

RESOLUTION NO. R-2023-88

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING AN INTERLOCAL AGREEMENT⁸ BETWEEN THE CITY OF BASTROP AND BASTROP COUNTY, ON PINE FOREST UNIT 6, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH BASTROP COUNTY REGARDING PINE FOREST UNIT 6.

WHEREAS, the City Council of the City of Bastrop ("City Council") finds it to be in the public interest and necessary to cooperate with Bastrop County regarding opportunities to convey certain interests in real property to a party who will develop the property in a comprehensive manner that includes vital infrastructure; and

WHEREAS, the City and County agree to let the City take the lead role in facilitating negotiations for a private party to purchase the property and build a master planned community in compliance with the applicable rules and regulations.

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

Section 1: The City Council hereby authorizes the City Manager to execute the attached Interlocal Agreement with Bastrop County.

Section 2: The City Council directs City staff to work cooperatively with County officials to effectuate the purposes and goals established by the Interlocal Agreement.

Section 3: The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 13th day of June 2023.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

**INTERLOCAL AGREEMENT
BETWEEN THE
CITY OF BASTROP & BASTROP COUNTY**

This Interlocal Agreement (“Agreement”) is between the **CITY OF BASTROP, TEXAS** (“City”), a duly organized and operating Home Rule municipality of the State of Texas, and the **COUNTY OF BASTROP, TEXAS** (“County”), a duly organized and operating political subdivision of the State of Texas, pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, and the general and special laws of the State of Texas, for the purposes and consideration as set out below. The County and the City are sometimes referred to herein individually as the “Party,” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Texas Government Code, Chapter 791, the Texas Interlocal Corporation Act provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the prevention and protection of the health and safety of the inhabitants of this State and the mutual benefit of the Parties; and

WHEREAS, the Parties desire to engage in a series of real estate transactions, planning efforts, regulation, and possibly the construction of vital infrastructure facilities needed for the comprehensive, master planned development of certain lots in the Pine Forest Area (“Project”); and

WHEREAS, the Parties have a long and successful history of working together for the public interest, and the execution and implementation of this Agreement is intended to advance that cooperative, good faith working relationship in the public interest, with particular focus on the sale, construction, and development of property known as the Pine Forest Unit 6 lots (“Property”), the location and extent of which is identified on Exhibit A attached hereto and incorporated herein; and

WHEREAS, on August 29, 2022, the City and the County executed a Letter of Intent to outline the essential concepts of the Project; and

WHEREAS, on October ___, 2022, the City of Bastrop City Council held a lawful open meeting to consider the terms of an agreement between the City and the County which would allow for the completion of the Project; and

WHEREAS, the Parties intend for the City to be the lead Party in initiating, managing, regulating, and implementing the terms and conditions related to this Project, including but not limited to any real estate transactions; and

WHEREAS, the Parties agree to exercise eminent domain powers as needed to preserve the public purpose and to enable the public to enjoy the benefits of improved services and utilities; and

WHEREAS, the City and the County desire to cooperate regarding the mutual responsibilities, obligations, and duties as stated herein for the Project, including a plan that shall follow the City’s development process under the City’s Code of Ordinances;

WHEREAS, the City and County acknowledge that this Project is located in critical habitat for the Houston Toad, and all development must comply with all federal, state, and local laws and regulations; and

WHEREAS, the Parties intend implementation of this Agreement to ensure fair and reasonable development regulations and procedures related to this Project.

NOW, THEREFORE, in consideration of the premises and of the terms and mutual provisions herein contained, the City and the County hereby agree as follows:

1. Purpose

- 1.1 The objective of this Agreement is to establish the roles and responsibilities of the City and the County regarding the Property, and to identify the applicable regulations and development standards that will be applied to the Project.

2. Development Objectives

- 2.1 The Parties agree that the Property is to be conveyed in its entirety to one or more purchasers (“Developer”) with a demonstrated capability of developing the project in a comprehensive manner as a whole. Proceeds from the sale of the Property are to be disbursed as has previously been agreed by the Parties in separate instruments attached hereto as Exhibit B.
- 2.2 The Parties agree that the developer of the Project shall be responsible for designing and constructing the Project’s infrastructure (e.g., water, wastewater, streets, and drainage). Any public conveyance or dedication of that infrastructure shall be to the City for operation and maintenance unless contractual provisions are made between the City and developer for the assumption of responsibility by a property owners association or the Bastrop County Water Control and Improvement District No. 2 (WCID #2).
- 2.3 The Parties agree that the Property is to be wholly annexed into the incorporated municipal boundary (i.e., City Limits) of the City as part of the comprehensive development process.
- 2.4 The Parties agree that the development of the Project will be governed by the sections, language, and applicable requirements of City’s regulations related to subdivision, replatting, and infrastructure improvements.

3. Obligations of the County

- 3.1 The County shall cooperate with the City to implement the development standards as set forth above and herein this Agreement.
- 3.2 The County shall collaborate with the City's representatives, agents, or consultants to develop any plans necessary for compliance with development standards provided herein.
- 3.3 The County authorizes the City to act as its agent for the purpose of the City negotiating with a Developer to effectuate the Project.
- 3.4 The County agrees that all of the City's costs associated with the development plan of Pine Forest are recoverable through the sale of the Property.
- 3.5 The County agrees that land acquisition costs, including professional services associated with land acquisition, are recoverable through the sale of the Property. This shall include services associated with land acquisition to provide proper drainage, water, and wastewater infrastructure.

4. Obligations of the City

- 4.1 The City agrees that land acquisition costs, including professional services associated with land acquisition, are recoverable through the sale of the Property. This shall include services associated with land acquisition to provide proper drainage, water, and wastewater infrastructure.
- 4.2 The City shall cooperate in good faith with the Consultant in developing or modifying the plans, as needed and pursuant to this Agreement.
- 4.3 The City shall convey only the land it owns or is otherwise authorized to sell by the owner of such land and that is necessary to proceed with the completion of the Project.
- 4.4 The City shall require the development agreement between the City and the future developer to contain language that will not allow the future developer to use the votes of the developer to assess any fees to any lots within any portion of the Pine Forest Subdivision, except section 6; however, no fees shall be assessed on any fully developed lot in Section 6, or any undeveloped contiguous lots owned by adjacent developed lot owners, until such a time as the undeveloped lot is sold to an individual who does not own an adjacent contiguous developed lot. Notwithstanding the forgoing, the City also shall exclude, any developed lots, or any undeveloped contiguous lots owned by adjacent developed lot owners, until such a time as the undeveloped lot is sold to an individual who does not own an adjacent contiguous developed lot, from any proposed special district within Pine Forest Unit 6.
- 4.5 The City shall require the development agreement between the City and the future developer to be in compliance with the County of Bastrop's section 10 permit through U.S. Fish and Wildlife Service. Permitting related to the Houston Toad will be through Bastrop County or directly through U.S. Fish and Wildlife.

5. Term & Termination

- 5.1 The term of this Agreement shall begin on the date of execution of this Agreement and end at 5:00 p.m. Central Standard Time on December 31, 2027.
- 5.2 As used in this Agreement, “default” shall mean the failure of the County or City to perform any obligation at the time and in the manner required by this Agreement.
- 5.3 Upon failure of either Party to this Agreement to perform an obligation required hereunder, the other Party shall promptly give written notice of such default to the Party in default. The Party in default shall have thirty (30) days after receipt of such notice of default within which to cure such default and, if cured within such time, the default specified in such notice shall cease to exist.
- 5.4 If default is not cured as provided in this Agreement, the Party not in default may resort to all remedies under the law. The Parties shall each bear their respective attorneys’ fees and court costs incurred as a result of any action to enforce this Agreement. Following the expiration of sixty (60) days after receipt of notice of default by the defaulting Party, and providing that the default complained of has not been cured by the defaulting Party, then the non-defaulting Party may, in addition to any other rights or remedies available at law or in equity, terminate this Agreement by providing written notice to the defaulting Party, with the termination to be effective on such future date as specified in the notice of termination sent to the defaulting Party.

6. Miscellaneous Provisions

- 6.1 **Expenses & Recoverable Costs.** The Parties agree that any costs that are over the funds of the Parties’ investment in the Project will be recoverable from the sale of the Property. Recoverable costs from the sale of the Property shall be allocated among the Parties as described herein and as agreed in the Interlocal Agreement between the City, the County, and the Bastrop Independent School District, entered into on January 8, 2015, as amended on April 23, 2018, which is attached to this Agreement as Exhibit B. Any expenses incurred by the Parties under this Agreement are payable from current funds of that Party.
- 6.2 **Non-Waiver.** No waiver of any one or more events of default shall operate as, or be deemed to be, a permanent waiver of any rights or obligations, an express or implied waiver of any rights or obligations, or an express or implied acceptance of any other existing or future event of default, whether of a similar or different character; nor shall such a waiver constitute either an amendment of the terms of this Agreement, or a practice or course of dealing between the Parties contrary to the terms of this Agreement.
- 6.3 **Law & Venue.** This Agreement shall be subject to all federal laws and the laws of the *State of Texas* as applicable to the Parties and for the purposes expressed herein. Venue shall lie in *Bastrop County, Texas*.
- 6.4 **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify,

or amend any legal defense available at law or in equity to the County or City, nor to create any legal rights or claim on behalf of any third party. The County and the City do not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

- 6.5 **Liability Coverage.** Each Party shall, at its sole cost, provide liability coverage for itself covering its own activities and duties set forth herein. Neither Party is obligated under this Agreement to indemnify or defend the other Party.
- 6.6 **Relationship.** Each Party is acting independently; neither is an agent, servant, or employee of the other; and the Parties are not engaged in a joint enterprise.
- 6.7 **Assignment.** The rights and obligations of this Agreement may be filled by a third-party developer through a separate development agreement with the prior written consent of both Parties.
- 6.8 **Amendments & Modifications.** This Agreement may not be amended or modified except in writing and executed by the County and the City.
- 6.9 **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be valid and enforceable.
- 6.10 **Gender, Number & Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.
- 6.11 **Notices.** Any notice given pursuant to this Agreement shall be given in writing and delivered or mailed by Certified or Registered United States Mail, postage prepaid, addressed as follows:

To the County:
 Bastrop County
 Attn: County Judge
 P.O. Box 577
 Bastrop, Texas 78602

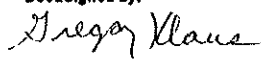
To the City:

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

With a copy to:
Bastrop City Attorney
1311 Chestnut Street
Bastrop, Texas 78602

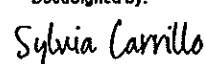
- 6.12 **Attorneys' Fees.** If any lawsuit or other legal proceeding is brought by one Party against the other, each Party shall bear their respective attorneys' fees and court costs.
- 6.13 **Entire Agreement.** This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written, previous and contemporary agreements between the Parties and relating to matters in this Agreement and, except as otherwise provided herein, cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.
- 6.14 **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. The Parties have executed and attested this Agreement by their officers as duly authorized on the date first written above.

BASTROP COUNTY:

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 Gregory Klaus
 County Judge

CITY OF BASTROP:

DocuSigned by:

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 Sylvia Carrillo
 City Manager

Exhibit A Property Description

