastewater main, and appurtenances related thereto, hereinafter referred to as MAIN, across the tract of land for which service is proposed and/or from a point of connection to an existing wastewater system to the tract of land to be developed within the DISTRICT. Attached and marked Exhibit "A" is a drawing showing the route of the proposed MAIN with reference points relating to the approved engineering plans and showing with clarity the land to be developed. Exhibit "A" to which further reference is made herein shall be part of this agreement for all purposes. The MAIN is further described as follows: approximately 4,278.27 linear feet of 24-inch wastewater collection main and 130.37 linear feet of 12 inch collection main with associated manholes.

II.

By the execution of this agreement, it is expressly understood that the CITY does not assume any

obligations, other than its obligation to pay the CITY's share of the costs as set forth herein and in the Wholesale Wastewater Agreement between the City, District and Developer (the "Wastewater Agreement"), which may arise under any terms of an agreement and/or contract, heretofore or hereafter entered into by the DISTRICT and/or DEVELOPER with a third party for the construction of subject MAIN.

### III.

The subject MAIN shall upon completion and acceptance by the City become the property of the CITY and subject to its jurisdiction and control, subject to the terms of the Wastewater Agreement.

### IV.

- a. The CITY, in consideration of the DEVELOPER constructing the larger diameter MAIN than otherwise required to serve the land within the DISTRICT, agrees to pay a sum equal to but not exceeding the difference in the Construction Costs (hereinafter defined) of the oversized MAIN and the cost of constructing a main twelve inches in diameter. The CITY's proportionate share of the oversize construction costs, not including engineering, testing and other costs related to construction of the MAIN, is estimated to be: \$ \$ Five Hundred Thirty-Nine Thousand Five Hundred and Sixty-Nine Dollars and 50/100 (\$539,569.50), see Exhibit "B." The DISTRICT shall send the City an invoice for the CITY's share of the construction costs, which payment will be due within thirty (30) days after receipt of the invoice.
- b. The City shall pay its share of Construction Costs (as defined below), other than actual costs of construction, following completion of the MAIN, which amount is currently estimated to be approximately \$45,000. Following completion of the MAIN, DISTRICT will provide to CITY verification of: (a) all costs incurred by or on behalf of the DISTRICT for the MAIN, including but not limited to, costs for engineering, surveying, legal, construction, construction management, construction materials testing, geo-technical testing and inspection and all other costs related to the design, construction and testing of the MAIN (collectively, the "Construction Costs"). If the accounting shows that the initial payment made by the CITY hereunder was insufficient to cover the CITY's share of the final Construction Costs, the CITY shall pay the DEVELOPER the amount of the underpayment within thirty (30) days of the receipt of the accounting. Conversely, if the accounting shows that the payment from the City made hereunder exceeds the CITY's share of the final Construction Costs, the CITY shall be reimbursed for the overpayment amount.
- c. The DISTRICT will submit to the CITY, following receipt of bids, with the approved engineering plans, a statement of estimated construction costs, proposed quantities, oversize calculations, a project location map, and the estimated costs that would have been incurred for a 12-inch diameter wastewater line.

### V.

The DEVELOPER agrees to obtain and make available any necessary easements, permits and rights of way, together with necessary working space as may be required to construct subject MAIN wherever the MAIN crosses property owned by Developer. The CITY, subject to its review and approval of plans and specifications for the MAIN, hereby grants DEVELOPER permission to install or construct subject MAIN wherever this MAIN crosses or parallels any public easement, street or property owned or controlled by the CITY.

VI.

The MAIN shall be installed in accordance with current City standards and specifications. The CITY has the right to observe and inspect, at the CITY's expense, the construction of the MAIN. The City Engineer or his/her representative will determine that subject MAIN is constructed in accordance with approved engineering plans and specifications and upon completion this MAIN shall become the property of the CITY and an integral part of the CITY's system and subject to maintenance, jurisdiction and control of the CITY, subject to the terms of the Wastewater Agreement.

VII.

Payment for the performance of governmental functions or services under this Agreement will be made from the current revenues legally available to the City.

VIII.

Should any provision of this agreement be declared illegal by a court of competent jurisdiction, the other and remaining provisions of this agreement shall not in any way be affected and all provisions of this agreement which are not declared to be illegal shall be binding upon the CITY, DISTRICT, and DEVELOPER.

IX.

The DISTRICT shall cause its contractor to hold harmless and indemnify the CITY from and against any and all claims for personal injury (including death) or property damage which may arise from the construction of the MAIN.

X.

The DISTRICT, DEVELOPER and the CITY agree that no party may assign or transfer any interest in this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

XI.

It is expressly agreed by the Parties that this Agreement is for the sole benefit of the Parties hereto and shall not be construed or deemed made for the benefit of any third party or parties.

XII.

In the event of any dispute, litigation or other proceeding between the Parties hereto to enforce any of the provisions of this Agreement or any right of either party hereunder, each party to such dispute, litigation or other proceeding shall be responsible for payment of its own costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration, administrative or other proceedings, all of which may be included in and as a part of the judgment rendered in such litigation.

XIII.

Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a weekend or national holiday, such action, notice or response shall not be required until the next succeeding business day.

XIV.

**THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN BASTROP COUNTY,**

**TEXAS, WHEREIN THE PROPERTY IS LOCATED. BY EXECUTING THIS AGREEMENT, EACH PARTY HERETO EXPRESSLY (i) CONSENTS AND SUBMITS TO PERSONAL JURISDICTION CONSISTENT WITH THE PREVIOUS SENTENCE, (ii) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT SUCH VENUE IS NOT PROPER OR CONVENIENT, AND (iii) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.**

**XV.**

A reference in this Agreement to any gender, masculine, feminine or neuter, shall be deemed a reference to the other, and the singular shall be deemed to include the plural and vice versa, unless the context otherwise requires. The terms "herein," "hereof," "hereunder," and other words of a similar nature mean and refer to this Agreement as a whole and not merely to the specified section or clause in which the respective word appears unless expressly so stated.

**XVI.**

All exhibits attached hereto are incorporated herein by reference to the same extent as though such exhibits were included in the body of this Agreement verbatim.

**XVII.**

This Agreement may be executed in counterparts, and when so executed shall be deemed executed as one agreement. CITY, DISTRICT, and DEVELOPER shall execute any and all documents and perform any and all acts reasonably necessary to fully implement this Agreement.

**XVIII.**

This Agreement may not be modified, amended or otherwise changed in any manner except by a writing executed by DISTRICT, DEVELOPER and CITY.

**XIX.**

A facsimile signature of a party shall be binding on such party to the same extent as an original signature. If this Agreement, or any future amendment to this Agreement, is signed by the Parties or a party and delivered by means of facsimile transmission, the Parties agree promptly to thereafter exchange original, executed counterparts thereof.

**XX.**

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction – to the effect that any ambiguities are to be resolved against the drafting party – shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

**XXI.**

All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement shall be in writing, signed by the party or its counsel, and shall be delivered by registered or certified mail, overnight courier service or facsimile transmission, at the addresses set forth below:

If to CITY:           City of Bastrop

Attn: City Manager  
1311 Chestnut Street  
Bastrop, Texas 78602

With a copy to: Bojorquez Law Firm, PC  
Attn: Alan Bojorquez, City Attorney  
11675 Jollyville Road, Suite 300  
Austin, Texas 78759

If to **DISTRICT**: West Bastrop Village Municipal Utility District  
c/o Allen Boone Humphries Robinson LLP  
1108 Lavaca Street, Suite 510  
Austin, Texas 78701  
Attn: Ryan Harper

If to **DEVELOPER**: West Bastrop Village, Ltd.  
610 West 5th, Suite 601  
Austin, Texas 78701

Attn: Myra Goepp

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered upon deposit, postage prepaid, in the United States Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered upon deposit with such courier, (c) sent by facsimile, in which case notice shall be deemed delivered upon transmission of such notice if the sender receives a machine generated facsimile confirmation containing the facsimile number and time sent and verifying the transmission was completed error free, or (d) sent by personal delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

XXII.

To the extent not inconsistent with the terms of this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

XXIII.

DEVELOPER hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 and Section 212.904 of the Texas Local Government Code, arising out of this Agreement. Both DEVELOPER and the CITY further agree, with respect to this Agreement and construction of the MAIN, to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement.

XXIV.

It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and

shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the development of the Project.

IN WITNESS THEREOF, the Parties have executed this Agreement on this the 26th  
Day of January, 2021.

**DEVELOPER:**

WEST BASTROP VILLAGE, LTD.  
a Texas limited partnership

By: WBV GP, LLC  
a Texas limited liability company, general partner

By: Myra J. Goepff  
Myra J. Goepff, Manager

**WEST BASTROP VILLAGE MUNICIPAL UTILITY DISTRICT OF BASTROP COUNTY:**

Kate Anne  
President, Board of Directors

**ATTEST:**

Deanna Fecand  
Secretary, Board of Directors

**CITY OF BASTROP:**

Paul A. Hofmann  
Paul A. Hofmann  
City of Bastrop City Manager

**ATTEST:**

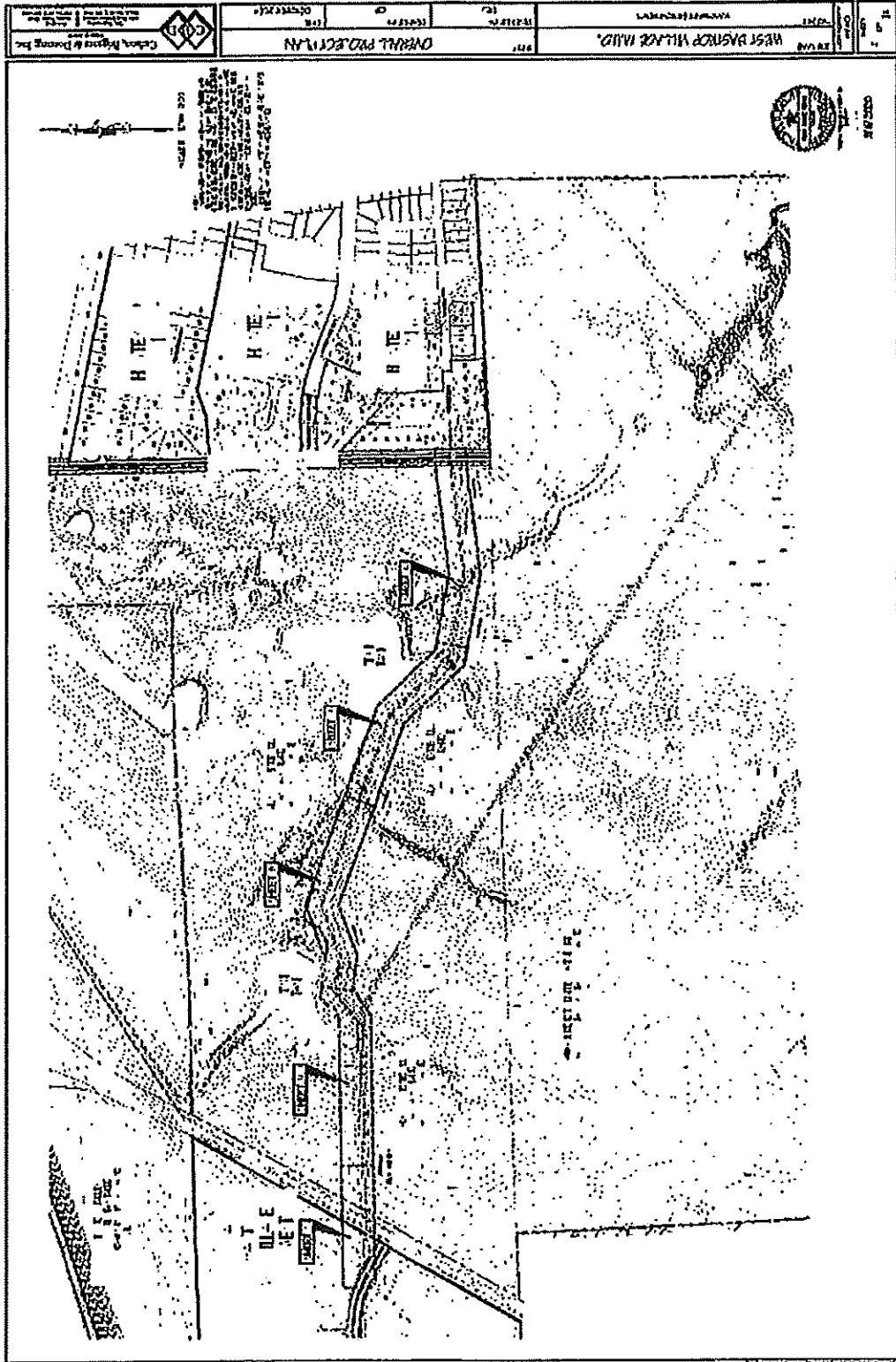
Ann Franklin  
Ann Franklin  
City Secretary

**APPROVED AS TO FORM:**

Alan Bojorquez  
Alan Bojorquez  
City Attorney



# EXHIBIT A: Proposed Route of the Main.



ENGINEERS COST ESTIMATE  
 WEST BASTROP VILLAGE  
 OFFSITE WASTEWATER  
 CBD NO. 4740  
 3/9/2021

I. EXCAVATION ITEMS		QUANTITY	UNIT	COST	AMOUNT
1	Clearing & Grubbing complete and in place per each	10,084	SY	\$1.00	\$10,084.00
<b>SUBTOTAL EXCAVATION ITEMS</b>					<b>\$10,084.00</b>

II. WASTEWATER ITEMS		QUANTITY	UNIT	COST	AMOUNT
1	Tie into existing Manhole complete and in place per each	1	EA	\$12,000.00	\$12,000.00
2	8" SDR-26 - All Pay Depths complete and in place per linear foot	229	LF	\$34.00	\$7,786.00
3	12" SDR-26 - All Pay Depths complete and in place per linear foot	194	LF	\$52.00	\$10,088.00
4	24" HOBAS - All Pay Depths complete and in place per linear foot	4,220	LF	\$125.00	\$527,500.00
5	4' Diameter Waste Water Manhole, Gasket & Bolted - complete and in place per each	11	EA	\$6,600.00	\$72,600.00
6	4' Diameter Standard Waste Water Manhole complete and in place per each	1	EA	\$8,500.00	\$8,500.00
7	4' Diameter Waste Water (VENTED) Manhole, Gasket & Bolted - complete and in place per each	2	EA	\$10,000.00	\$20,000.00
8	5' Diameter Waste Water Manhole, Gasket & Bolted - complete and in place per each	1	EA	\$12,709.00	\$12,709.00
9	5' Diameter Waste Water (DROP) Manhole, Gasket & Bolted - complete and in place per each	3	EA	\$15,000.00	\$45,000.00
10	5' Diameter Waste Water (VENTED) Manhole, Gasket & Bolted - complete and in place per each	1	EA	\$17,000.00	\$17,000.00
11	42" Steel Encasement with Spacers complete and in place per linear foot	132	LF	\$270.00	\$35,640.00
12	42" bore complete and in place per linear foot	132	LF	\$600.00	\$79,200.00
13	Wastewater Flow Meter Vault (Dog House Manhole) complete and in place per each	1	EA	\$15,000.00	\$15,000.00
14	Concrete Caps complete and in place per linear foot	255	LF	\$16.00	\$4,080.00
15	3-4" PVC sch-40 Sleeves, complete and in place per linear foot	132	LF	\$40.00	\$5,280.00
16	Trench Safety complete and in place per linear foot	4,643	LF	\$1.00	\$4,643.00
17	Wastewater Main offset Staking complete and in place per lump sum	1	LS	\$6,957.00	\$6,957.00
<b>SUBTOTAL WASTEWATER ITEMS</b>					<b>\$883,983.00</b>

III. EROSION CONTROL ITEMS		QUANTITY	UNIT	COST	AMOUNT
1	Revegetation of disturbed areas complete and in place per square yard	10,084	SY	\$0.25	\$2,521.00
2	Stabilized Construction Entrance, complete and in place per each	2	EA	\$2,500.00	\$5,000.00
3	Install and Maintain Silt Fence complete and in place per linear foot	5,483	LF	\$3.00	\$16,449.00
4	Double Duty Rock Berms complete and in place per each	8	EA	\$2,000.00	\$16,000.00
5	Tree Removal/Easement Clearing complete and in place per each	1	LS	\$1.00	\$1.00
6	LOC Staking complete and in place per lump sum	1	LS	\$7,350.75	\$7,350.75
<b>SUBTOTAL BID EROSION CONTROL ITEMS:</b>					<b>\$47,321.75</b>

<b>TOTAL</b>	<b>\$941,388.75</b>
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  = Items eligible. \$642,340

84% = \$539,565.60  
 16% = \$102,774.40



**Carlson, Brigance & Doering, Inc.**

Civil Engineering ♦ Surveying

CBD Project Number 4740

**WASTEWATER FLOW CALCULATIONS  
PROPOSED WEST BASTROP VILLAGE:**

1,500 LUE X 250 GPD = 375,000 GPD = 260.42 GPM  
TOTAL = 260.42 GPM X 3.5 PEAKING FACTOR = 911.47 GPM = 2.03 CFS

**TOTAL REQUIRED WASTEWATER LINE SIZE FOR  
WEST BASTROP VILLAGE MUD**

DIAMETER = 12"  
MINIMUM SLOPE = 0.45%  
MANNINGS "N" = .013  
FLOW = 2.46 CFS = 1,104 GPM = 1,589,938 GPD  
CAPACITY = 1,817 LUE  
DEPTH = 0.85'  
VELOCITY = 3.46 FPS

**MAXIMUM CAPACITY FOR PROPOSED HOBAS LINE**

DIAMETER = 24"  
MINIMUM SLOPE = 0.30%  
MANNINGS "N" = .013  
FLOW = 12.87 CFS = 5,776 GPM = 8,318,095 GPD  
CAPACITY = 9,506 LUE  
DEPTH = 1.70'  
VELOCITY = 4.52 FPS

	12" PIPE	24" PIPE	% For cost allocation
LUE	1,817	9,506	19%
FLOW (CFS)	2.46	12.87	19%

**ESTIMATED CONSTRUCTION COSTS FOR 24" HOBAS**

Total Estimated Construction Costs (See Ex A):	<b>\$642,340.00</b>
City of Bastrop Cost Share (84%):	<b>\$539,565.60</b>
WBV MUD Cost Share (16%):	<b>\$102,774.40</b>