

**RESOLUTION NO. R-2018-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, RELATING TO THE "BASTROP ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, SERIES 2018", INCLUDING THE APPROVAL OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE CORPORATION AUTHORIZING THE ISSUANCE OF SUCH BONDS; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Bastrop Economic Development Corporation (the "Issuer") has been duly created and organized pursuant to the provisions of the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (formerly known as the Development Corporation Act of 1979. Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 505 of the Local Government Code (the "Act"); and

**WHEREAS**, pursuant to the Act, the Issuer is empowered to issue bonds for the purpose of defraying the cost of any "project" defined as such by the Act; and

**WHEREAS**, the Board of Directors of the Issuer has found and determined that infrastructure street improvements and extension, including Agnes Street/Home Depot Way and related drainage improvements, will promote and develop new and expanded business enterprises and constitute projects within the meaning of Section 501.103 of the Act ("The Project") and the costs of constructing and equipping such project should be financed from the proceeds of sale of \$1,250,000 "Bastrop Economic Development Corporation Sales Tax Revenue Bonds, Series 2018" (the "Bonds"); and

**WHEREAS**, Section 501.204 of the Act requires the City Council of the City approve the resolution of the Issuer providing for the issuance of the Bonds no more than sixty (60) days prior to the delivery of the Bonds;

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

**SECTION 1:** The Resolution authorizing the issuance of the Bonds adopted by the Issuer on May 21, 2018 (the "Issuer Resolution") and submitted to the City Council this day is hereby approved in all respects. The Bonds are being issued to finance the costs of acquiring and purchasing the Project, which is located within the City of Bastrop.

**SECTION 2:** The approvals herein given are in accordance with Section 501.204 of the Act and the Bylaws of the Issuer, and the Bonds shall never be construed as an indebtedness or pledge of the City, or the State of Texas (the "State"), within the meaning of any constitutional or statutory provision, and the owner of the Bonds shall never be paid in whole or in part out of any funds raised or to be raised by taxation (other than sales tax proceeds as authorized pursuant to the Act) or any other revenues of the Issuer, the City, or the State, except those revenues assigned and pledged by the Issuer Resolution.

**SECTION 3:** The City hereby agrees to promptly collect and remit to the Issuer the sales tax revenues in accordance with the terms of the Issuer Resolution and the Act to provide for the prompt payment of the Bonds, and to assist and cooperate with the Issuer in the enforcement and collection of sales and use taxes imposed on behalf of the Issuer.

**SECTION 4:** The Mayor, the Mayor Pro Tem, the City Secretary, the City Manager and Chief Financial Officer of the City are hereby authorized, jointly and severally, to execute and deliver such endorsements, instruments, certificates, documents, or other papers necessary and advisable to carry out the intent and purposes of this Resolution and Issuer Resolution.

**SECTION 5:** The City hereby acknowledges and recognizes that the Bonds are being issued as tax exempt obligations under and pursuant to section 103(a) of the Code (as defined below) and the proceeds of sales of such Bonds are to be deposited with the City following their receipt by the Issuer and the City shall have full control and responsibility for the acquisition and purchase of the Project and the investment and disbursement of the proceeds of sales of the Bonds. Therefore, as a result of the foregoing, the City hereby makes the following representations and warranties to the Issuer:

(a) **Definitions.** When used in this Section, the following terms have the following meanings:

“Closing Date” means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all Legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1 (c) of the Regulations, of the Bonds.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) **Not to Cause Interest to Become Taxable.** The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City received a written opinion of council nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) **No Private Use or Private Payments.** Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) **No Private Loan.** Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and Regulations and rulings thereunder, the City shall not take or omit to take any action which cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Payment of Rebatable Arbitrage. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of accounts separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall remit to the Issuer for payment to the United States the amount described in paragraph (3) above and the amount described in paragraph (4) below, at the times, in the manner and accompanied by such forms or other information as is or may be required by Section 148 (f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraph (2), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including the amount remitted to the Issuer for payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

**SECTION 6.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject

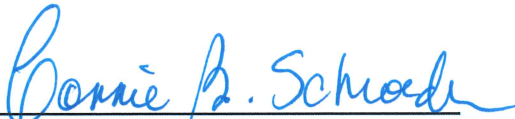
matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

**SECTION 7.** This Resolution shall be in force and effect from and after its passage on the date shown below.

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**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 22<sup>nd</sup>.  
day of May 2018.

**APPROVED:**

  
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Connie B. Schroeder, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
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Alan Bojorquez, City Attorney