

**RESOLUTION NO. R-2019-33**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS ADOPTING A STANDARDIZED WHOLESALE WATER AGREEMENT; ATTACHED IN EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bastrop City Council understands the importance of fiscal sustainability; and

**WHEREAS**, the City of Bastrop City Council understands the value in managing growth for future generations; and

**WHEREAS**, the City of Bastrop understands the importance of focusing on the standardization of water wholesales and providing fairness and consistency; and

**WHEREAS**, the City of Bastrop has chosen to adopt a standardized wholesale water agreement; and

**WHEREAS**, the City of Bastrop City Council has unequivocally committed to fiscal sustainability, responsibly managing growth, and taking definitive action towards lasting solutions.

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

**Section 1.** That the City Council has found a wholesale water agreement to be in the best interest of the City of Bastrop, Texas.

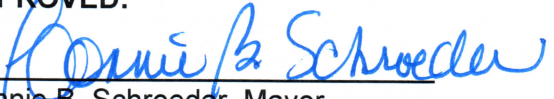
**Section 2.** The City Council adopts a standardized wholesale water agreement, as attached in Exhibit A, for use with future wholesale customers.

**Section 3.** All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

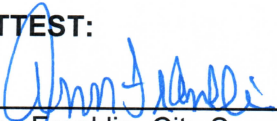
**Section 4.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop, Texas this 23<sup>rd</sup> day of April 2019.

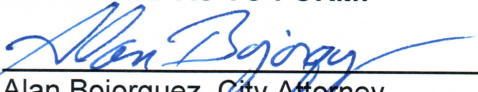
**APPROVED:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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



**WHOLESALE WATER AGREEMENT  
BETWEEN CITY OF BASTROP, \_\_\_\_\_ DISTRICT AND  
\_\_\_\_\_**

This **WHOLESALE WATER AGREEMENT** (this “**Agreement**”) is made and entered into by and between the **CITY OF BASTROP**, a home rule city located in Bastrop County (“**Bastrop**” or “**City**”) and the \_\_\_\_\_ District, a political subdivision of the state operating under Chapters 49 and 54, Texas Water Code (the “**District**”), and \_\_\_\_\_, a Texas \_\_\_\_\_ (“**Developer**”) (collectively referred to herein as the “**Parties**”). The Parties hereby mutually agree as follows:

**RECITALS**

**WHEREAS**, the City and the Developer entered into a Planned Development Agreement, to be known in this Agreement as “the PDA” on \_\_\_\_\_, 20\_\_\_\_, requiring a wholesale water agreement; and

**WHEREAS**, by Resolution R-\_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, the City granted consent for creation of \_\_\_\_\_ District; and

**WHEREAS**, by Order signed on \_\_\_\_\_, 20\_\_\_\_, the Texas Commission on Environmental Quality granted the Petition for Creation of \_\_\_\_\_ District; and

**WHEREAS**, by Resolution R-\_\_\_\_\_ the City confirmed its consent for creation of the \_\_\_\_\_ District, on \_\_\_\_\_, 20\_\_\_\_; and

**WHEREAS**, the District encompasses approximately \_\_\_\_\_ acres of land within the extraterritorial jurisdiction (“ETJ”) of the City (the “Tract”). The Tract is more particularly described in Exhibit “A”; and

**WHEREAS**, Developer intends to develop the Tract as a \_\_\_\_\_ community, initially to be referred to as “\_\_\_\_\_” projected to consist primarily of residential uses, expected at the time of execution of this Agreement to include approximately \_\_\_\_\_ homes, and also will include other limited nonresidential uses (the “Development”); and

**WHEREAS**, City, District and Developer wish to enter into this Agreement, to provide the terms of wholesale water service for the benefit of the present and future residents of City and the District; and

**WHEREAS**, the Tract is within the water CCN of Aqua Water Supply Corporation (10294), from which the City intends to purchase potable water at wholesale rates (the “Bastrop Aqua Agreement”), and intends to sell potable water at wholesale rates to the District; and

WHEREAS, Bastrop has adequate water supply and distribution infrastructure to provide up to \_\_\_\_\_ gallons per day to District; and

NOW, THEREFORE, for and in consideration of the agreements set forth below, the City, District and Developer agree as follows:

## ARTICLE 1. DEFINITIONS

### Section 1.01 Definitions of Terms.

In addition to the terms otherwise defined in the above recitals; in the City's ordinances; or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

**Active Connection:** means a connection for which there is an open utility account with the District during any portion of a monthly billing period. Each connection is the equivalent of one SUE, provided that the property served by the connection is a single-family residence.

**Agreement:** means this Wholesale Water Agreement by and among the City of Bastrop, Texas, \_\_\_\_\_ District, and \_\_\_\_\_.

**AWWA:** means the American Water Works Association.

**Bastrop Aqua Agreement:** means the Agreement to be entered by the City of Bastrop and Aqua Water Supply Corporation ("Aqua") pursuant to which Aqua will sell potable water at wholesale to the City.

**Bastrop Service Area:** means the wholesale and retail water service territory for the City of Bastrop.

**Bastrop Water System or City Water System:** means the facilities, including water production wells, pumps, lines, meters, components, and equipment owned and operated by Bastrop, together with all extensions, expansions, improvements, enlargements, betterments and replacements to monitor, convey, supply, deliver and distribute potable water or Wholesale Water Services to Bastrop's customers, including \_\_\_\_\_. The Bastrop System does not include any improvements on District's side of the Delivery Point or any facilities on any other wholesale customer's side of its delivery point.

**Bastrop Water Conservation and Drought Contingency Plan:** means, collectively, the Bastrop Water Conservation Plan and the Bastrop Drought Contingency Plan, as may be amended by the Bastrop City Council from time to time. A copy of the Bastrop Water Conservation and Drought Contingency Plan in effect as of the Effective Date is attached hereto as Exhibit "B".

**CCN:** means a certificate of convenience and necessity or similar permit authorizing a specified entity to be the retail water or sewer service provider in a specified area.

**City:** The City of Bastrop, Texas, a home rule municipality, organized and operating pursuant to the applicable laws of the State of Texas



**City Manager:** means the City of Bastrop's City Manager

**Commercial Customers:** means all non-residential retail water customers of District in the Wholesale Water Service Area.

**Commission or TCEQ:** means the Texas Commission on Environmental Quality or its successor agency.

**Connecting Facilities:** means facilities connecting any Internal Facilities to a Delivery Point.

**Costs of the System:** means all of Bastrop's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining, and operating the Bastrop System, including, without limiting the generality of the foregoing, the costs of property, interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the System in accordance with policies of Bastrop's City Council.

**County:** means Bastrop County, Texas.

**Delivery Point:** means the point at which Bastrop will deliver treated water to District under this Agreement, which point shall be at the \_\_\_\_\_ inch Master Meter as depicted on Exhibit "C".

**Developer:** means \_\_\_\_\_, a Texas \_\_\_\_\_, its successors or assigns.

**Development:** means the mixed-use development of the Tract, including residential and non-residential land uses, together with parkland, open space, recreational amenities and related facilities, intended to produce developed lots.

**District:** means the municipal utility district organized and operating in accordance with Section 54.016, Texas Water Code and Section 42.042, Texas Local Government Code, encompassing the Tract, known as \_\_\_\_\_ District.

**District's water system:** means District's water transmission, distribution and delivery systems that provide service to District's retail customers through the Wholesale Water Services provided under this Agreement. The District System shall be owned, operated and maintained by - \_\_\_\_\_ District and shall not include the Master Meter or any facilities on Bastrop's side of the Delivery Point.

**District Service Area:** means the retail water service territory of \_\_\_\_\_ District, as amended from time to time.

**Effective Date:** means the last date of execution by all of the Parties.

**ETJ:** means extraterritorial jurisdiction.

**Emergency:** means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Bastrop. The term includes Force Majeure and acts of third parties that cause the Bastrop System to be unable to provide the Wholesale Water Services agreed to be provided herein.

**EPA:** means United States Environmental Protection Agency

**Force Majeure:** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Bastrop or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

**Impact Fee:** means a charge imposed on each service unit on new development pursuant to Chapter 395 of the Local Government Code to generate revenue for funding or recouping the costs of capital improvements or facility expansions.

**Initial Wholesale Water Service:** means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to \_\_\_\_\_ GPD.

**Internal Facilities:** means the internal Water distribution facilities and related equipment, facilities, and appurtenances to be constructed by or on behalf of District for the District System.

**Maximum Water SUE Capacity:** Use of water treatment capacity up to \_\_\_\_\_ GPD.

**Metering Facility:** means the water flow meter, meter vault, and all metering and telemetering equipment located at a Delivery Point to measure Wholesale Water Service to District. The Bastrop System shall include each Metering Facility.

**Monthly Water Supply:** means the quantity of water for which Bastrop agrees to provide Wholesale Water Services to District under the terms and conditions of this Agreement. The Monthly Water Supply shall be \_\_\_\_\_ gallons per month.

**Parties:** means the City, the District, and the Developer.

**Planned Development Agreement or PDA:** means the agreement that was entered into by the City and the Developer on \_\_\_\_\_, 20\_\_\_\_.

**Point(s) of Connection – Water:** The point(s) at which the City's Water System connects to the District's Water System, generally shown on Exhibit C.



**Residential Customers:** means retail residential water customers of District in the Wholesale Water Service Area.

**Single Family Residence:** means the use of a site for only one dwelling unit, where a dwelling unit is a building, or portion thereof, designed or used exclusively for residential occupancy (not including hotels and motels).

**SUE:** means service unit equivalent which is the basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4 " diameter simple water meter, using American Water Works Association C700-C703 standards.

**SU multiplier:** means the number of SUEs to be multiplied by the Impact Fee for each active connection served that is not a single-family residence in accordance with the SU Equivalency Chart in Bastrop Code of Ordinances Section 10.02.004.

**Tract:** means the approximately \_\_\_\_\_ acres of land within the District's boundaries to be served under the terms of this Agreement.

**Wholesale Water Services:** means the diversion or the production of water, the transmission thereof to a place or places of treatment, the treatment of the water into potable form, and the transmission of the potable water to the Delivery Point in a quantity equal to the Monthly Water supply.

## **Section 1.02 Captions.**

The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

## **ARTICLE II. DESIGN AND CONSTRUCTION OF FACILITIES**

### **Section 2.01 Design and Construction of the Internal Facilities.**

- a. District will be responsible for design and construction of, or for causing one or more third parties to design and construct, the Internal Facilities within the District System.
- b. District agrees to be responsible for and pay for all costs of rights-of- way, easements, design, engineering, contracting, construction and inspection of the Internal Facilities; provided that District may require Developer to be responsible and pay for all or a portion of the costs of right-of-way, easements, design, engineering, contracting, construction, and inspection of the Internal Facilities.
- c. The Internal Facilities will be designed and constructed in accordance with applicable regulations and specifications of Bastrop, the State of Texas and United States, and with the terms and conditions of this Agreement.

**Section 2.02 Design and Construction of the Connecting Facilities.**

- a. District shall be responsible for design and construction of, or for causing one or more third parties to design and construct, any Connecting Facilities, or modification to the existing Connecting Facilities, required for the transmission of water to the Bastrop System.
- b. Subject to the terms and conditions of this Agreement, District agrees to engage or cause to be engaged the services of a professional engineer registered in Texas to produce the engineering design, including detailed plans and specifications for Connecting Facilities in conformance with Bastrop's design criteria and construction standards in effect at the time the plans and specifications are submitted to Bastrop for approval, or in accordance with District's design criteria and construction standards if such are more stringent; provided that the parties shall reasonably cooperate to determine the design standards that will control. The plans and specifications will address the sizing, routing, material selection, service method, cost estimates, proposed construction schedule, easements, and such other and further information as Bastrop deems necessary or advisable for proper review and assessment of the plans and specifications. The design for the Connecting Facilities shall be procured at District's sole expense; provided that District may cause Developer to be responsible for designing the Connecting Facilities, and the cost thereof. The plans and specifications for the Connecting Facilities will be submitted to Bastrop for review and comment before District approves said plans and specifications. Bastrop shall provide written comments within thirty (30) days of the date of the receipt of the plans unless a longer period is specified by City Staff. District shall cause any comments provided by Bastrop to be addressed. If Bastrop does not provide comments within the greater of thirty (30) days or the time specified by City Staff, District may approve the plan and specifications, subject to compliance with District's regulations.
- c. District solely shall be responsible for funding construction, and all costs related thereto, of the Connecting Facilities, or for causing one or more third party developers or owners of land within the Wholesale Water Service Area to be responsible for funding construction, and all costs related thereto, of the Connecting Facilities.
- d. District agrees to be responsible for, and pay for all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System, or for causing Developer to be responsible for and to pay all costs of rights-of-way, easements, design, engineering, contracting, construction and inspection of the Connecting Facilities required to be constructed for the connection to the Bastrop System.
- e. The parties will cooperate in good faith to determine the location of Connecting Facilities that are located in Bastrop's city limits or ETJ. Bastrop agrees to make good faith efforts to cause the dedication of easements or right-of-way that may be necessary for the location and installation of Connecting Facilities within the city limits and ETJ of Bastrop. Pursuant to separate written instruments, Bastrop will further allow District to access and use rights-of-way and easements owned or controlled by City for the purpose of installing, constructing, repairing, replacing, maintaining, and operating or causing to be installed, constructed, repaired, replaced, maintained and operated, Connecting Facilities.



**Section 2.03 Notification of Commencement of Construction on Connecting Facilities.**

After all required approvals for construction of the Connecting Facilities are obtained, but prior to commencement of construction, District will provide, or cause to be provided, written notice to Bastrop of the date on which construction of the Connecting Facilities is scheduled to commence. Bastrop must receive this written notice at least five (5) days before the scheduled construction date.

**Section 2.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.**

The Parties agree that Bastrop has the right to make periodic inspections during the construction phase of the Connecting Facilities. Acceptance of the Connecting Facilities by District is subject to final inspection by Bastrop.

**Section 2.05 Agreement to Submit As-Built or Record Drawings and Final Plats.**

District agrees to provide, or cause to be provided, to Bastrop: a) as-built or record drawings of all Internal Facilities and Connecting Facilities that take from the Bastrop System; and b) final plats for property located within the Wholesale Water Service Area; within thirty (30) days of District receiving them, not to exceed sixty (60) days following completion and acceptance of the construction of such facilities or recording of the final plat, as appropriate.

**Section 2.06 Ownership and Operation of Connecting Facilities.**

Except as set forth below or otherwise agreed, District shall own and operate all Connecting Facilities located on its side of a Delivery after completion of construction by District or the Developer, and acceptance of the Connecting Facilities by Bastrop.

**ARTICLE III. PROVISION OF WHOLESALE WATER SERVICES****Section 3.01 Wholesale Water Services.**

Bastrop agrees to provide Wholesale Water Services to District for the Monthly Water Supply in accordance with the flow limitations and other provisions of this Agreement, all as hereafter specified.

**Section 3.02 District Responsible for Retail Connections.**

District will be solely responsible for providing retail water service within the District Service Area. District will be solely responsible for the proper and lawful application of District's policies and regulations governing connection to the District System.

**Section 3.03 Source.**

- a. Bastrop, by entering into this Agreement with District and Developer, confers upon District, the right to purchase on a wholesale basis the Monthly Water Supply from the water secured by Bastrop from Aqua Water Supply Corporation.

- b. In the event that the amount of water supplied by Aqua to Bastrop in the Aqua Agreement is reduced, the Monthly Water Supply to District shall be reduced on a pro rata basis.

**Section 3.04 Title to and Responsibility for Water; Delivery Point(s).**

- a. Title to the water diverted, treated and transported to District by Bastrop under this Agreement shall remain with Bastrop at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the water shall pass to District. Each of Each party shall bear responsibility for the loss of water on their respective side of the point or points of delivery.
- b. District shall be solely responsible for conveying water from the Delivery Point to the District's intended places of use. At its cost and expense, District may change the Delivery Point from time to time following prior written notice to and written approval by Bastrop, which approval shall not be unreasonably withheld, denied or delayed.

**Section 3.04 Quantity and Pressure.**

Subject to the terms of this Agreement, Bastrop agrees to deliver potable water to District all water needed and requested by District for the District Service Area, at prevailing pressure up to, but not in excess of: (i) a minimum of \_\_\_\_\_ GPD per SUE (ii) a maximum daily delivery of \_\_\_\_\_ gallons per day; and (iii) a maximum flow rate of 0.6 gallons per minute per connection.

**Section 3.05 Quality of Water Delivered to District.**

The water delivered by Bastrop at the Delivery Point shall be potable water of a quality conforming to the requirements of any applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. Each party agrees to provide to the other party, in a timely manner, any information or data regarding this Agreement or the quality of treated water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies.

**Section 3.06 Maintenance and Operation; Future Construction.**

- a. Bastrop shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging all current and future facilities of the City. The City commits to acquire necessary easements and complete construction on a schedule that serves and protects the property owners and their structures in the District.
- b. District shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the District System in good working condition and shall promptly repair any leaks or breaks in the District System.



**Section 3.07 Rights and Responsibilities in Event of Leaks or Breaks.**

District shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the District System.

**Section 3.08 Commencement of Wholesale Water Service.**

Bastrop will commence the provision of Wholesale Water Service to District upon final inspection and approval of connecting facilities to the district.

**Section 3.09 Wholesale Service Commitment Not Transferable.**

Bastrop's commitment to provide Wholesale Water Services is solely to District. District may not assign or transfer in whole or in part its right to receive Wholesale Water Services without Bastrop's prior written approval.

**Section 3.10 Conservation and Drought Planning.**

District, within ninety (90) days of the date the District begins operation of the District Water System, the District shall adopt a water conservation plan consistent with and no less stringent than the City's drought contingency plan then in effect and in compliance with TCEQ Rules, 30 Texas Administrative Code, Chapter 288. A copy of the City's current drought contingency plan is attached as Exhibit "B" to this Agreement.

**Section 3.11 Curtailment of Service.**

The Parties agree that, if water service is curtailed by Bastrop to other similarly-situated customers of the Bastrop System, Bastrop may impose a like curtailment, with notice to District, on Wholesale Water Services delivered to District under this Agreement. Bastrop will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Bastrop from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance.

**Section 3.12 Cooperation during Maintenance or Emergency.**

District will reasonably cooperate with Bastrop during periods of Emergency or required maintenance. If necessary, upon prior notice, District will operate and maintain the District System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

**Section 3.13 Re-sale of Water Prohibited.**

District is prohibited from selling any water sold to District hereunder to any person or entity, except to its retail water customers.

**ARTICLE IV. WATER METERING PROVISIONS**

**Section 4.01 Master Meter Accuracy.**

Meter shall meet accuracy standards required by the AWWA with calibration maintained as described in Section 4.02.

**Section 4.02 Meter Calibration.**

- a. The Master Water Meters shall be calibrated each calendar year by District at District’s sole cost and expense. Bastrop shall provide prior notice of each such calibration, and a representative of Bastrop may be present to observe each calibration.
- b. In the event any question arises at any time as to the accuracy of the Master Meter, but not more than a frequency of once per consecutive twelve (12) month period without mutual consent of both Parties, then the Master Meter shall be tested by Bastrop promptly upon demand of District. The expense of such test shall be borne by Bastrop.
- c. If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess of AWWA and manufacturer’s standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon, if no such period is known or agreed upon, the shorter of:
  - 1. a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or
  - 2. a period extending back one-half of the time elapsed since the last previous test; and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

**ARTICLE V. WATER RATES AND CHARGES**

**Section 5.01 Wholesale Water Rates, Fees and Charges.**

District will pay Bastrop for the Wholesale Water Service provided under this Agreement based on a base meter charge and the volumetric charge. No other rates, fees or charges shall be owed by the District to Bastrop for Wholesale Water Service.

**Section 5.02 Bastrop Water Impact Fee.**

The Water Impact Fee is \$\_\_\_\_\_ per SUE.

**Section 5.03 Base Meter Charge.**

District will pay Bastrop the monthly retail base meter charge applicable to the meter size at the Point of Delivery. Such fee shall be subject to change from time to time when Bastrop retail rates



are reviewed. The initial base meter charge for the meter at the Point of Delivery is \$ \_\_\_\_\_ per month.

**Section 5.04 Volumetric Charge.**

- a. Bastrop will measure water flows monthly based on monthly readings of the Master Meter. The total of these amounts multiplied by the volumetric rate will be used by Bastrop to compute the volume charge as provided in Section 6.02 below.
- b. The initial volumetric rate shall be Bastrop’s non-residential volumetric water rate (\$ \_\_\_\_\_ per 1,000 gallons of water).
- c. Bastrop may amend the volumetric rate from time to time when Bastrop retail rates are reviewed. Bastrop shall provide written notice to District of any rate adjustments not later than thirty (30) days prior to the effective date thereof.

**Section 5.05 Changes to Rates and Fees.**

The City agrees that a change in the monthly base meter charge or volumetric charge will not become effective against the District until thirty (30) days after effective written notice to the District if a change is provided by the City.

**Section 5.06 District Water Rates and Charges.**

District will determine and charge its retail water customers such rates as are determined by its governing body. During the term of this Agreement, District will fix and collect rates and charges for retail water service that are, in the opinion of its governing body, sufficient, together with any other revenues available to District, to produce the amount necessary to operate, repair, and maintain the District System, and to pay the cost of Wholesale Water Service from Bastrop. District will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

**Section 5.07 District and Developer to Pay All Costs for Connection to the City.**

The District, or Developer if the District does not have sufficient funds, will pay the entire cost of connection to the City’s Water System.

**Section 5.08 Wholesale Water Rates.**

The City shall invoice the District for wholesale water delivery and treatment service at the same rate that the City charges its other wholesale customers per gallon of use. The District shall pay the City monthly, one month in arrears, as more fully described in Article XIII of this Agreement.

**Section 5.09 District Payment for Wholesale Service.**

Billing for wholesale service will commence after the first date water service is provided to the District. The City will send one bill to the District on or before the first day of each month after the date water service has commenced, at a rate that is the same as the rate the City charges its city

customers of each class. The Developer agrees to require the builders in the District to send notice of each such closing to the City within thirty (30) days of the closing of each lot in a separate agreement with each such builder.

#### **Section 5.10 Builder Payment for Impact Fees.**

Builders in the District will be required in a contract by and between the builder and the Developer to pay the standard impact fee to the City related to the use of the capacity in the City's Water System.

### **ARTICLE VI. WHOLESALE WATER BILLING METHODOLOGIES; REPORTS AND OTHER RELATED MATTERS**

#### **Section 6.01 Monthly Statement.**

For each monthly billing period, Bastrop will forward to District a bill providing a statement of the Base Meter Fee and the total Volume Charge owed by District for Wholesale Water Service provided to District during the previous monthly billing period. District will pay Bastrop for each bill submitted by Bastrop to District by check or bank-wire on or before thirty (30) days from the date of receipt of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to Bastrop's headquarters in Bastrop County, Texas. If payments will be made by bank-wire, District shall verify wiring instructions. Payment must be received at Bastrop's headquarters or bank by the due date in order not to be considered past due or late. In the event District or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, District shall pay in addition Bastrop's then current late payment charges on the unpaid balance of the invoice.

#### **Section 6.02 Monthly Billing Calculations.**

Bastrop will compute the sum of the base meter charge and the volume charge for Wholesale Water Service on the basis of monthly readings of the Master Meter and will bill District such sum on a monthly basis.

#### **Section 6.03 Effect of Nonpayment.**

With respect to monthly billings, if Bastrop has not received payment from District by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Bastrop will notify District of such delinquency in writing, and if District fails to make payment of the delinquent billing within thirty (30) calendar days from the date of transmittal of such written notice of delinquency from Bastrop, then Bastrop may, at its discretion, terminate or reduce the level of Wholesale Water Service to District until payment is made.

#### **Section 6.04 Reasonableness of Rates.**

District agrees that the Rates initially charged by City and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by City are subject to modification as provided herein. District agrees that it is reasonable for City to adjust the Rates periodically as provided herein and understands that any adjustments made in



accordance with this Agreement are part of the consideration for this Agreement. Notwithstanding any provision to the contrary, District does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by City that is not in conformance with the terms of this Agreement.

**Section 6.05 Records and Reports**

The District shall promptly provide to the City upon written request, and without charge, copies of any District records or documents relating to the construction, operation, maintenance, or repair of the District Water System.

**ARTICLE VII. REGULATORY COMPLIANCE**

**Section 7.01 Agreement Subject to Applicable Law.**

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

**Section 7.02 Cooperation to Assure Regulatory Compliance.**

Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the Parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

**ARTICLE VIII. TERM, TERMINATION, DEFAULT, REMEDIES**

**Section 8.01 Term and Termination.**

- a. This Agreement shall become effective upon the Effective Date and shall extend until \_\_\_\_\_, \_\_\_\_\_ unless terminated earlier as provided herein.
- b. District may terminate this Agreement by providing not less than sixty (60) days written notice of termination to Bastrop.
- c. In the event that any agreement provided for in the definition of Bastrop’s System Agreements are terminated or expires, this Agreement shall be terminated and be of no further force or effect. Either party shall give thirty (30) days prior written notice of an anticipated termination or expiration of any agreement provided for in the definition of Bastrop’s System Agreements.

**Section 8.02 Default.**

- a. In the event District shall default in the payment of any amounts due to Bastrop under this Agreement, or in the performance of any material obligation to be performed by District under this Agreement, then Bastrop shall give District at least thirty (30) days’ written

notice of such default and the opportunity to cure same. Thereafter, Bastrop shall have the right to pursue any remedy available at law or in equity, pending cure of such default by District.

- b. In the event Bastrop shall default in the performance of any material obligation to be performed by Bastrop under this Agreement, then District shall give Bastrop at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the District shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Bastrop.

### **Section 8.03 Additional Remedies upon Default.**

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Bastrop's undertaking to provide Wholesale Water Service to the District System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Bastrop agrees, in the event of any default on its part, that District shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of District's obligations could not be adequately compensated in money damages alone, District agrees in the event of any default on its part that Bastrop shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Bastrop including the right to obtain a writ of mandamus or an injunction against District requiring the District to collect rates and charges sufficient to pay the amounts owed to Bastrop by District under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

## **ARTICLE IX. GENERAL PROVISIONS**

### **Section 9.01 Assignability.**

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned.

### **Section 9.02 Amendment.**

This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of District and Bastrop and executed by duly authorized representatives of each.



**Section 9.03 Necessary Documents and Actions.**

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

**Section 9.04 Entire Agreement.**

This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Service by Bastrop to District for the District Service Area.

**Section 9.05 Applicable Law.**

This Agreement will be construed under and in accordance with the laws of the State of Texas.

**Section 9.06 Venue.**

All obligations of the Parties created in this Agreement are performable in Bastrop County, Texas, and venue for any action arising under this Agreement will be in Bastrop County, Texas.

**Section 9.07 Third Party Beneficiaries.**

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

**Section 9.08 Duplicate Originals.**

This Agreement may be executed in duplicate originals each of equal dignity.

**Section 9.09 Notices.**

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery the address of the other party shown below:

**DISTRICT:**

Attn:

**DEVELOPER:**

Attn:

**CITY OF BASTROP:** City of Bastrop  
1311 Chestnut Street  
Bastrop, Texas 78602  
Attn: City Manager

**WITH REQUIRED COPY TO:** Alan Bojorquez  
Bojorquez Law Firm, PC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

Notices shall be deemed received on the date of hand delivery or within three (3) days of deposit in first-class mail.

**Section 9.10 Consents and Approvals.**

Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

**Section 9.11 Severability.**

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

**Section 9.12 Records.**

Bastrop and District each agree to preserve, for a period of at least two (2) years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Bastrop and District shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

**Section 9.13 State Approval; Compliance with TCEQ Rules.**

Anything herein to the contrary notwithstanding, it is the intention of the parties that this Agreement fully comply with the requirements of the TCEQ applicable to public drinking water systems which receive water through a sole-source water supply contract, including the requirements of 30 Texas Administrative Code, Section 290.45(f). The parties each agree to provide any information which may be requested by the other in order to respond to any inquiries or reports required by the TCEQ. If, at any time, it is determined that this Agreement does not



comply with all applicable TCEQ requirements, the parties agree to cooperate to modify this Agreement in order to effect such compliance.

**Section 9.14 Force Majeure.**

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

**Section 9.15 Good Faith.**

Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

**Section 9.16 Authority of Parties Executing Agreement, Validity.**

By their execution, each of the individuals executing this Agreement on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

**Section 9.17 Exhibits.**

The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A: Metes and Bounds Description of the Land
- Exhibit B: Bastrop Water Conservation and Drought Contingency Plan
- Exhibit C: Map Showing Locations of Water Delivery Points, Water Connection Points

**Section 9.18 Effective Date.**

This Agreement will be effective from and after the last date of due execution by all Parties.

**CITY OF BASTROP, TEXAS**

By: \_\_\_\_\_

Name: Lynda Humble

Title: City Manager

Date: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

City Secretary

\_\_\_\_\_ **DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS           §

  §

COUNTY OF BASTROP   §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2018,  
by \_\_\_\_\_, \_\_\_\_\_ City of Bastrop, Texas, on behalf of City.

\_\_\_\_\_  
Notary Public Signature

(DEVELOPER)

A \_\_\_\_\_

By:

A \_\_\_\_\_ company, \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: Manager

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a Texas \_\_\_\_\_ company, \_\_\_\_\_ of \_\_\_\_\_, a Texas \_\_\_\_\_, on behalf of said \_\_\_\_\_ company as \_\_\_\_\_ of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**Exhibit "A"**

**Metes and Bounds Description of the Land**

**Exhibit “B”**

**Bastrop Water Conservation and Drought Contingency Plan**

**Exhibit “C”**

**Map Showing Locations of Water Delivery Points**