



NOTICE OF MEETING OF THE GOVERNING BODY OF THE CITY OF BURNET

Notice is hereby given that a **Special City Council Meeting** will be held by the governing body of the City of Burnet on the **8th day of February, 2024**, at **2:00 p.m.**, in the City of Burnet Council Chambers located at 2402 S. Water Street (Hwy. 281 South, Burnet Municipal Airport) Burnet, TX.

The City of Burnet City Council Meeting will be available for live viewing via the following media connections.

City of Burnet Facebook Page: <https://www.facebook.com/cityofburnet>

City of Burnet Website via Zoom as follows:

<https://us02web.zoom.us/j/81278669602>

Or One tap mobile :

US: 8778535257,,81278669602# (Toll Free) or 8884754499,,81278669602# (Toll Free)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: 877 853 5257 (Toll Free) or 888 475 4499 (Toll Free)

Webinar ID: 812 7866 9602

International numbers available: <https://us02web.zoom.us/j/81278669602>

The Zoom connection is a live broadcast viewing option only. The option for comments will not be available.

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

The following subjects will be discussed, to wit:

CALL TO ORDER:

ROLL CALL:

INVOCATION:

PLEDGES (US & TEXAS):

4. ACTION ITEMS:

4.1) Discuss and consider action: FIRST READING OF AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 4, 2024, FOR THE PURPOSE OF SUBMITTING PROPOSITIONS TO VOTERS FOR PROPOSED AMENDMENTS TO THE CITY CHARTER; SAID ELECTION TO BE HELD IN CONJUNCTION WITH THE CITY'S GENERAL ELECTION: K. Dix

PRIMERA LECTURA DE UNA ORDENANZA QUE ORDENA QUE SE CELEBRE UNA ELECCIÓN ESPECIAL EL 4 DE MAYO DE 2024, CON EL FIN DE PRESENTAR PROPUESTAS A LOS VOTANTES PARA LAS ENMIENDAS PROPUESTAS A LA CARTA CONSTITUCIONAL DE LA CIUDAD; DICHA ELECCIÓN SE LLEVARÁ A CABO EN CONJUNTO CON LAS ELECCIONES GENERALES DE LA CIUDAD: K. Dix

4.2) Discuss and consider action: A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, SELECTING A GENERAL CONTRACTOR TO CONSTRUCT THE NEW CITY HALL PROJECT; AWARDING A CONTRACT TO SAID GENERAL CONTRACTOR; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT: H. Erkan

5. REQUESTS FROM COUNCIL FOR FUTURE REPORTS: In accordance with Resolution 2020-28 Council Members may request the City Manager to prepare and present future reports on matter of public interest.

6. ADJOURN:

Dated this 5th day of February, 2024

City of Burnet

Mayor Gary Wideman

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the governing body of the above named City, BURNET, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on February 5th, 2024 at or before 2 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Kelly Dix, City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:

The City of Burnet Council Chambers is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's office (512.756.6093) at least two working days prior to the meeting. Requests for information may be faxed to the City Secretary at 512.756.8560.

RIGHT TO ENTER INTO EXECUTIVE SESSION:

The City Council for the City of Burnet reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



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PRIMERA LECTURA DE UNA ORDENANZA QUE ORDENA QUE SE CELEBRE UNA ELECCIÓN ESPECIAL EL 4 DE MAYO DE 2024, CON EL FIN DE PRESENTAR PROPUESTAS A LOS VOTANTES PARA LAS ENMIENDAS PROPUESTAS A LA CARTA CONSTITUCIONAL DE LA CIUDAD; DICHA ELECCIÓN SE LLEVARÁ A CABO EN CONJUNTO CON LAS ELECCIONES GENERALES DE LA CIUDAD: K. Dix

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6. ADJOURN:

Dated this 5th day of February, 2024

City of Burnet

Mayor Gary Wideman

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the governing body of the above named City, BURNET, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on February 5th, 2024 at or before 2 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Kelly Dix, City Secretary

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NOTICE OF MEETING OF THE GOVERNING BODY OF THE CITY OF BURNET

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The following subjects will be discussed, to wit:

CALL TO ORDER: Time: _____

ROLL CALL:

Council Member Dennis Langley _____
Mayor Pro Tem Philip Thurman _____
Council Member Mary Jane Shanes _____
Mayor Gary Wideman _____
Council Member Tres Clinton _____
Council Member Joyce Laudenschlager _____
Council Member Ricky Langley _____

INVOCATION: Led by: _____

PLEDGES (US & TEXAS): Led by: _____

4. ACTION ITEMS:

4.1) Discuss and consider action: FIRST READING OF AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 24, 2024, FOR THE PURPOSE OF SUBMITTING PROPOSITIONS TO VOTERS FOR PROPOSED AMENDMENTS TO THE CITY CHARTER; SAID ELECTION TO BE HELD IN CONJUNCTION WITH THE CITY'S GENERAL ELECTION: K. Dix

PRIMERA LECTURA DE UNA ORDENANZA QUE ORDENA QUE SE CELEBRE UNA ELECCIÓN ESPECIAL EL 24 DE MAYO DE 2024, CON EL FIN DE PRESENTAR PROPUESTAS A LOS VOTANTES PARA LAS ENMIENDAS PROPUESTAS A LA CARTA CONSTITUCIONAL DE LA CIUDAD; DICHA ELECCIÓN SE LLEVARÁ A CABO EN CONJUNTO CON LAS ELECCIONES GENERALES DE LA CIUDAD: K. Dix

Motion _____ **Seconded By** _____

4.2) Discuss and consider action: A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, SELECTING A GENERAL CONTRACTOR TO CONSTRUCT THE NEW CITY HALL PROJECT; AWARDING A CONTRACT TO SAID GENERAL CONTRACTOR; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT: H. Erkan

Motion _____ **Seconded By** _____

5. REQUESTS FROM COUNCIL FOR FUTURE REPORTS: In accordance with Resolution 2020-28 Council Members may request the City Manager to prepare and present future reports on matter of public interest.

6. ADJOURN:

Dated this 2nd day of February, 2024

City of Burnet

Mayor Gary Wideman

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the governing body of the above named City, BURNET, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on February 2nd, 2024 at or before 6 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Kelly Dix, City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:

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Administration

ITEM 4.1

Kelly Dix
City Secretary
(512)715-3209
kdix@cityofburnet.com

Action

Meeting Date: February 8, 2024

Agenda Item: Discuss and consider action: FIRST READING OF AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 4, 2024, FOR THE PURPOSE OF SUBMITTING PROPOSITIONS TO VOTERS FOR PROPOSED AMENDMENTS TO THE CITY CHARTER; SAID ELECTION TO BE HELD IN CONJUNCTION WITH THE CITY'S GENERAL ELECTION: K. Dix

UNA ORDENANZA QUE ORDENA QUE SE CELEBRE UNA ELECCIÓN ESPECIAL EL 4 DE MAYO DE 2024, CON EL FIN DE PRESENTAR PROPUESTAS A LOS VOTANTES PARA LAS ENMIENDAS PROPUESTAS A LA CARTA CONSTITUCIONAL DE LA CIUDAD; DICHA ELECCIÓN SE LLEVARÁ A CABO EN CONJUNTO CON LAS ELECCIONES GENERALES DE LA CIUDAD: K. Dix

Background: The City of Burnet Charter Committee was appointed by Council in August 2023 to review the City's Charter. The committee completed the review and presented final report for Council acceptance on January 9, 2024. Council Approved the ten measures and recommended propositions for the May ballot as presented.

Information: It will be necessary to hold a Special Election on May 4, 2024 to present the proposed Charter amendments to the citizens of Burnet for a vote.

Fiscal Impact: None.

Recommendation: Approve the first reading of Ordinance 2024-05 as presented calling a Special Election to be held on the question of the adoption of amendments to the Charter of the City of Burnet, on May 4, 2024.

ORDINANCE NO. 2024-05

AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 24, 2024, FOR THE PURPOSE OF SUBMITTING PROPOSITIONS TO VOTERS FOR PROPOSED AMENDMENTS TO THE CITY CHARTER; SAID ELECTION TO BE HELD IN CONJUNCTION WITH THE CITY'S GENERAL ELECTION

WHEREAS, On August 22nd, 2023, City Council created a charter review commission ("CRC") and appointed persons to the CRC and charged it with reviewing and proposing amendments to the Charter; and

WHEREAS, the CRC held multiple meetings, all of which were open to the public; and

WHEREAS, the CRC prepared and presented its written report to Council in a public meeting, said report titled *2024 Report of the Charter Review Commission* ("Report"), which specified proposed Charter amendments to City Council; and

WHEREAS, Council listened to a presentation from the Chair of the CRC regarding the Report and then reviewed the proposed amendments and the rationale for such amendments as found within the Report; and

WHEREAS, after considering the Report, Council now believes that Burnet voters, in accordance with Section 9.004 of the Texas Local Government Code, should vote on the amendments as specified by the Report, in the form of propositions, at the next uniform election date to be held on May 4, 2024; and

WHEREAS, City Council finds it in the public interest to order a special election, to be held in conjunction with next uniform election date on May 24, 2024, for a vote of the electors as to proposed amendments to the Charter;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS:

SECTION ONE. City Council accepts the *2024 Report of the Charter Review Commission*.

SECTION TWO. Council orders that a special election be held by the City of Burnet, Texas ("City") on May 24, 2024. This election will be held in conjunction with the City's general election on same date with voting day and early voting locations being the same as the City's general election. As part of the election, ballot propositions will be submitted to the qualified voters of the City for proposed amendments to the Charter, in accordance with applicable provisions of the City Charter and State law.

SECTION THREE. The following measures, with blue, underlined language being additions (added) to the Charter and strike-through language being deletions (~~deleted~~) from the Charter, shall be submitted to the qualified voters of the City at the election in the form of the propositions as provided for in Section Four, below, and in accordance with Section 9.004 of the Texas Local Government Code and other applicable laws:

Measure A

Proposition A

Shall the City Charter of the City of Burnet be amended to clarify the Mayor's authority to delay a vote on a matter?

Measure A

Section 3.05. Mayor and Mayor Pro-tem. The Mayor shall be the official head of the City government. The Mayor shall be the Chair and shall preside at all meetings of the City Council. The Mayor may make motions and may vote on every proposition before the City Council. While the Mayor or alternate presiding officer shall have no power to veto, he/she shall have the power to declare a delay of the ~~initial~~ vote on ~~a matter any item on an agenda~~ until the next Council meeting, ~~such authority to be limited to a single delay for any agenda item being considered.~~ The Mayor shall, except as provided otherwise by the City Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. The Mayor shall appoint special committees as advisable and as instructed by the City Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed by the City Council.

Mayor Pro-tem shall be elected by the City Council as soon as practicable after each regular City election, or in the event of a vacancy in the Mayor Pro-tem position. The Mayor Pro-tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.

Measure B

Proposition B

Shall the City Charter of the City of Burnet be amended to require a two-thirds vote of remaining City Council members to declare a vacancy on City Council?

Measure B

Section 3.06. Vacancies, Forfeiture, and Filling of Vacancies.

B. Forfeiture of Office. If the Mayor or any City Council Member:

2. has been found by at least ~~five (5) affirmative~~ a ~~two-thirds (2/3)~~ votes of the remaining Members of City Council to have violated any express prohibition of this Charter; or

Section 3.16. Council Investigative Body; Hearings; Process.

B. Hearing Process for Forfeiture of Office and Prohibitions.

10. In the case of a violation of Section 3.06 of this Charter, City Council shall vote on the forfeiture and on the affirmative vote of two-thirds ~~(2/3)~~ of the remaining Members of City Council to declare the office of said office holder to be forfeited and vacant.

Measure C

Proposition C

Shall the City Charter of the City of Burnet be amended to authorize the adoption and publication of ordinances consistent with state law and City Council policy?

Measure C

Section 3.14. Ordinances and Resolutions. The enacting clause of all ordinances shall be: "Be it ordained by the City Council of the City of Burnet, Texas..." Ordinances, and formal resolutions that establish programs, adopt policy, provide any rule or regulation applicable to the general public, or establish requirements for any general administrative function of the City, shall be introduced in the City Council only in written or printed form and shall contain only one subject each. All ordinances, unless otherwise provided by law or this Charter or by the terms of such ordinances, shall take effect immediately upon the final passage thereof. City Council shall adopt a policy regarding the publication of ordinances consistent with State law.

Resolutions that give directions to the City Manager on a business matter, approve an administrative action, contract or bid, and that approve plans and actions in the course of the day-to-day business of the City, will be sufficient if shown by recording the motion and vote in the minutes of the City Council. Ordinances making appropriations shall be confined to appropriations.

~~Any reference to the reading of an ordinance made in this Charter shall be understood to mean the reading of the caption of the ordinance only unless a specific request is made by any Council Member for the ordinance to be read in part or in full. Any ordinance that levies a fine or penalty or deals with the budget, taxes, franchises or public utilities or the setting of their rates shall be read at two (2) meetings. Such Ordinances shall be published in full or by caption with a summary in two (2) successive issues of a newspaper of general circulation in the City of Burnet and as files available for download via the Internet with the first publication at least fourteen (14) days before the final reading and passage of the Ordinance.~~

~~No ordinance that is not an emergency ordinance shall be finally passed until it has been read on two (2) separate days not less than twenty-four (24) hours apart.~~

~~**Section 3.15. Emergency Ordinances.** In order to meet a public emergency affecting life, health, property, the public peace, or to prevent a material financial loss to the City, the City Council may adopt emergency ordinances. Such ordinances shall not levy taxes, grant or renew or extend a franchise, or regulate the rate charged by any public utility for its services. The City Council shall not by Emergency Ordinance authorize the borrowing of money, except as provided in Section 7.07, B titled, "Emergency Appropriations." An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall be plainly designated in the title as an "Emergency Ordinance" and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear and specific terms. Such emergency clause shall require the affirmative vote of at least five (5) members of the City Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption, the ordinance shall be published in two (2) successive issues of a newspaper of general circulation in the City, and as files available for download via the Internet.~~

~~Every emergency ordinance so adopted, except one authorizing the borrowing of money for emergency appropriations, shall automatically be repealed after sixty (60) days following the day on which it became effective. The ordinance may be reenacted.~~

Measure D

Proposition D

Shall the City Charter of the City of Burnet be amended to clarify that the Mayor is a member of City Council?

Measure D

Section 1.02. Form of Government. The municipal government provided by this Charter shall be the Council-Manager form of government consisting of a Mayor and Council Members (collectively and individually referred to herein as "Member(s) of City Council"), elected by and responsible to the people, and a City Manager, appointed by and responsible to the City Council for proper administration of the affairs of the City.

Section 3.06. Vacancies, Forfeiture, and Filling of Vacancies.

D. Filling of Vacancies.

1. When a single or double vacancy occurs in the City Council, the remaining ~~m~~Members of ~~the~~ City Council shall:
 - a. If the remaining term(s) is less than one year in duration either appoint a qualified person to fill the unexpired term(s) or hold a special election to fill the unexpired term(s). An appointment must be approved by an affirmative vote of at least five (5) members of the City Council; or
 - b. If the remaining term(s) is one year or more, order an election to fill the unexpired term(s) at the next regular general election.
2. Should three (3) vacancies exist on City Council at the same time then City Council shall order an election to fill the vacancies on the next available uniform election date as provided by law.
3. All appointments to City Council shall serve until the next regular election.
4. All appointments to City Council shall be qualified to serve pursuant to Section 3.02 of this Charter and shall take office immediately upon appointment.

Section 3.09. Prohibitions.

- A. *Holding Other Office.* Except as authorized by law, no Mayor or Council Member shall hold any other City office or City employment during a term as Mayor or Council Member. No former Mayor or Council Member shall hold any compensated appointive City office or City employment until one year after the expiration of term as Mayor or Council Member except as provided in Section 3.01 of this Charter.
- B. *Appointments and Removals.* Neither the Mayor, nor any ~~member of the~~ City Council ~~Member~~ shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the City Manager or the Manager's subordinates are empowered to appoint. However, the City Council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.
- C. *Interference with Administration.* Except for the purpose of inquiries or investigations under Section 3.16, ~~neither~~ the Mayor, ~~City Council Members, nor~~ the City Council ~~or its members~~ shall ~~not~~ direct City officers or employees who are subject to the direction and supervision of the City Manager, except through the City Manager. ~~The Mayor, Neither the~~ City Council nor ~~any of the Members of City Council members~~ shall give orders to any officer or employee supervised by the City Manager, either publicly or privately, except as otherwise provided in this Charter.

Section 3.10. Meetings of the Council.

- A. *Monthly Council Meeting.* The City Council shall hold at least one (1) regular meeting each month at a time and place the City Council shall designate.
- B. *Regular Meetings.* Regular meetings are council meetings required to be held at least monthly and designated as regular.
- C. *Special Meetings.* Special meetings may be called by the City Secretary at the request of the Mayor, the City Manager or two (2) ~~members of the~~ City Council Members. The City Manager and each ~~member of the~~ City Council Member shall be notified of all special meetings.
- D. *Public Meetings.* All meetings shall be open to the public except as authorized by law and shall be held at the City Council Chambers of the City, or other places within or outside of the City that will permit the attendance of the general public.

Section 3.11. Quorum. Four (4) ~~Council Members of City Council, whether or not inclusive of the Mayor or Mayor Pro tem,~~ shall constitute a quorum for the purpose of transacting business. Any action of the City Council, except as provided in this Charter, shall be valid or binding when adopted by majority vote of the ~~Council~~ Members of City Council in attendance. A ~~Member of City Council~~ Member that is present but not voting shall be in attendance for purposes of the quorum.

Section 3.13. Voting. The City Council shall provide for the taking and recording of minutes for all open meetings, and such minutes shall be a public record. There shall also be provision for a certified agenda or recording of meetings held in executive or closed session in accordance with applicable law. The “ayes” and “nays” of each ~~Council~~ Member of City Council, on every vote taken by the City Council shall be recorded in the minutes. All ~~mMembers of the~~ City Council present, ~~including the Mayor,~~ shall vote upon every resolution or ordinance, except where there is a conflict of interest, the reason for which shall be stated concisely in the minutes.

[IF PROPOSITION C PASSES THIS SECTION SHALL NOT GO INTO EFFECT IF IT ALSO PASSES] Section 3.15. Emergency Ordinances.

In order to meet a public emergency affecting life, health, property, the public peace, or to prevent a material financial loss to the City, the City Council may adopt emergency ordinances. Such ordinances shall not levy taxes, grant or renew or extend a franchise, or regulate the rate charged by any public utility for its services. The City Council shall not by Emergency Ordinance authorize the borrowing of money, except as provided in Section 7.07, B titled, “Emergency Appropriations.” An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall be plainly designated in the title as an “Emergency Ordinance” and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear and specific terms. Such emergency clause shall require the affirmative vote of at least five (5) ~~mMembers of the~~ City Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption, the ordinance shall be published in two (2) successive issues of a newspaper of general circulation in the City, and as files available for download via the Internet.

Every emergency ordinance so adopted, except one authorizing the borrowing of money for emergency appropriations, shall automatically be repealed after sixty (60) days following the day on which it became effective. The ordinance may be reenacted.

Section 4.01. City Manager.

- A. Appointment and Qualifications.** The City Manager shall be appointed by an affirmative vote of five (5) or more Members of City Council ~~Members~~. The method of selection shall be left to the discretion of the City Council. The City Manager shall reside within the City of Burnet within forty-five (45) days of assuming his/her duties. The City Manager shall be bonded at City expense in an amount consistent with current need as established by the City Council.
- B. Compensation.** The City Manager shall receive compensation as fixed by the City Council. The compensation shall be agreed upon before appointment. The City Council may increase but not reduce the compensation of the City Manager at their discretion.
- C. Term and Removal.** The City Manager shall be appointed for an indefinite term. An affirmative vote of five (5) or more Members of City Council ~~Members~~ may remove the City Manager. The action of the City Council in suspending or removing the City Manager shall be final. It is the intention of this Charter to vest all authority and fix all responsibilities of such suspension or removal in the City Council.

Section 4.03. Municipal Court.

- A. Municipal Court Established.** There shall be established and maintained a court, designated as the Municipal Court for the trial of misdemeanor offenses and other matters as provided by state law or ordinance. The Municipal Court shall perform such other duties and functions appropriate for the Municipal Court as are established by ordinance not inconsistent with state law. The Municipal Court shall have all such other powers and duties as are now, or may in the future be prescribed by laws of the State of Texas, relative to municipal courts.
- B. Presiding Judge.** The Presiding Judge of the Municipal Court shall be appointed by the City Council and shall hold office for two years from the date of appointment unless sooner removed by a majority vote of the ~~members of the~~ City Council as provided for herein. The Presiding Judge shall have such qualifications as are required by the City Council and state law, shall report to the City Council, shall be required to participate in training programs available for municipal judges, and shall receive such salary as fixed by the City Council.

Section 6.08. Ballot Form and Results of Elections. The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words: "For the Ordinance" and "Against the Ordinance." Any number of ordinances may be voted upon at the same election in accordance with the provisions of this Charter. An ordinance submitted and receiving an affirmative majority of the votes cast shall then become effective as an ordinance of the City. An ordinance so adopted may be repealed or amended at any time after the expiration of two (2) years by an affirmative vote of five (5) or more ~~of the~~ Members of City Council ~~Members~~. A referred ordinance that is not approved by a majority of the voters is repealed.

Measure E

Proposition E

Shall the City Charter of the City of Burnet be amended to provide that the municipal court presiding judge serves at the pleasure of the City Council and may be removed by a majority vote of the City Council?

Measure E

Section 4.03. Municipal Court.

F. Removal of Presiding Judge. ~~The Presiding Judge shall serve at the will and pleasure of the City Council and may be relieved from office by a majority vote of the City Council. The Presiding Judge may, subject to the other provisions of this subsection, be removed from office for willful or persistent violations of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section. Any person holding an office specified in this subsection may be suspended from office with or without pay by the City Council immediately on being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. Upon the motion of the City Council or on the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit on the judiciary or on the administration of justice, the City Council, after giving the person notice and an opportunity to appear and be heard before the City Council may, after considering the record of such appearance may, suspend with or without pay, censure, or otherwise discipline the Judge; or remove the Judge from office.~~

Measure F

Proposition F

Shall the City Charter of the City of Burnet be amended to provide that elections shall be held consistent with state law?

Measure F

Article V. Elections

Section 5.01. Election of Mayor and City Council Members.

~~The regular City election shall be held annually on the uniform election date in May, or at such other times as may be specified by state law. All elections shall be held as required by law.~~

At the regular election held in odd numbered years a Mayor shall be elected, and three (3) City Council Members shall be elected to serve in the City Council positions for which the term of office expires in that year. At the regular election in even numbered years, three (3) City Council Members shall be elected to serve in the three (3) City Council positions for which the term of office expires in that year. The term of each office shall be two (2) years and the office holders shall serve until their successors are elected and take office.

Each qualified voter of the City may vote for one (1) Mayoral candidate and three (3) City Council candidates in odd numbered years, and for three (3) City Council candidates in even numbered years. The candidate for Mayor that receives the highest number of votes cast shall be elected, and in each election the three (3) candidates for City Council

Members that individually receive the highest number of votes shall be elected. ~~The election shall be ordered by the City Council. The City Secretary shall give notice of the election in the manner required by the laws of the State of Texas.~~

Section 5.02. Notice and Order for Elections.

- ~~A. **Date.** The regular City election shall be held annually on the uniform election date in May, or at such other times as may be specified by state law, at which time officers will be elected to fill those offices which become vacant that year.~~
- ~~B. **Place.** The City Council shall fix the place for holding such election.~~
- ~~C. **Special Elections.** The City Council may, by ordinance or resolution, order a special election, fix the date and place for holding same, and provide all means for holding such special election.~~
- ~~D. **Notice.** Notice of elections shall be published in a newspaper of general circulation of the City of Burnet, such publication to follow the requirements of the Election Code and any applicable law.~~
- ~~E. **Early Voting.** Early voting shall be governed by the general election laws of the State of Texas.~~

Section 5.03. Regulation of Elections.

- ~~A. **Compliance.** All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections.~~
- ~~B. **Election Judges.** The City Council shall appoint the election judges and other election officials.~~

~~**Section 5.04. Special Elections.** The City Council may call special elections as required or authorized by the laws of the State of Texas or this Charter, fix the time and place of holding these elections, and provide all means for holding such special elections, provided that every special election shall be held on a Saturday, or a uniform election date, unless otherwise provided by law or this Charter. Except as required by this Charter or state law, every special election shall be called and held as nearly as practicable according to the provisions governing regular elections.~~

Section 5.025. Filing for Office.

- A. Applications.** Any person having the qualifications set forth under Section 3.02 of this Charter shall have the right to file an application to have their name placed on the official ballot as a candidate for any elective office.
 1. Any such application shall be in writing, signed by such candidate, and filed with the City Secretary in accordance with the Texas Election Code and this Charter.
 2. An application filed in accordance herewith shall entitle such applicant to a place on the official ballot.
- B. Place or Position.** A candidate of City Council shall specify the place number or position the candidate is seeking.

Section 5.036. Taking of Office.

Each newly elected person to the City Council shall be inducted into office at the City Council meeting canvassing the votes.

~~**Section 5.07. Votes Required and Canvassing of Returns.** At the regular City election in odd-numbered years, the candidate for Mayor who receives the highest number of votes shall be declared elected. In each regular City election, the three (3) candidates for Council Member who individually receive the highest number of votes shall be declared elected. At a special election to fill more than one Council Member office, if two Council Member positions are to be filled, the two candidates that receive the highest number of votes cast for individual candidates shall be declared elected. If three such offices are to be filled, the three candidates that receive the highest number of votes cast for individual candidates shall be declared elected, etc. The returns of every municipal election shall be recorded in the minutes of the City Council, by totals for each candidate, or for and against each issue submitted. City Council shall canvass the returns of all elections pursuant to state law.~~

~~**Section 5.08. Run-Off Elections.**~~

~~Run-off elections shall be conducted pursuant to state law.~~

~~The candidate(s) receiving the highest number of votes cast for the office being filled in the run-off election shall be declared elected, and if the run off results in a tie vote, the tie shall be broken in a manner authorized by the Texas Election Code, or by lot or chance as agreed by and between the candidates. The following circumstances require a run off election that shall be conducted as prescribed by state election laws:~~

- ~~**A. Tie Vote for Mayor.** If two (2) or more candidates for Mayor tie with the highest number of votes cast, a run-off election shall be ordered for the office of Mayor. Only the candidates who tied for the highest number of votes shall have their names on the ballot to determine the winner of the Mayoral election.~~
- ~~**B. Tie Vote for Council Member.** If in a regular election one (1) or more ties between two (2) or more candidates for Council Member make it impossible to determine the three candidates that received the highest number of votes cast for Council Member, each candidate that received a higher number of votes than the candidates that are tied shall be declared elected, and a run-off election shall be held between the candidates that are tied. If one candidate receives a higher number of votes than all the other candidates, a run-off election shall be held between the candidates tied for the second highest vote. If no candidate receives a higher number of votes than any other candidate, a run-off election shall be held between the candidates tied for the highest number of votes. If a special election is held to fill one Council Member office, and two or more candidates tie for the highest vote, a run-off election shall be held between the tied candidates. If more than one Council Member office is to be filled in the special election and one or more tie votes make it impossible to determine the candidates that received the highest number of votes, then run-off elections shall be held as provided for regular elections to fill the vacant positions.~~

Measure G

Proposition G

Shall the City Charter of the City of Burnet be amended to delete and amend those sections which are repetitive of or inconsistent with State law?

Measure G

~~**Section 6.16. Failure of City Council to Order Election.** When all the requirements of this Charter shall have been met and the City Council shall fail or refuse to receive a Recall, Initiative or Referendum petition, or order such Recall, Initiative or Referendum~~

~~election, or discharge other duties imposed upon the City Council by the provisions of this Charter with reference to such Recall, Initiative or Referendum, then any voter registered to vote in City elections shall be entitled to petition the District Court of Burnet County Texas for a Declaratory Judgment, Mandatory Injunction or other relief to order the City Council to call the election and to enforce the carrying into effect the provisions of this Article.~~

Section 7.05. City Council Action on Budget. The City Council shall comply with state law in the adoption of the budget and, unless otherwise in conflict with state law, shall adopt the budget on or before the last day of the last month of the current fiscal year. ~~If the City Council fails to adopt the budget by this date, the budget proposed by the City Manager shall go into effect.~~

~~**Section 7.08. Lapse of Appropriations.**~~ Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed. The purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Section 10.01. Publicity of Records.

~~**A. Inspection.**~~ All records and accounts of every office, department or agency of the City shall be open to inspection by any citizen or by any representative of the press pursuant to the Texas Public Information Act.

B. Available Online. The Burnet web site shall publicize as files available for download via the Internet the budget; existing and proposed ordinances; pending contracts and bids; minutes of the last City Council meeting; proposed agendas for upcoming City Council meetings; times and locations for all public City meetings; audit summaries; monthly balance sheet reports for all public utilities, public services and proprietary enterprises; names, addresses and telephone numbers of all City Council persons and standing committee members, and all City career opportunities and other matters as prescribed by this Charter. Failure to post any such matter shall not invalidate any action taken with respect to such matter, nor give rise to any equitable or legal claim whatsoever. References in this Charter to the World Wide Web shall include means of access to the Internet or its equivalent and/or successor.

~~**C. Newspaper.**~~ The City Council shall not designate an official newspaper, but it shall cause notices of all information as required by this Charter, existing ordinances, or by the Constitution and laws of the State of Texas to be published in a local newspaper of general circulation in the City.

~~**Section 10.05. Power to Settle Claims.**~~ The City Council shall have the authority to compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the City except suits by the City to recover delinquent taxes.

Measure H

Proposition H

Shall the City Charter of the City of Burnet be amended to require the City Council's goals and objectives be included in the budget?

Measure H

Section 7.04. Budget. The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Council may require. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections as follows:

- A. Goals and Objectives.** The City Council's goals and objectives as provided for in Section 3.08 and any associated proposed goals, objectives expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit and program, purpose or activity, and the method of financing such expenditures; and
- B. Capital Budget.** Proposed capital expenditures during the ensuing fiscal year, detailed for each fund by organization unit when practicable, and the proposed method of financing each capital expenditure; and
- C. Enterprise Funds.** The anticipated income and expense and profit and loss for the ensuing year for each public utility or other proprietary enterprise fund, as defined in Section 8.01 of this Charter, operated by the City. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus any fund balance carried forward, exclusive of reserves.

Measure I

Proposition I

Shall the City Charter of the City of Burnet be amended to delete or revise inconsistent and obsolete provisions?

Measure I

Section 7.04. Budget. The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Council may require. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections as follows:

- A. Goals and Objectives.** The proposed goals, objectives and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit and program, purpose or activity, and the method of financing such expenditures;

- B. Capital Budget.** Proposed capital expenditures during the ensuing fiscal year, detailed for each fund by organization unit when practicable, and the proposed method of financing each capital expenditure; and
- C. Enterprise Funds.** The anticipated income and expense and profit and loss for the ensuing year for each public utility or other proprietary enterprise fund, ~~as defined in Section 8.01 of this Charter,~~ operated by the City. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus any fund balance carried forward, exclusive of reserves.

~~**Section 10.06. Continuance of Contracts and Preservation of Rights.** All laws previously enforced governing suits, taxes, penalties, fines, forfeitures, and all other rights, claims and demands of every kind and character which have accrued in favor of the City shall belong to and vest in the City and shall not end by reason of the adoption of this Charter. The laws under which they shall have accrued shall be deemed to be in full force and effect. The budget and all ordinances, rules and regulations of the City shall be and remain in effect, subject to the terms of this Charter and the future discretion and vote of the City Council. All present commissions, boards and officers of the City shall continue in office subject to the provisions of this Charter including but not limited to the provisions governing election, removal and the City Council's exercise of authority conferred by this Charter.~~

~~**Section 10.11. Effective Date.** This Charter shall take effect immediately following approval by the qualified voters of the City of Burnet. However, in no case shall the Charter be in effect until the City Council records with the City Secretary an order declaring that the Charter is adopted. The order declaring adoption shall be entered into City record as soon as is practicable following the election.~~

Measure J

Proposition J

Shall the City Charter of the City of Burnet be amended to provide that the City Secretary and Assistant City Secretaries are hired by the City Manager without the need for consent of the City Council?

Measure J

~~**Section 4.05. City Secretary.** The City Manager shall appoint a City Secretary, who shall be subject to the supervision of the City Manager. , ~~with the consent of the City Council,~~ appoint and may remove the City Secretary and any assistant City Secretaries as the City Council shall deem advisable. The duties of the City Secretary or an assistant City Secretary shall be as follows:~~

~~**Gives Public Notice.** Gives notice of City Council meetings, the meetings of all other City boards and commissions and public hearings.~~

~~**Keeps Minutes and Records.** Keeps the minutes and records of the proceedings of such meetings.~~

~~**Maintains Documents and Records.** Authenticates by signature and record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and~~

~~**Performs Additional Duties.** Performs such other duties as the City Manager shall assign and those elsewhere provided for in this Charter or by ordinance.~~

SECTION FOUR. The ballots for the City election must comply with the Texas Election Code and shall have the measures described in Section Three, above, stated as propositions as follows:

Measure A shall be placed on the ballot in the form of the following Proposition:

PROPOSITION A

Shall the City Charter of the City of Burnet be amended to clarify the Mayor's authority to delay a vote on a matter?

Yes _____

No _____

Measure B shall be placed on the ballot in the form of the following Proposition:

PROPOSITION B

Shall the City Charter of the City of Burnet be amended to require a two-thirds vote of remaining City Council members to declare a vacancy on City Council?

Yes _____

No _____

Measure C shall be placed on the ballot in the form of the following Proposition:

PROPOSITION C

Shall the City Charter of the City of Burnet be amended to authorize the adoption and publication of ordinances consistent with state law and City Council policy?

Yes _____

No _____

Measure D shall be placed on the ballot in the form of the following Proposition:

PROPOSITION D

Shall the City Charter of the City of Burnet be amended to clarify that the Mayor is a member of City Council?

Yes _____

No _____

Measure E shall be placed on the ballot in the form of the following Proposition:

PROPOSITION E

Shall the City Charter of the City of Burnet be amended to provide that the municipal court presiding judge serves at the pleasure of the City Council and may be removed by a majority vote of the City Council?

Yes _____

No _____

Measure F shall be placed on the ballot in the form of the following Proposition:

PROPOSITION F

Shall the City Charter of the City of Burnet be amended to provide that elections shall be held consistent with state law?

Yes _____

No _____

Measure G shall be placed on the ballot in the form of the following Proposition:

PROPOSITION G

Shall the City Charter of the City of Burnet be amended to delete and amend those sections which are repetitive of or inconsistent with State law?

Yes _____

No _____

Measure H shall be placed on the ballot in the form of the following Proposition:

PROPOSITION H

Shall the City Charter of the City of Burnet be amended to require the City Council's goals and objectives be included in the budget?

Yes _____

No _____

Measure I shall be placed on the ballot in the form of the following Proposition:

PROPOSITION I

Shall the City Charter of the City of Burnet be amended to delete or revise inconsistent and obsolete provisions?

Yes _____

No _____

Measure J shall be placed on the ballot in the form of the following Proposition:

PROPOSITION J

Shall the City Charter of the City of Burnet be amended to provide that the City Secretary and Assistant City Secretaries are hired by the City Manager without the need for consent of the City Council?

Yes _____

No _____

PASSED AND APPROVED on first reading, this the 6th day of February, 2024.

PASSED, APPROVED AND ADOPTED on final reading, this the 13th day of February, 2024.

CITY OF BURNET

Gary Wideman, Mayor

ATTEST:

Kelly Dix, City Secretary

APPROVED AS TO FORM:

Charles E Zech, City Attorney

ORDENANZA N° 2024-05

UNA ORDENANZA QUE ORDENA QUE SE CELEBRE UNA ELECCIÓN ESPECIAL EL 24 DE MAYO DE 2024, CON EL FIN DE PRESENTAR PROPUESTAS A LOS VOTANTES PARA LAS ENMIENDAS PROPUESTAS A LA CARTA CONSTITUCIONAL DE LA CIUDAD; DICHA ELECCIÓN SE LLEVARÁ A CABO EN CONJUNTO CON LAS ELECCIONES GENERALES DE LA CIUDAD

MIENTRAS QUE, el 22 de agosto de 2023, el Concejo Municipal creó una comisión de revisión de estatutos ("CRC") y nombró a personas para el CRC y le encargó revisar y proponer enmiendas a los estatutos; y

MIENTRAS QUE, el Comité de los Derechos del Niño celebró múltiples reuniones, todas ellas abiertas al público; y

MIENTRAS QUE, el CRC preparó y presentó su informe escrito al Consejo en una reunión pública, dicho informe titulado *Informe 2024 de la Comisión de Revisión de la Carta Constitutiva* ("Informe"), que especificaba las enmiendas propuestas a la Carta Constitucional al Concejo Municipal; y

MIENTRAS QUE, el Consejo escuchó una presentación del Presidente del Comité de los Derechos del Niño en relación con el Informe y luego revisó las enmiendas propuestas y los fundamentos de dichas enmiendas que se encuentran en el Informe; y

MIENTRAS QUE, después de considerar el Informe, el Concejo ahora cree que los votantes de Burnet, de acuerdo con la Sección 9.004 del Código de Gobierno Local de Texas, deben votar sobre las enmiendas especificadas en el Informe, en forma de proposiciones, en la próxima fecha de elección uniforme que se llevará a cabo el 4 de mayo de 2024; y

MIENTRAS QUE, el Concejo Municipal considera de interés público ordenar una elección especial, que se llevará a cabo junto con la próxima fecha de elección uniforme el 24 de mayo de 2024, para una votación de los electores en cuanto a las enmiendas propuestas a la Constitución;

AHORA, POR LO TANTO, SEA ORDENADO POR EL CONCEJO MUNICIPAL DE LA CIUDAD DE BURNET, TEXAS:

SECCIÓN PRIMERA. El Concejo Municipal acepta el *Informe 2024 de la Comisión de Revisión de la Carta Constitutiva*.

SECCIÓN SEGUNDA. El Concejo ordena que la Ciudad de Burnet, Texas ("Ciudad") lleve a cabo una elección especial el 24 de mayo de 2024. Esta elección se llevará a cabo junto con las elecciones generales de la Ciudad en la misma fecha, y el día de la votación y los lugares de votación anticipada serán los mismos que los de las elecciones generales de la Ciudad. Como parte de la elección, las propuestas de la boleta electoral se presentarán a los votantes calificados de la Ciudad para las enmiendas propuestas a la Carta, de acuerdo con las disposiciones aplicables de la Carta Constitucional de la Ciudad y la ley estatal.

SECCIÓN TERCERA. Las siguientes medidas, con el lenguaje azul subrayado como adiciones (agregadas) a la Carta Constitutiva y el lenguaje tachado como supresiones (~~eliminadas de la~~ Carta, se presentarán a los votantes calificados de la Ciudad en la elección en la forma de las proposiciones según lo dispuesto en la Sección Cuatro, a continuación, y de acuerdo con la Sección 9.004 del Código de Gobierno Local de Texas y otras leyes aplicables:

Medida A

Proposición Un

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para aclarar la autoridad del Alcalde para retrasar una votación sobre un asunto?

Medir Un

Sección 3.05. Alcalde y Alcalde Pro-tem. El Alcalde será el jefe oficial del gobierno de la Ciudad. El Alcalde será el Presidente y presidirá todas las reuniones del Concejo Municipal. El Alcalde puede hacer mociones y puede votar sobre cada proposición ante el Concejo Municipal. Si bien el Alcalde o el presidente suplente no tendrá poder de veto, tendrá el poder de declarar un retraso de la votación ~~inicial~~ sobre un asunto de cualquier tema en ~~una agenda hasta la próxima reunión del Concejo, dicha autoridad se limitará a un solo retraso para cualquier tema de la agenda que se esté considerando.~~ El Alcalde deberá, salvo que el Concejo Municipal disponga lo contrario, firmar todos los documentos oficiales, tales como ordenanzas, resoluciones, trasposos, acuerdos de subvención, planos catastrales oficiales, contratos y bonos. El Alcalde nombrará comités especiales según convenga y según las instrucciones del Concejo Municipal. El Alcalde desempeñará cualquier otro deber consistente con esta Carta o según lo imponga el Concejo Municipal.

El Alcalde Interino será elegido por el Concejo Municipal tan pronto como sea posible después de cada elección regular de la Ciudad, o en caso de una vacante en el puesto de Alcalde Interino. El Alcalde Interino actuará como Alcalde durante la incapacidad o ausencia del Alcalde, y en esta capacidad tendrá los derechos conferidos al Alcalde.

Medida B

Propuesta B

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para requerir un voto de dos tercios de los miembros restantes del Concejo Municipal para declarar una vacante en el Concejo Municipal?

Medida B

Sección 3.06. Vacantes, pérdida y cobertura de vacantes.

- C. **Pérdida del cargo.** Si el Alcalde o cualquier miembro del Concejo Municipal:
- se ha determinado por al menos ~~cinco (5) votos afirmativos~~ de dos tercios (2/3) de los miembros restantes del Concejo Municipal que ha violado cualquier prohibición expresa de esta Carta; o

Sección 3.16. Órgano de Investigación del Consejo; Audiencias; Proceso.

C. **Proceso de Audiencia para Pérdida de Cargo y Prohibiciones.**

- En el caso de una violación de la Sección 3.06 de esta Carta, el Concejo Municipal votará sobre la pérdida y sobre el voto afirmativo de dos tercios (2/3) de los miembros restantes del Concejo Municipal para declarar perdido y vacante el cargo de dicho titular.

Medida C

Propuesta C

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para autorizar la adopción y publicación de ordenanzas consistentes con la ley estatal y la política del Concejo Municipal?

Medida C

Sección 3.14. Ordenanzas y Resoluciones. La cláusula promulgadora de todas las ordenanzas será: "Sea ordenado por el Concejo Municipal de la Ciudad de Burnet, Texas..." Las ordenanzas y resoluciones formales que establezcan programas, adopten políticas, proporcionen cualquier regla o reglamento aplicable al público en general, o establezcan requisitos para cualquier función administrativa general de la Ciudad, se presentarán al Concejo Municipal solo en forma escrita o impresa y contendrán solo un tema cada una. Todas las ordenanzas, a menos que la ley o este Estatuto dispongan lo contrario o los términos de dichas ordenanzas, entrarán en vigor inmediatamente después de su aprobación final. El Concejo Municipal adoptará una política con respecto a la publicación de ordenanzas consistentes con la ley estatal.

Las resoluciones que dan instrucciones al Administrador de la Ciudad sobre un asunto de negocios, aprueban una acción administrativa, contrato o licitación, y que aprueban planes y acciones en el curso de los asuntos cotidianos de la Ciudad, serán suficientes si se muestran registrando la moción y el voto en las actas del Concejo Municipal. Las ordenanzas que establezcan asignaciones se limitarán a las asignaciones.

~~Cualquier referencia a la lectura de una ordenanza hecha en esta Carta se entenderá como la lectura del título de la ordenanza solamente, a menos que cualquier miembro del Concejo haga una solicitud específica para que la ordenanza se lea en parte o en su totalidad. Cualquier ordenanza que imponga una multa o sanción o que se refiera al presupuesto, impuestos, franquicias o servicios públicos o a la fijación de sus tarifas, se leerá en dos (2) reuniones. Dichas Ordenanzas se publicarán en su totalidad o por pie de foto con un resumen en dos (2) números sucesivos de un periódico de circulación general en la Ciudad de Burnet y como archivos disponibles para descargar a través de Internet con la primera publicación al menos catorce (14) días antes de la lectura final y aprobación de la Ordenanza.~~

~~Ninguna ordenanza que no sea una ordenanza de emergencia será finalmente aprobada hasta que haya sido leída en dos (2) días separados con no menos de veinticuatro (24) horas de diferencia.~~

~~**Sección 3.15. Ordenanzas de emergencia. Con el fin de hacer frente a una emergencia pública** que afecte la vida, la salud, la propiedad, la paz pública, o para evitar una pérdida financiera material a la Ciudad, el Concejo Municipal puede adoptar ordenanzas de emergencia. Dichas ordenanzas no impondrán impuestos, ni concederán, renovarán ni extenderán una franquicia, ni regularán la tarifa cobrada por cualquier empresa de servicios públicos por sus servicios. El Concejo Municipal no autorizará por Ordenanza de Emergencia el préstamo de dinero, excepto según lo dispuesto en la Sección 7.07, B titulada "Asignaciones de Emergencia". Una ordenanza de emergencia se introducirá en la forma y manera generalmente prescritas para las ordenanzas, excepto que se designará claramente en el título como una "Ordenanza de Emergencia" y contendrá, después de la cláusula de promulgación, una declaración que indique que existe una emergencia y describa la emergencia en términos claros y específicos. Dicha cláusula de emergencia requerirá el voto afirmativo de al menos cinco (5) miembros del Concejo Municipal. Una ordenanza de emergencia puede ser adoptada con o sin enmiendas o rechazada en la reunión en que se presenta. Después de su adopción, la ordenanza se publicará en dos (2) números sucesivos de un periódico de circulación general en la Ciudad, y como archivos disponibles para descargar a través de Internet.~~

~~Toda ordenanza de emergencia así adoptada, excepto una que autorice el préstamo de dinero para asignaciones de emergencia, será derogada automáticamente después de~~

~~sesenta (60) días después del día en que entró en vigencia. La ordenanza puede volver a promulgarse.~~

Medida D

Propuesta D

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para aclarar que el Alcalde es miembro del Concejo Municipal?

Medida D

Sección 1.02. Forma de Gobierno. El gobierno municipal provisto por esta Carta será la forma de gobierno del Concejo-Administrador que consiste en un Alcalde y Miembros del Concejo (~~denominados colectiva e individualmente en este documento como "Miembro(s) del Concejo Municipal"~~), elegidos por el pueblo y responsables ante él, y un Administrador de la Ciudad, nombrado por el Concejo Municipal y responsable ante él para la administración adecuada de los asuntos de la Ciudad.

Sección 3.06. Vacantes, pérdida y cobertura de vacantes.

E. Cobertura de vacantes.

5. Cuando se produzca una vacante única o doble en el Concejo Municipal, los ~~miembros restantes del~~ Concejo Municipal deberán:
 - a. Si el (los) período(s) restante(s) es de menos de un año de duración, designe a una persona calificada para ocupar el (los) período (s) no vencido (s) o celebre una elección especial para completar el (los) período (s) no vencido (s). Un nombramiento debe ser aprobado por el voto afirmativo de al menos cinco (5) miembros del Concejo Municipal; o
 - b. Si el/los término(s) restante(s) es de un año o más, ordene una elección para llenar el/los término(s) no vencido(s) en la próxima elección general ordinaria.
6. En caso de que existan tres (3) vacantes en el Concejo Municipal al mismo tiempo, el Concejo Municipal ordenará una elección para llenar las vacantes en la próxima fecha de elección uniforme disponible según lo dispuesto por la ley.
7. Todos los nombramientos para el Concejo Municipal servirán hasta la próxima elección regular.
8. Todos los nombramientos para el Concejo Municipal estarán calificados para servir de conformidad con la Sección 3.02 de esta Carta Constitutiva y asumirán el cargo inmediatamente después de su nombramiento.

Sección 3.09. Prohibiciones.

- D. *Ocupar otro cargo.*** Salvo que lo autorice la ley, ningún Alcalde o Concejales ocupará ningún otro cargo o empleo en la Ciudad durante un período como Alcalde o Concejal. Ningún ex Alcalde o Concejales ocupará ningún cargo remunerado de la Ciudad o empleo de la Ciudad hasta un año después de la expiración del mandato como Alcalde o Concejales, excepto según lo dispuesto en la Sección 3.01 de esta Carta.
- E. *Nombramientos y Remociones.*** Ni el Alcalde, ni ningún ~~miembro del~~ Concejo Municipal dictará de ninguna manera el nombramiento o destitución de ningún funcionario administrativo o empleado de la Ciudad que el Administrador de la Ciudad o los subordinados del Gerente estén facultados para nombrar. Sin embargo, el Concejo Municipal puede expresar sus puntos de vista y discutir completa y

libremente con el Administrador de la Ciudad cualquier cosa relacionada con el nombramiento y la remoción de dichos funcionarios y empleados.

- F. *Interferencia con la Administración.* Excepto para el propósito de indagaciones o investigaciones bajo la Sección 3.16, ni el Alcalde, ni los miembros del Concejo Municipal, ni el Concejo Municipal o sus miembros ~~no~~ dirigirán ~~a~~ los funcionarios o empleados de la Ciudad que están sujetos a la dirección y supervisión del Administrador de la Ciudad, excepto a través del Administrador de la Ciudad. El Alcalde, Ni el Concejo Municipal ni ninguno de los miembros del Concejo Municipal darán órdenes a ningún funcionario o empleado supervisado por el Administrador de la Ciudad, ya sea pública o privadamente, salvo que se disponga lo contrario en esta Carta.

Sección 3.10. Reuniones del Consejo.

- E. *Reunión mensual del Consejo.* El Concejo Municipal celebrará al menos una (1) reunión ordinaria cada mes en el momento y lugar que el Concejo Municipal designe.
- F. *Reuniones periódicas.* *Las reuniones ordinarias* son reuniones del consejo que deben celebrarse al menos una vez al mes y que deben designarse como ordinarias.
- G. *Reuniones Especiales.* Las reuniones especiales pueden ser convocadas por el Secretario de la Ciudad a solicitud del Alcalde, el Administrador de la Ciudad o dos (2) ~~miembros de los Miembros del~~ Concejo Municipal. El Administrador de la Ciudad y cada ~~miembro del~~ Concejo Municipal serán notificados de todas las reuniones especiales.
- H. *Reuniones públicas.* Todas las reuniones estarán abiertas al público, excepto según lo autorizado por la ley, y se llevarán a cabo en las Cámaras del Concejo Municipal de la Ciudad u otros lugares dentro o fuera de la Ciudad que permitan la asistencia del público en general.

Sección 3.11. Quórum. Cuatro (4) ~~miembros del Concejo Municipal,~~ ya sea que incluyan o no al Alcalde o al Alcalde Interino, ~~constituirán~~ quórum con el propósito de realizar transacciones comerciales. Cualquier acción del Concejo Municipal, excepto lo dispuesto en esta Carta, será válida o vinculante cuando se adopte por el voto mayoritario de los ~~miembros del~~ Concejo Municipal presentes. Un ~~miembro del~~ Concejo Municipal que esté presente pero que no vote estará presente a los efectos del quórum.

Sección 3.13. Votación. El Concejo Municipal dispondrá la toma y registro de actas para todas las reuniones abiertas, y dichas actas serán un registro público. También se dispondrá un orden del día certificado o una grabación de las reuniones celebradas en sesión ejecutiva o cerrada de conformidad con la legislación aplicable. Los "sies" y "noes" de ~~cada~~ concejales del Concejo Municipal, en cada voto tomado por el Concejo Municipal se registrarán en el acta. Todos los ~~miembros del~~ Concejo Municipal presentes, ~~incluido el Alcalde,~~ votarán sobre cada resolución u ordenanza, excepto cuando exista un conflicto de intereses, cuya razón se indicará concisamente en el acta.

[SI SE APRUEBA LA PROPOSICIÓN C, ESTA SECCIÓN NO ENTRARÁ EN VIGOR SI TAMBIÉN SE APRUEBA] **Sección 3.15. Ordenanzas de emergencia.** Con el fin de hacer frente a una emergencia pública que afecte la vida, la salud, la propiedad, la paz pública, o para evitar una pérdida financiera material a la Ciudad, el Concejo Municipal puede adoptar ordenanzas de emergencia. Dichas ordenanzas no impondrán impuestos, ni concederán, renovarán ni extenderán una franquicia, ni regularán la tarifa cobrada por cualquier empresa de servicios públicos por sus servicios. El Concejo Municipal no autorizará por Ordenanza de Emergencia el préstamo de dinero, excepto según lo dispuesto en la Sección 7.07, B titulada "Asignaciones de Emergencia". Una

ordenanza de emergencia se introducirá en la forma y manera generalmente prescritas para las ordenanzas, excepto que se designará claramente en el título como una "Ordenanza de Emergencia" y contendrá, después de la cláusula de promulgación, una declaración que indique que existe una emergencia y describa la emergencia en términos claros y específicos. Dicha cláusula de emergencia requerirá el voto afirmativo de al menos cinco (5) miembros del Concejo Municipal. Una ordenanza de emergencia puede ser adoptada con o sin enmiendas o rechazada en la reunión en que se presenta. Después de su adopción, la ordenanza se publicará en dos (2) números sucesivos de un periódico de circulación general en la Ciudad, y como archivos disponibles para descargar a través de Internet.

Toda ordenanza de emergencia así adoptada, excepto una que autorice el préstamo de dinero para asignaciones de emergencia, será derogada automáticamente después de sesenta (60) días después del día en que entró en vigencia. La ordenanza puede volver a promulgarse.

Sección 4.01. Administrador de la Ciudad.

D. Nombramiento y calificaciones. El Administrador de la Ciudad será nombrado por un voto afirmativo de cinco (5) o más Miembros del Concejo Municipal. El método de selección se dejará a discreción del Concejo Municipal. El Administrador de la Ciudad deberá residir dentro de la Ciudad de Burnet dentro de los cuarenta y cinco (45) días posteriores a la asunción de sus funciones. El Administrador de la Ciudad se vinculará a expensas de la Ciudad en una cantidad consistente con la necesidad actual según lo establecido por el Concejo Municipal.

E. Compensación. El Administrador de la Ciudad recibirá la compensación fijada por el Concejo Municipal. La compensación se acordará antes del nombramiento. El Concejo Municipal puede aumentar, pero no reducir, la compensación del Administrador de la Ciudad a su discreción.

F. Plazo y remoción. El Administrador de la Ciudad será nombrado por un período indefinido. Un voto afirmativo de cinco (5) o más miembros del Concejo Municipal puede destituir al Administrador de la Ciudad. La acción del Concejo Municipal de suspender o destituir al Administrador de la Ciudad será definitiva. Es la intención de esta Carta conferir toda la autoridad y fijar todas las responsabilidades de dicha suspensión o remoción en el Concejo Municipal.

Sección 4.03. Juzgado Municipal.

C. Se establece el Tribunal Municipal. Se establecerá y mantendrá un tribunal, designado como el Tribunal Municipal para el juicio de delitos menores y otros asuntos según lo dispuesto por la ley u ordenanza estatal. El Tribunal Municipal desempeñará los demás deberes y funciones apropiados para el Tribunal Municipal que se establezcan por ordenanza que no sean incompatibles con la ley estatal. El Tribunal Municipal tendrá todos los demás poderes y deberes que sean prescritos ahora, o puedan ser prescritos en el futuro por las leyes del Estado de Texas, en relación con los tribunales municipales.

D. Juez. El Juez Presidente del Tribunal Municipal será nombrado por el Concejo Municipal y ocupará el cargo por dos años a partir de la fecha de nombramiento, a menos que sea destituido antes por el voto mayoritario de los miembros del Concejo Municipal según lo dispuesto en este documento. El Juez Presidente deberá tener las calificaciones requeridas por el Concejo Municipal y la ley estatal, reportará al Concejo Municipal, se le exigirá que participe en los programas de

capacitación disponibles para jueces municipales y recibirá el salario que fije el Concejo Municipal.

Sección 6.08. Formulario de votación y resultados de las elecciones. La boleta utilizada en la votación sobre una ordenanza iniciada o referida deberá indicar el título de la ordenanza y debajo del título deberá establecer en líneas separadas las palabras: "A favor de la ordenanza" y "En contra de la ordenanza". Cualquier número de ordenanzas puede ser votado en la misma elección de acuerdo con las disposiciones de esta Carta. Una ordenanza presentada y que reciba una mayoría afirmativa de los votos emitidos entrará en vigencia como una ordenanza de la Ciudad. Una ordenanza así adoptada puede ser derogada o enmendada en cualquier momento después de la expiración de dos (2) años por el voto afirmativo de cinco (5) o más de ~~los miembros del~~ **Municipal**. Se deroga una ordenanza referida que no sea aprobada por la mayoría de los votantes.

Medida E

Propuesta E

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que el juez que preside el tribunal municipal sirve a discreción del Concejo Municipal y puede ser destituido por el voto mayoritario del Concejo Municipal?

Medida E

Sección 4.03. Juzgado Municipal.

G. Destitución del Juez Presidente. ~~El Juez Presidente servirá a voluntad y placer del Concejo Municipal y puede ser relevado de su cargo por el voto mayoritario del Concejo Municipal. El Juez Presidente puede, sujeto a las demás disposiciones de esta subsección, ser destituido de su cargo por violaciones intencionales o persistentes de las reglas promulgadas por la Corte Suprema de Texas, incompetencia en el desempeño de los deberes del cargo, violación intencional del código de Conducta Judicial, o conducta intencional o persistente que sea claramente inconsistente con el desempeño adecuado de sus deberes o desacredite públicamente al poder judicial o a la administración de justicia. Cualquier persona que ocupe dicho cargo puede ser disciplinada o censurada, en lugar de ser destituida del cargo, según lo dispuesto en esta sección. Cualquier persona que ocupe un cargo especificado en esta subsección puede ser suspendida de su cargo con o sin goce de sueldo por el Concejo Municipal inmediatamente después de ser acusada por un gran jurado estatal o federal por un delito grave o acusada de un delito menor que involucre mala conducta oficial. A petición del Concejo Municipal o ante la presentación de una queja jurada acusando a una persona que ocupa dicho cargo de violación intencional o persistente de las reglas promulgadas por la Corte Suprema de Texas, incompetencia en el desempeño de los deberes del cargo, violación intencional del Código de Conducta Judicial, o conducta intencional y persistente que es claramente inconsistente con el desempeño adecuado de sus deberes o arroja descrédito público sobre el poder judicial o en la administración de justicia, el Concejo Municipal, después de notificar a la persona y darle la oportunidad de comparecer y ser escuchada ante el Concejo Municipal, puede, después de considerar el registro de dicha comparecencia, suspender, con o sin goce de sueldo, censurar o disciplinar al Juez; o destituir al Juez de su cargo.~~

Medida F

Propuesta F

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que las elecciones se llevarán a cabo de acuerdo con la ley estatal?

Medida F

Artículo V. Elecciones

Sección 5.01. Elección de Alcalde y Concejales.

~~La elección regular de la Ciudad se llevará a cabo anualmente en la fecha de elección uniforme en mayo, o en cualquier otro momento que pueda ser especificado por la ley estatal. Todas las elecciones se celebrarán conforme a lo dispuesto por la ley.~~

En la elección ordinaria que se celebre en los años impares se elegirá un Alcalde, y se elegirán tres (3) Miembros del Concejo Municipal para servir en los puestos del Concejo Municipal para los cuales el mandato expira en ese año. En la elección ordinaria en años pares, se elegirán tres (3) miembros del Concejo Municipal para servir en los tres (3) puestos del Concejo Municipal para los cuales expira el mandato en ese año. La duración de cada cargo será de dos (2) años y los titulares de los cargos ejercerán sus funciones hasta que sus sucesores sean elegidos y tomen posesión de sus cargos.

Cada votante calificado de la Ciudad puede votar por un (1) candidato a Alcalde y tres (3) candidatos al Concejo Municipal en años impares, y por tres (3) candidatos al Concejo Municipal en años pares. Se elegirá al candidato a Alcalde que reciba el mayor número de votos emitidos, y en cada elección se elegirán los tres (3) candidatos a Concejales que individualmente reciban el mayor número de votos. ~~La elección será ordenada por el Concejo Municipal. El Secretario Municipal notificará la elección de la manera requerida por las leyes del Estado de Texas.~~

Sección 5.02. Aviso y Orden para las Elecciones.

~~F. Fecha.— La elección regular de la Ciudad se llevará a cabo anualmente en la fecha de elección uniforme en mayo, o en cualquier otro momento que pueda ser especificado por la ley estatal, momento en el cual se elegirán funcionarios para llenar los cargos que queden vacantes ese año.~~

~~G. Lugar.— El Concejo Municipal fijará el lugar para la celebración de dicha elección.~~

~~H. Elecciones Especiales.— El Concejo Municipal puede, por ordenanza o resolución, ordenar una elección especial, fijar la fecha y el lugar para la celebración de la misma, y proporcionar todos los medios para celebrar dicha elección especial.~~

~~I. Notar.— El aviso de elecciones se publicará en un periódico de circulación general de la Ciudad de Burnet, dicha publicación cumplirá con los requisitos del Código Electoral y cualquier ley aplicable.~~

~~J. Votación anticipada.— La votación anticipada se regirá por las leyes electorales generales del Estado de Texas.~~

Sección 5.03. Regulación de las elecciones.

~~C. Conformidad.— Todas las elecciones se llevarán a cabo de acuerdo con las leyes del Estado de Texas que regulan la celebración de elecciones municipales y de acuerdo con las ordenanzas adoptadas por el Concejo Municipal para la realización de elecciones.~~

~~**D. Jueces Electorales.** El Concejo Municipal nombrará a los jueces electorales y otros funcionarios electorales.~~

~~**Sección 5.04. Elecciones Especiales.** El Concejo Municipal puede convocar elecciones especiales según lo requieran o autoricen las leyes del Estado de Texas o esta Carta, fijar la hora y el lugar de celebración de estas elecciones, y proporcionar todos los medios para celebrar dichas elecciones especiales, siempre que cada elección especial se celebre un sábado, o una fecha de elección uniforme, a menos que la ley o la presente Carta dispongan otra cosa. Salvo que lo exija esta Carta Constitutiva o la ley estatal, cada elección especial se convocará y celebrará lo más cerca posible de acuerdo con las disposiciones que rigen las elecciones regulares.~~

Sección 5.025. Presentación de la Oficina.

C. Aplicaciones. Cualquier persona que reúna las calificaciones establecidas en la Sección 3.02 de esta Carta tendrá derecho a presentar una solicitud para que su nombre se coloque en la boleta oficial como candidato para cualquier cargo electivo.

3. Cualquier solicitud de este tipo deberá ser por escrito, firmada por dicho candidato y presentada ante el Secretario de la Ciudad de acuerdo con el Código Electoral de Texas y esta Carta.
4. Una solicitud presentada de conformidad con el presente documento dará derecho a dicho solicitante a un lugar en la boleta oficial.

D. Lugar o posición. Un candidato al Concejo Municipal deberá especificar el número de lugar o posición que el candidato está buscando.

Sección 5.036. Toma de posesión.

Cada persona recién elegida para el Concejo Municipal será incorporada a su cargo en la reunión del Concejo Municipal en la que se escutarán los votos.

~~**Sección 5.07. Se requieren votos y escrutinio de los resultados.** En las elecciones ordinarias de la Ciudad en los años impares, el candidato a Alcalde que reciba el mayor número de votos será declarado electo. En cada elección ordinaria de la Ciudad, los tres (3) candidatos a concejal que individualmente reciban el mayor número de votos serán declarados electos. En una elección especial para ocupar más de un cargo de miembro del Concejo, si se van a llenar dos puestos de miembro del Consejo, se declararán electos los dos candidatos que reciban el mayor número de votos emitidos para candidatos individuales. Si se han de cubrir tres de esos cargos, se declararán electos los tres candidatos que reciban el mayor número de votos emitidos para cada uno de ellos, etc. Los resultados de cada elección municipal se registrarán en las actas del Concejo Municipal, por totales para cada candidato, o a favor y en contra de cada tema presentado. El Concejo Municipal hará un escrutinio de los resultados de todas las elecciones de conformidad con la ley estatal.~~

~~**Sección 5.08. Segunda vuelta electoral.**~~

~~Las elecciones de segunda vuelta se llevarán a cabo de conformidad con la ley estatal.~~

~~El/los candidato(s) que reciba(n) el mayor número de votos emitidos para el cargo que se está ocupando en la segunda vuelta será declarado electo, y si la segunda vuelta resulta en un empate en la votación, el empate se romperá de una manera autorizada por el Código Electoral de Texas, o por sorteo o azar según lo acordado por y entre los candidatos. Las siguientes circunstancias requieren una segunda vuelta electoral que se llevará a cabo según lo prescrito por las leyes electorales estatales:~~

~~D. **Empate en la votación para alcalde.** Si dos (2) o más candidatos a Alcalde empatan con el mayor número de votos emitidos, se ordenará una segunda vuelta para el cargo de Alcalde. Solo los candidatos que empataron con el mayor número de votos tendrán sus nombres en la boleta para determinar el ganador de la elección de alcalde.~~

~~E. **Empate en la votación para el miembro del Concejo.** Si en una elección regular uno (1) o más empates entre dos (2) o más candidatos a Miembro del Concejo hacen imposible determinar los tres candidatos que recibieron el mayor número de votos emitidos para Miembro del Concejo, cada candidato que haya recibido un número mayor de votos que los candidatos empatados será declarado electo, y se celebrará una segunda vuelta entre los candidatos empatados. Si un candidato recibe un número de votos más alto que todos los demás candidatos, se celebrará una segunda vuelta entre los candidatos empatados en el segundo lugar más votado. Si ningún candidato recibe un número de votos superior al de cualquier otro candidato, se celebrará una segunda vuelta entre los candidatos empatados en el mayor número de votos. Si se lleva a cabo una elección especial para llenar un cargo de miembro del Concejo, y dos o más candidatos empatan por el voto más alto, se llevará a cabo una segunda vuelta entre los candidatos empatados. Si se va a ocupar más de un cargo de miembro del Concejo en la elección especial y uno o más votos de empate hacen imposible determinar los candidatos que recibieron el mayor número de votos, entonces se llevarán a cabo elecciones de segunda vuelta según lo dispuesto para las elecciones regulares para llenar los puestos vacantes.~~

Medida G

Propuesta G

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para eliminar y enmendar aquellas secciones que son repetitivas o inconsistentes con la ley estatal?

Medida G

~~**Sección 6.16. Falta de orden de elección por parte del Concejo Municipal.** Cuando se hayan cumplido todos los requisitos de esta Carta y el Concejo Municipal no reciba o se niegue a recibir una petición de Revocatoria, Iniciativa o Referéndum, u ordene dicha elección de Revocatoria, Iniciativa o Referéndum, o cumpla con otros deberes impuestos al Concejo Municipal por las disposiciones de esta Carta Constitutiva con referencia a dicha Revocatoria, Iniciativa o Referéndum, entonces cualquier votante registrado para votar en las elecciones de la Ciudad tendrá derecho a solicitar al Tribunal de Distrito del Condado de Burnet, Texas, una Sentencia Declaratoria, una Orden Judicial Obligatoria u otra reparación para ordenar al Concejo Municipal que convoque la elección y haga cumplir las disposiciones de este Artículo.~~

~~**Sección 7.05. Acción del Concejo Municipal sobre el Presupuesto.** El Concejo Municipal cumplirá con la ley estatal en la adopción del presupuesto y, a menos que entre en conflicto con la ley estatal, adoptará el presupuesto en o antes del último día del último mes del año fiscal en curso. Si el Concejo Municipal no adopta el presupuesto antes de esta fecha, el presupuesto propuesto por el Administrador de la Ciudad entrará en vigencia.~~

~~**Sección 7.08. Caducidad de los créditos.** Toda consignación, excepto la consignación para gastos de capital, caducará al cierre del ejercicio fiscal en la medida en que no se haya gastado o gravado. Los créditos para gastos de capital continuarán en vigor hasta que se gasten, revisen o deroguen. El propósito de dicha consignación se considerará~~

~~abandonado si transcurren tres años sin que se haya desembolsado o gravado la consignación.~~

Sección 10.01. Publicidad de registros.

~~**B. Inspección.** Todos los registros y cuentas de cada oficina, departamento o agencia de la Ciudad estarán abiertos a la inspección de cualquier ciudadano o de cualquier representante de la prensa de conformidad con la Ley de Información Pública de Texas.~~

B. Disponible en línea. El sitio web de Burnet publicará el presupuesto como archivos disponibles para su descarga a través de Internet; ordenanzas existentes y propuestas; contratos y licitaciones pendientes; actas de la última reunión del Concejo Municipal; agendas propuestas para las próximas reuniones del Concejo Municipal; horarios y lugares para todas las reuniones públicas de la Ciudad; resúmenes de auditoría; informes mensuales de los balances de todas las empresas de servicios públicos, servicios públicos y empresas propietarias; nombres, direcciones y números de teléfono de todas las personas del Concejo Municipal y miembros del comité permanente, y todas las oportunidades de carrera de la Ciudad y otros asuntos según lo prescrito por esta Carta. La falta de publicación de dicho asunto no invalidará ninguna acción tomada con respecto a dicho asunto, ni dará lugar a ningún reclamo equitativo o legal de ningún tipo. Las referencias en esta Carta a la World Wide Web incluirán los medios de acceso a Internet o su equivalente y/o sucesor.

~~**F. Periódico.** El Concejo Municipal no designará un periódico oficial, pero hará que se publiquen avisos de toda la información requerida por esta Carta, las ordenanzas existentes o por la Constitución y las leyes del Estado de Texas en un periódico local de circulación general en la Ciudad.~~

~~**Sección 10.05. Facultad para resolver reclamaciones.** El Concejo Municipal tendrá la autoridad para comprometer y resolver todas y cada una de las reclamaciones y demandas de todo tipo y carácter a favor o en contra de la Ciudad, excepto las demandas de la Ciudad para recuperar los impuestos atrasados.~~

Medida H

Propuesta H

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para exigir que las metas y objetivos del Concejo Municipal se incluyan en el presupuesto?

Medida H

Sección 7.04. Presupuesto. El presupuesto deberá proporcionar un plan financiero completo de todos los fondos y actividades de la Ciudad para el año fiscal siguiente y, salvo que lo exija la ley o esta Carta, deberá estar en la forma que el Administrador de la Ciudad considere deseable o que el Concejo Municipal pueda requerir. El presupuesto comenzará con un resumen general claro de su contenido; deberá mostrar en detalle todos los ingresos estimados, indicando el gravamen propuesto del impuesto sobre la propiedad, y todos los gastos propuestos, incluido el servicio de la deuda, para el año fiscal siguiente; y se organizará de manera que muestre cifras comparativas de los ingresos y gastos reales y estimados del año fiscal en curso y de los ingresos y gastos reales del año fiscal anterior. Indicará en secciones separadas lo siguiente:

D. Metas y objetivos. Las metas y objetivos del Concejo Municipal según lo dispuesto en la Sección 3.08 y cualquier meta propuesta asociada, objetivos de gastos para operaciones corrientes durante el año fiscal siguiente, detallados para

cada fondo por unidad organizativa y programa, propósito o actividad, y el método de financiamiento de dichos gastos;y

- E. Presupuesto de capital.** Gastos de capital propuestos durante el año fiscal siguiente, detallados para cada fondo por unidad organizativa cuando sea posible, y el método propuesto para financiar cada gasto de capital; y
- F. Fondos empresariales.** Los ingresos y gastos anticipados y las ganancias y pérdidas para el año siguiente para cada fondo de servicios públicos u otro fondo empresarial propietario, según se define en la Sección 8.01 de esta Carta, operado por la Ciudad. En el caso de cualquier fondo, el total de los gastos propuestos no excederá del total de los ingresos estimados más el saldo del fondo arrastrado, excluidas las reservas.

Medida I

Proposición I

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para eliminar o revisar disposiciones inconsistentes y obsoletas?

Medida I

Sección 7.04. Presupuesto. El presupuesto deberá proporcionar un plan financiero completo de todos los fondos y actividades de la Ciudad para el año fiscal siguiente y, salvo que lo exija la ley o esta Carta, deberá estar en la forma que el Administrador de la Ciudad considere deseable o que el Concejo Municipal pueda requerir. El presupuesto comenzará con un resumen general claro de su contenido; deberá mostrar en detalle todos los ingresos estimados, indicando el gravamen propuesto del impuesto sobre la propiedad, y todos los gastos propuestos, incluido el servicio de la deuda, para el año fiscal siguiente; y se organizará de manera que muestre cifras comparativas de los ingresos y gastos reales y estimados del año fiscal en curso y de los ingresos y gastos reales del año fiscal anterior. Indicará en secciones separadas lo siguiente:

- D. Metas y objetivos.** Las metas, objetivos y gastos propuestos para las operaciones corrientes durante el año fiscal siguiente, detallados para cada fondo por unidad organizativa y programa, propósito o actividad, y el método de financiación de dichos gastos;
- E. Presupuesto de capital.** Gastos de capital propuestos durante el año fiscal siguiente, detallados para cada fondo por unidad organizativa cuando sea posible, y el método propuesto para financiar cada gasto de capital; y
- F. Fondos empresariales.** Los ingresos y gastos anticipados y las ganancias y pérdidas para el año siguiente para cada fondo de servicios públicos u otro fondo empresarial propietario, ~~según se define en la Sección 8.01 de esta Carta,~~ operado por la Ciudad. En el caso de cualquier fondo, el total de los gastos propuestos no excederá del total de los ingresos estimados más el saldo del fondo arrastrado, excluidas las reservas.

~~**Sección 10.06. Continuación de los contratos y conservación de los derechos.** Todas las leyes que se aplicaban anteriormente y que rigen las demandas, impuestos, sanciones, multas, confiscaciones y todos los demás derechos, reclamaciones y demandas de todo tipo y carácter que se hayan acumulado a favor de la Ciudad pertenecerán y se conferirán a la Ciudad y no terminarán por razón de la adopción de esta Carta. Las leyes en virtud de las cuales se hayan devengado se considerarán en pleno vigor y efecto. El presupuesto y todas las ordenanzas, reglas y regulaciones de la Ciudad estarán y permanecerán vigentes, sujetos a los términos de esta Carta~~

~~Constitutiva y a la futura discreción y voto del Concejo Municipal. Todas las comisiones, juntas y funcionarios actuales de la Ciudad continuarán en el cargo sujetos a las disposiciones de esta Carta, incluidas, entre otras, las disposiciones que rigen la elección, la remoción y el ejercicio de la autoridad conferida por esta Carta Constitucional por parte del Concejo Municipal.~~

~~**Sección 10.11. Fecha de entrada en vigor.** Esta Carta entrará en vigor inmediatamente después de su aprobación por los votantes calificados de la Ciudad de Burnet. Sin embargo, en ningún caso la Carta Constitutiva estará en vigor hasta que el Concejo Municipal registre con el Secretario de la Ciudad una orden declarando que la Carta Constitucional ha sido adoptada. La orden que declare la adopción se inscribirá en el registro de la Ciudad tan pronto como sea posible después de la elección.~~

Medida J

Propuesta J

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que el Secretario de la Ciudad y los Secretarios Asistentes de la Ciudad sean contratados por el Administrador de la Ciudad sin la necesidad del consentimiento del Concejo Municipal?

Medida J

~~**Sección 4.05. Secretario de la Ciudad.** El Administrador de la Ciudad nombrará un Secretario de la Ciudad, quien estará sujeto a la supervisión del Administrador de la Ciudad. , ~~con el consentimiento del Concejo Municipal, nombrará y podrá destituir al Secretario Municipal y a los Secretarios Municipales adjuntos que el Concejo Municipal considere conveniente. Los deberes del Secretario Municipal o de un Secretario Municipal adjunto serán los siguientes:~~~~

~~**Da aviso público.** Da aviso de las reuniones del Concejo Municipal, las reuniones de todas las demás juntas y comisiones de la Ciudad y las audiencias públicas.~~

~~**Mantiene actas y registros.** Mantiene las actas y registros de las deliberaciones de dichas reuniones.~~

~~**Mantiene documentos y registros.** Autentifica mediante firma y registro completo en un libro llevado e indexado para el propósito, todas las ordenanzas y resoluciones, y~~

~~**Realiza tareas adicionales.** Realiza las demás tareas que le asigne el Administrador de la Ciudad y las que se dispongan en esta Carta Constitutiva o por ordenanza.~~

SECCIÓN CUARTA. Las boletas para las elecciones municipales deben cumplir con el Código Electoral de Texas y deben tener las medidas descritas en la Sección Tres, arriba, declaradas como proposiciones de la siguiente manera:

La Medida A se colocará en la boleta electoral en la forma de la siguiente Proposición:

PROPOSICIÓN A

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para aclarar la autoridad del Alcalde para retrasar una votación sobre un asunto?

Sí _____

No _____

La Medida B se colocará en la boleta electoral en la forma de la siguiente

Proposición:

PROPOSICIÓN B

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para requerir un voto de dos tercios de los miembros restantes del Concejo Municipal para declarar una vacante en el Concejo Municipal?

Sí _____

No _____

La Medida C se colocará en la boleta electoral en la forma de la siguiente

Proposición:

PROPOSICIÓN C

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para autorizar la adopción y publicación de ordenanzas consistentes con la ley estatal y la política del Concejo Municipal?

Sí _____

No _____

La Medida D se colocará en la boleta electoral en la forma de la siguiente

Proposición:

PROPOSICIÓN D

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para aclarar que el Alcalde es miembro del Concejo Municipal?

Sí _____

No _____

La Medida E se colocará en la boleta electoral en la forma de la siguiente

Proposición:

PROPOSICIÓN E

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que el juez que preside el tribunal municipal sirve a discreción del Concejo Municipal y puede ser destituido por el voto mayoritario del Concejo Municipal?

Sí _____

No _____

La Medida F se colocará en la boleta electoral en la forma de la siguiente

Proposición:

PROPOSICIÓN F

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que las elecciones se llevarán a cabo de acuerdo con la ley estatal?

Sí _____

No _____

La Medida G se colocará en la boleta electoral en la forma de la siguiente Proposición:

PROPOSICIÓN G

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para eliminar y enmendar aquellas secciones que son repetitivas o inconsistentes con la ley estatal?

Sí _____

No _____

La Medida H se colocará en la boleta electoral en la forma de la siguiente Proposición:

PROPOSICIÓN H

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para exigir que las metas y objetivos del Concejo Municipal se incluyan en el presupuesto?

Sí _____

No _____

La Medida I será colocada en la boleta electoral en la forma de la siguiente Proposición:

PROPUESTA I

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para eliminar o revisar disposiciones inconsistentes y obsoletas?

Sí _____

No _____

La Medida J se colocará en la boleta electoral en la forma de la siguiente Proposición:

PROPOSICIÓN J

¿Se debe enmendar la Carta Constitucional de la Ciudad de Burnet para establecer que el Secretario de la Ciudad y los Secretarios Asistentes de la Ciudad sean contratados por el Administrador de la Ciudad sin la necesidad del consentimiento del Concejo Municipal?

Sí _____

No _____

APROBADO Y APROBADO en primera lectura, a los 6 días del mes de febrero de 2024.

APROBADO, APROBADO Y ADOPTADO en lectura final, a los 13 días del mes de febrero de 2024.

CIUDAD DE BURNET

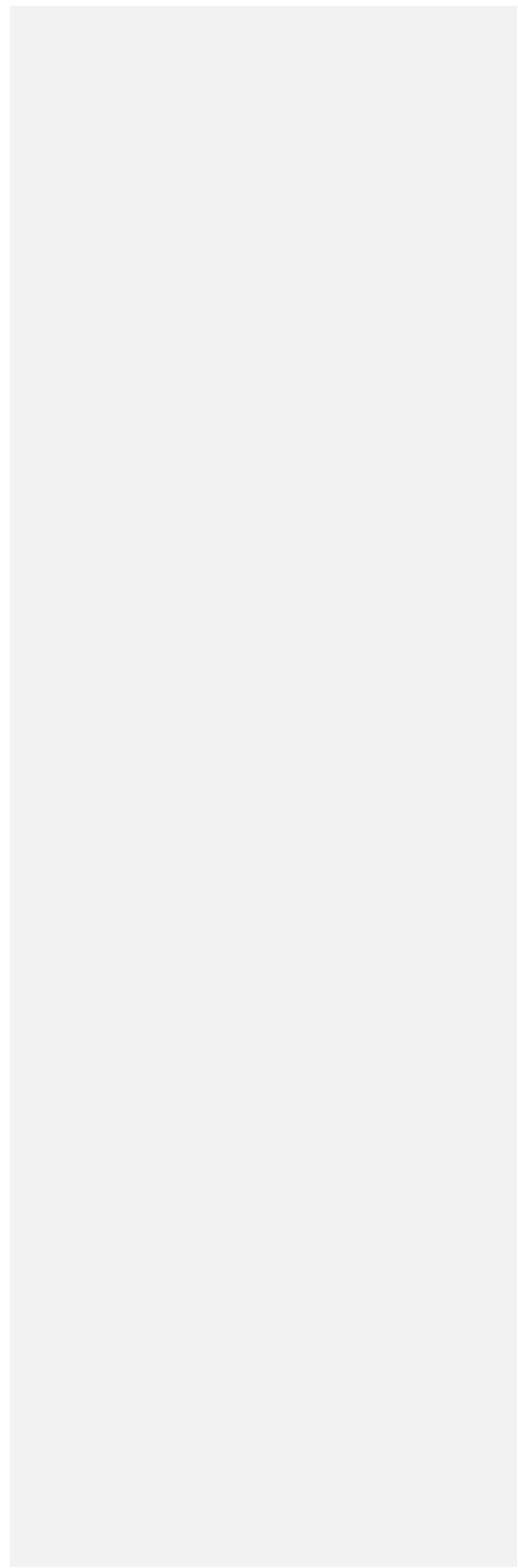
Gary Wideman, Alcalde

ATESTIGUAR:

Kelly Dix, Secretaria de la Ciudad

APROBADO EN CUANTO A LA FORMA:

Charles E Zech, Abogado de la Ciudad



**ORDINANCE 2018-03
ORDENANZA 2018-03**

AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON THE QUESTION OF THE ADOPTION OF AMENDMENTS TO THE CHARTER OF THE CITY OF BURNET; DESIGNATING MAY 5, 2018 AS THE DATE OF THE SPECIAL ELECTION; PRESCRIBING THE FORM OF THE BALLOT; DESIGNATING THE POLLING PLACE; PROVIDING FOR THE METHOD OF VOTING; PROVIDING FOR ABSENTEE VOTING; PROVIDING FOR NOTICE OF THE ELECTION; AND PROVIDING AN EFFECTIVE DATE.

UNA ORDENANZA DE ORDENAR UNA ELECCIÓN ESPECIAL QUE SE CELEBRARÁ EN LA CUESTIÓN DE LA ADOPCIÓN DE ENMIENDAS A LA CONSTITUCIÓN DE LA CIUDAD DE BURNET; DESIGNACIÓN DE 5 DE MAYO DE 2018 COMO FECHA DE LA ELECCIÓN ESPECIAL; PRESCRIPCIÓN DE LA FORMA DE LA BOLETA; DESIGNAR EL LUGAR DE VOTACIÓN; PROPORCIONAR PARA EL MÉTODO DE VOTACIÓN; PREVEN AUSENTE VOTACIÓN; PROPORCIONAR PARA LA NOTIFICACIÓN DE LA ELECCIÓN; Y PROPORCIONAR UNA FECHA EFECTIVA.

WHEREAS, the City Council of the City of Burnet, Texas, in the exercise of the discretion reposed in it by the laws of this State, and in accordance with the provisions of Chapter 9 of the Texas Local Government Code, has determined to submit the following proposed amendments to the existing Charter of the City of Burnet at a special election to be held on May 5, 2018, and

Considerando que, el Ayuntamiento de la ciudad de Burnet, Texas, en el ejercicio de la discreción depositada en él por las leyes de este estado y de conformidad con las disposiciones del capítulo 9 del código de Gobierno Local de Texas, ha decidido a presentar las siguientes enmiendas a la carta vigente de la ciudad de Burnet en una elección especial que se celebrará el 5 de mayo 2018, y

WHEREAS, the laws of the State of Texas further provide that Section 3.001 of the

Election Code of the State of Texas is applicable to said elections, and in order to comply with said Code, an Order should be passed ordering said election and establishing the procedure to be followed in said election, and designating the voting place for said election; and

Considerando que, *proporcionan las leyes del estado de Texas que 3.001 de la sección del código electoral del estado de Texas es aplicable a dicho las elecciones, y para cumplir con dicho código, se debe pasar un pedido pedido dicha elección y establecer el procedimiento a seguir en dicha elección y designar la votación lugar para dicha elección; y*

WHEREAS, on October 24, 2017, the City Council appointed persons to a Charter Review Committee ("CRC"), and charged the CRC with reviewing and proposing amendments to the Burnet City Charter; and

Considerando que, *el 24 de octubre de 2017, el Concejo Municipal nombró a las personas a un Comité de revisión de la carta ("CRC") y cargado el CRC de revisar y proponer enmiendas a la Constitución de la ciudad de Burnet; y*

WHEREAS, following a series of public meetings, held pursuant to and in compliance with the Texas Open Meetings Act, the CRC presented its proposed Charter amendments to City Council in a public meeting; and

Considerando que, *tras una serie de reuniones públicas, celebrada en virtud y en cumplimiento de la ley de reuniones abiertas de Texas, la CRC presenta sus enmiendas de la carta al Consejo de la ciudad en una reunión pública; y*

WHEREAS, the Council reviewed the proposed Charter amendments and after considering the CRC's proposed amendments, the Council now believes that Burnet voters should vote on the following proposed amendments, in the form of propositions; and

Considerando que, *el Consejo examinó las enmiendas de la carta y después de considerar la CRC enmiendas, el Consejo cree ahora que los votantes de Burnet deben votar en las siguientes enmiendas, en forma de proposiciones; y*

WHEREAS, Texas Local Government Code Section 9.004 governs the amendments to a City's Home Rule Charter; and

Considerando que, *Texas Local Gobierno código sección 9.004 rige las enmiendas de la ciudad Inicio regla carta; y*

WHEREAS, the City Council of the City of Burnet, Texas, finds it in the public interest to order a special election, to be held on May 5, 2018, for a vote of the electors as to the proposed amendments to the Burnet City Charter; and

Considerando que, *el Ayuntamiento de la ciudad de Burnet, Texas, resulta de interés público para pedir una elección especial, que se celebrará el 5 de mayo de 2018, una votación de los electores en cuanto a las enmiendas a la Constitución de la ciudad de Burnet; y*

WHEREAS, the City Council of the City of Burnet, Texas, hereby directs City staff to publish in some newspaper of general circulation in the city on the same day in each of two successive weeks, the date of the first publication to be not less than fourteen days prior to the date of the May 5, 2018 election, a substantial copy of the proposed amendments and an estimate of the anticipated fiscal impact to the City.

Considerando que, *el Ayuntamiento de la ciudad de Burnet, Texas, por la presente dirige el personal de la ciudad para publicar en un periódico de circulación*

general en la ciudad el mismo día en cada una de las dos sucesivas semanas, la fecha de la primera publicación que no menos de catorce días antes de la fecha de la elección del 5 de mayo de 2018, una copia substancial de las enmiendas propuestas y una estimación del impacto fiscal previsto a la ciudad.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS:
AHORA, POR TANTO, SER ORDENADO POR EL AYUNTAMIENTO DE LA CIUDAD DE BURNET, TEXAS:**

**SECTION 1. ELECTION ORDER
SECCIÓN 1. ORDEN DE ELECCIÓN**

The City Council of the City of Burnet, pursuant to Chapter 9 of the Texas Local Government Code, for the purpose of submitting to the qualified voters of the City, for adoption or rejection, order the following proposed amendments to the existing Charter of the City of Burnet, Texas be submitted for election.
El Ayuntamiento de la ciudad de Burnet, en virtud del capítulo 9 del código de Gobierno Local sobre el Texas, con el propósito de presentar a los electores de la ciudad, para su aprobación o rechazo, pedir las siguientes enmiendas a la Constitución vigente de la ciudad de Burnet, Texas presentarse a las elecciones.

**SECTION 2. SUBMISSION OF MEASURES
SECCIÓN 2. PRESENTACIÓN DE MEDIDAS**

The following measures will be submitted to the qualified voters of the City at the election in the form of propositions in accordance with Section 9.004 of the Texas Local Government Code and other applicable laws:
Las siguientes medidas se presentará a los votantes de la ciudad en la elección en forma de proposiciones según sección 9.004 del código de Gobierno Local de Texas y otras leyes aplicables:

Measure No. 1

Measure 1 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION A

The Amendment of the City Charter eliminating those provisions which are redundant of or in conflict with State Law.

FOR _____

AGAINST _____

Section 3.04. - Judge of Election Qualifications.

The City Council shall be the judge of the ~~election and~~ qualifications of its ~~new~~ members. ~~The City Council shall also, at the first meeting after the filing deadline, by majority vote either approve or disapprove the Section 3.03 qualifications of each candidate. If the City Council finds that a candidate does not meet all qualifications set forth in Section 3.03, such candidate's name shall not be placed on the ballot.~~

Section 4.10. —Boards and Commissions.

~~The City Council shall have authority to establish by ordinance such boards and commissions as it may deem necessary for the conduct of City business and management of municipal affairs. The authority, functions, qualifications and responsibilities of such boards and commissions shall be delineated in the establishing ordinances.~~

~~Section 5.05. Official Ballot.~~

~~The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be placed on official ballots without party designations specifying the council place for which each is seeking election.~~

~~Section 8.05. Consent of Property Owners.~~

~~The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any public utility, public service or proprietary enterprise but nothing in this Article or in any franchise granted under the provisions of this Article shall ever be construed to deprive any such property owners of any right of action for damage or injury to property as now or shall later be provided by law.~~

~~Section 8.10. Municipally Owned Utilities, Public Services and Proprietary Enterprises.~~

~~Annually, a certified public accountant will prepare, and the City Council will cause to be published, a financial report for each public utility, public service and proprietary enterprise owned or operated by the City. Each report will contain the information specified in this Section and other information as required by the City Council. The City Council will establish by ordinance the submission and inclusive dates of each report.~~

~~Section 10.04. Oath of Office.~~

~~All officers of the City shall, whether elected or appointed, before entering upon the duties of their respective offices, take and subscribe to the official oath prescribed by the Constitution of the State of Texas. The oath shall be administered by the Mayor, Mayor Pro tem, City Secretary or other person authorized by law to administer oaths.~~

~~Section 10.05. Exemption From Execution, Garnishment and Assignment.~~

~~Property of the City shall not be liable for sale or appropriation by writ of execution. Funds of the City possessed by any person or entity shall not be liable to garnishment on account of any debt the City may owe nor funds or property it may have on hand owed to any person. The City and its officers and agents shall not be required to answer a writ of garnishment of City property on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors.~~

~~Section 10.07. Security or Bond Not Required.~~

~~It shall not be necessary in any action, suit or proceeding in which the City may be a party for any bond, undertaking, or security to be executed in behalf of the City, but all actions, suits and proceedings shall be conducted as if a bond, undertaking or security had been given. The City shall have all remedies of appeal provided by law to all courts without bond or security of any kind. For the purposes of all such actions, suits, proceedings and appeals, the City shall be liable in the same manner and to the same extent as if the bond, undertaking or security had been executed and given.~~

~~Section 10.10. Sale or Lease of Real Property Other than Public Utilities or Real Property Acquired by Tax Sale.~~

The sale or lease of real property other than public utilities or real property acquired by tax sale shall be as provided by State law. In the event that a sale or lease of real property is not covered by State law, the following shall apply: The City Council may by ordinance sell or lease any real property owned by the City, but not for less than the appraised value determined by a certified appraiser. A sale, or lease for more than five (5) years, shall not be completed until thirty (30) days after passage of an ordinance approving the transaction. If, during that thirty (30) day period, a Referendum Petition is presented to the City Secretary who then deems it sufficient according to Article VI of this Charter, he/she shall certify the Referendum Petition to the City Council at its next regular meeting. The City Council shall then call an election submitting the question of whether or not the sale or lease shall be concluded.

The provisions of this Section shall not apply to public utilities or to property purchased by the City at tax sales.

Section 10.11. -- Abandonment of Streets, Alleys and Rights of Way.

The City may vacate, abandon or close a street, alley, easement or other public right of way. Any owner of property that abuts a public right of way may petition the City to vacate, abandon or close such right of way.

Any proposal by the City Council or citizen request, or upon citizen presentation of an Initiative Petition to abandon any public right of way shall first be heard by the Planning and Zoning Commission. The Planning and Zoning Commission shall notify all owners of property abutting the public right of way in question of its pending recommendation and the time when the matter will be heard by the City Council.

Thirty (30) days prior to the hearing before the Planning and Zoning Commission regarding the abandonment of a public right of way, the City shall notify, in writing, all owners of abutting property of the proposed action. The notice shall describe the street, alley, easement or other right of way to be abandoned and give the time and place of the meeting set to discuss the matter. Notice of the proposed action shall be published in a newspaper of general circulation in the City Burnet and as files available for download via the Internet.

In the event a public roadway or right of way is abandoned, the City shall determine what part of such road or right of way will not be required for another public use and shall offer the remainder of such right of way to the abutting owners in proportion to their ownership. The conveying of such property to the abutting owners shall be as provided by State law. If such is not controlled by State law and upon an abutting owner offering to purchase the right of way for the fair value, the City shall, within thirty (30) days after deposit of the fair value, deliver a deed without warranty transferring the abandoned property to the abutting owners who made the deposit.

Article XI. -- Charter Amendments

Section 11.01. -- Proposal of Amendments.

Amendments to this charter may be framed and proposed as follows:

A. **By Law.** In any manner provided by law;

B. **By City ordinance.** By an ordinance of the City Council containing the full text of the proposed amendment;

C. **By Charter Commission report.** By the report of a Charter Commission created by ordinance, or

D. **By the voters of the City.** Proposal of an amendment by the voters of the City shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article VI for Initiative Petitions. The petition must be signed by at least three hundred (300) registered voters of the City

or the number equal to at least 30 percent (30%) of the total of those registered to vote at the last regular City election, whichever number is greater. The Petitioners Committee may withdraw the petition at any time before the fifteenth (15th) day immediately preceding the day scheduled for the City vote on the amendment. Any amendment proposed for this Charter shall contain only one subject

Section 11.02.—Election.

~~Upon delivery to the City election authorities of the report of a Charter Commission or delivery by the City Secretary of an adoption ordinance or a petition finally determined sufficient proposing an amendment pursuant to Article VI of this Charter, the election authorities shall submit the proposed amendment to the voters of the City at an election. An election for a proposed Charter amendment shall be announced by a notice containing the complete text of the proposed amendment, shall be posted in compliance with State law and shall be published on the same day of two successive weeks in one or more newspapers of general circulation in the City and as files available for download via the Internet. The date of the first publication shall occur more than fourteen (14) days prior to the date of the election.~~

~~A Charter amendment election shall be held on the first uniform election date that is not less than sixty (60) days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. The City Council shall provide for a special election on a proposed amendment in compliance with State law. The election may be held with the regular City election.~~

~~Ballots for an amendment election shall be so designed that voters may approve or disapprove any one or more amendments without having to approve or disapprove all the amendments.~~

Section 11.03.—Adoption of Amendments.

~~If a majority of the registered voters of the City voting on a proposed Charter amendment vote in favor if it, the amendment shall become effective at the time fixed in the amendment or, if no time is fixed, 30 days after its adoption by the voters. However, in no case shall the amendment be in effect until the City Council records with the City Secretary an order declaring that the amendment is adopted. The order declaring adoption shall be entered into City records as soon as practicable following the election.~~

Medida N° 1

Medida 1 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN A

La enmienda de la Constitución de la ciudad eliminando aquellas disposiciones que sean redundantes de o contrario a la ley del estado.

POR _____ CONTRA _____

Sección 3.04. -Juez de calificación de la elección.

~~El Ayuntamiento será el juez de la electoral y títulos de sus nuevos miembros. El Concejo Municipal deberá también, en la primera reunión después de la fecha límite de presentación, por mayoría de votos aprobar o desaprobar las calificaciones sección 3.03 de cada candidato. Si el Ayuntamiento considera que un candidato no cumple con todos~~

~~los requisitos establecidos en la sección 3.03, nombre de dicho candidato no se colocarán en la boleta electoral.~~

~~Sección 4.10. Tableros y comisiones.~~

~~El Ayuntamiento tendrá autoridad para establecer por ordenanza los tableros y las comisiones que considere necesaria para la realización de negocios de la ciudad y gestión de los asuntos municipales. La autoridad, funciones, requisitos y responsabilidades de tales juntas y comisiones se delineó en las ordenanzas estableciendo.~~

~~Sección 5.05. Boleta oficial.~~

~~Los nombres de todos los candidatos para la oficina, excepto como puede haberse retirado, murió o se convierten en elegibles, deberán colocarse en las papeletas oficiales sin designaciones de partes especificando el lugar consejo para que cada uno trata de elecciones.~~

~~Sección 8.05. Consentimiento de los propietarios.~~

~~El consentimiento de los propietarios contiguos y adyacentes no será necesario para la construcción, ampliación, mantenimiento o funcionamiento de utilidad pública, servicio público o empresa propietaria pero nada en este artículo o en cualquier licencia concedida en virtud de la lo dispuesto en este artículo se interpretará siempre para privar a cualquier tales propietarios de cualquier derecho de acción por daños a la propiedad como ahora o más tarde se proporcionará por la ley.~~

~~Sección 8.10. Propiedad municipal de servicios públicos, servicios públicos y las empresas propietarias.~~

~~Anualmente, un contador público certificado preparará y hará que el Ayuntamiento publicará, un informe financiero para cada servicio público, servicio público y empresa propietaria propiedad u operados por la ciudad. Cada informe contendrá la información especificada en esta sección y demás información requerida por el Ayuntamiento. El Concejo Municipal establecerá por ordenanza la presentación y fechas extremas de cada informe.~~

~~Sección 10.04. Juramento de la oficina.~~

~~Todos los funcionarios de la ciudad, ya sea elegido o designado, antes de entrar en los deberes de sus respectivos cargos, tomará y suscribirse al juramento oficial prescrito por la Constitución del estado de Texas. El juramento será administrado por el alcalde, alcalde Pro tem, Secretario de la ciudad u otra persona autorizada por ley para tomar juramentos.~~

~~Sección 10.05. Exención de ejecución, embargo y cesión.~~

~~Propiedad de la ciudad no será responsable de la venta o apropiación por mandamiento de ejecución. Fondos de la ciudad poseído por cualquier persona o entidad no será responsables a retención a cuenta de cualquier deuda que la ciudad puede deber ni fondos o propiedad puede haber en mano debió a cualquier persona. No será necesarios para responder a un mandamiento de embargo de propiedad de la ciudad en cualquier cuenta sea cual sea la ciudad y sus funcionarios y agentes. La ciudad no estará obligada a reconocer cualquier cesión de los salarios o los fondos de sus empleados, agentes o contratistas.~~

~~Sección 10.07. Seguridad o fianza no es necesario.~~

No será necesario en cualquier acción, demanda o procedimiento en que la ciudad puede ser una fiesta para cualquier enlace, empresa o seguridad para bien de la ciudad, pero todas las acciones, trajes actuaciones deberán llevarse a cabo como si de un bono, empresa o seguridad se les había dado. La ciudad tendrá todos los recursos de apelación previstos por la ley a todos los tribunales sin la fianza o garantía de ningún tipo. A los efectos de dichas acciones, jueces, procedimientos y recursos, la ciudad será responsable de la misma manera y en la misma medida como si el vínculo, la empresa o la seguridad había sido ejecutada y dado.

Sección 10.10. Venta o arrendamiento de bienes inmuebles que no sean de servicios públicos o bienes adquiridos por el impuesto sobre la venta.

La venta o arrendamiento de real property que no sean de servicios públicos o bienes adquiridos por el impuesto sobre la venta será conforme a lo dispuesto por la ley estatal. En caso de que una venta o arrendamiento de bienes inmuebles no está cubierto por la ley estatal, se aplicarán las siguientes: el Concejo Municipal puede por ordenanza vender o alquilar cualquier inmueble propiedad de la ciudad, pero no por menos el valor de tasación determinado por un tasador certificado. Una venta o contrato de arrendamiento por más de cinco 5 años, no se completará hasta treinta 30 días después de la aprobación de una ordenanza que aprueba la transacción. Si, durante ese período de treinta 30 días, se presenta una petición de referéndum para el Secretario de la ciudad que luego considere suficiente según artículo VI de la presente carta, certificará la petición de referéndum para el Ayuntamiento en su próxima reunión regular. El Ayuntamiento deberá llamar una elección presentar la pregunta de si o no la venta o arrendamiento deberá haber concluido.

Las disposiciones de esta sección no se aplicarán a los servicios públicos o de propiedad adquirida por la ciudad en las ventas de impuestos.

Sección 10.11. Abandono de calles, callejones y derechos de vía.

La ciudad puede desalojar, abandonar o cerrar una calle, callejón, servidumbre u otra vía pública. Cualquier dueño de propiedad que colinda con una vía pública podrá solicitar a la ciudad para desalojar, abandonar o cerrar tal derecho de paso.

Cualquier propuesta por el Concejo Municipal o solicitud del ciudadano, o ciudadana presentación de una petición de iniciativa para abandonar cualquier vía pública primero será resuelta por la Comisión de zonificación y planificación. La Comisión de zonificación y planificación notificará a todos los dueños de la propiedad contigua a la vía pública en cuestión de la recomendación de la pendiente y el tiempo cuando el tema se escuchará por el Ayuntamiento.

Treinta 30 días antes de la audiencia ante la Comisión de zonificación y planificación sobre el abandono de una vía pública, la ciudad debe notificar, por escrito, todos los propietarios de contigua propiedad de la acción propuesta. El aviso describirá la calle, callejón, servidumbre u otro derecho de paso a ser abandonados y dar la hora y el lugar de la reunión para discutir el asunto. Anuncio de la acción propuesta se publicará en un periódico de circulación general en la ciudad de Burnet y archivos disponibles para su descarga a través de Internet.

En el caso de un camino público o derecho de vía se abandona la ciudad determinará qué parte de dicho camino o derecho de vía no será requerido para otro uso público y ofrecerá el resto de tal derecho de paso a los propietarios contiguos en proporción a su propiedad. El transporte de esos bienes a los propietarios contiguos será conforme a lo dispuesto por la ley estatal. Si tal no es controlado por la ley estatal y contiguos dueño oferta adquirir el derecho de vía para el valor razonable, la ciudad, dentro de 30 treinta días después del depósito del valor razonable, entregará una escritura sin garantía transfiera la propiedad abandonada a la propietarios contiguos que hecho el depósito.

Artículo XI. Carta enmiendas

Sección 11.01. Propuesta de enmiendas.

Enmiendas de esta carta pueden enmarcadas y propuso como sigue:

- A. ~~por la ley.~~ En cualquier forma prevista por la ley,
- B. ~~por ordenanza.~~ Por una ordenanza del Concejo Municipal que contiene el texto completo de la enmienda propuesta,
- C. ~~Informe por carta Comisión.~~ El informe de una Comisión de la carta creada por ordenanza, o
- D. ~~por los votantes de la ciudad.~~ Propuesta de una enmienda presentada por los votantes de la ciudad será por petición que contiene el texto completo de la enmienda propuesta y se registrá por los mismos procedimientos y requisitos prescriben en artículo VI para peticiones de iniciativa. La petición debe ser firmada por al menos trescientos 300 votantes registrados de la ciudad o el número equivalente a por lo menos 30 por ciento (30%) del total de los registrados para votar en la elección regular pasada de la ciudad, cualquier número es mayor. La Comisión de peticiones puede retirar la petición en cualquier momento antes del quince (15^{to}) día inmediatamente anterior al día previsto para la votación de la ciudad de la enmienda. Cualquier enmienda de esta carta contendrá un único tema

Sejo 11.02. elección.

Entrega a las autoridades de elección de la ciudad del informe de una Comisión de la carta o entrega por el Secretario de la ciudad de una adopción ordenanza o una petición se determina suficiente proponiendo una enmienda en virtud del artículo VI de la presente carta, la elección las autoridades deberán presentar la enmienda propuesta a los votantes de la ciudad en una elección. Una elección para una enmienda de la carta se hará por un aviso que contenga el texto completo de la enmienda propuesta, se publicará en cumplimiento de la ley del estado y se publicarán el mismo día de dos semanas sucesivas en uno o más periódicos de circulación general en la ciudad y como archivos disponibles para su descarga a través de Internet. La fecha de la primera publicación ocurrirá más de catorce 14 días antes de la fecha de la elección.

En la primera fecha de la elección uniforme que no menos de sesenta 60 días después de la aprobación de la ordenanza o informe o de la determinación final de suficiencia de la petición proponiendo la enmienda se celebrará una elección de enmienda de la carta. El Ayuntamiento deberá proporcionar una elección especial en una enmienda conforme a la ley estatal. La elección puede realizarse con la elección regular de la ciudad.

Votos para una elección de enmienda deberán diseñarse para que los votantes pueden aprobar o desaprobar cualquier modificación de uno o más sin tener que aprobar o rechazar todas las enmiendas.

Sección 11.03. Adopción de las enmiendas.

Si la mayoría de los votantes registrados de la ciudad votar una carta propuesta enmienda votar a favor si, la enmienda entrará en vigor en el plazo fijado en la enmienda o, si no hay tiempo fijo, 30 días después de su adopción por los votantes. Sin embargo, en ningún caso la enmienda quedará en efecto hasta los registros del Ayuntamiento con el Secretario de la ciudad una orden declarando que la enmienda es aprobada. La orden que declara la adopción se inscribirá en la ciudad registra tan pronto como sea posible después de la elección.

Measure No. 2

Measure 2 and shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION B

The Amendment of the City Charter providing that City Council members "may" be compensated rather than "shall" be compensated.

FOR _____ AGAINST _____

Section 3.05. - Compensation.

The Mayor and Council Members ~~shall~~ may be compensated ~~entitled to compensation~~. The rate of compensation may be established or changed by the City Council; however, no increase in the rate of compensation shall take effect unless ratified by a majority of the voters in the next regular City election. The Mayor and Council Members shall be entitled, with approval by the City Council, to be reimbursed for reasonable expenses incurred in the performance of specific duties. Levels of reimbursement shall be determined by the City Council.

Medida N° 2

Mide 2 y se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN B

La enmienda de la Constitución de la ciudad que los miembros del Consejo de la ciudad "pueden" ser compensados que no "serán" compensados.

POR _____ CONTRA _____

Sección 3.05. -Compensación.

El alcalde y los miembros del Consejo ~~será~~ puede ser compensado ~~con derecho a indemnización~~. La tasa de compensación puede ser establecida o cambiada por el Ayuntamiento; sin embargo, ningún aumento en la tasa de compensación surtirá efecto a menos que ratificado por una mayoría de los votantes en las próximas elecciones regulares de la ciudad. El alcalde y los miembros del Consejo podrá, con aprobación del Consejo de la ciudad, a ser reembolsado por los gastos erogados en el ejercicio de funciones específicas. Niveles de reembolso se determinarán por el Ayuntamiento.

Measure No. 3

Measure 3 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION C

The Amendment of the City Charter clarifying that the Mayor's authority to delay a vote is not indefinite.

FOR _____ AGAINST _____

Section 3.06. - Mayor and Mayor Pro-tem.

The Mayor shall be the official head of the City government. The Mayor shall be the Chair and shall preside at all meetings of the City Council. The Mayor may make motions and may vote on every proposition before the City Council. While the Mayor or alternate presiding officer shall have no power to veto, he/she shall have the power to declare a delay of the initial vote on a matter until the next ~~regular~~ Council meeting ~~on matters related to City Ordinances~~. The Mayor shall, except as provided otherwise by the City Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. The Mayor shall appoint special committees as advisable and as instructed by the City Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed by the City Council.

Medida N° 3

Medida 3 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN C

La enmienda de la Constitución de la ciudad aclarar que la autoridad de la Alcaldía a aplazar una votación no es indefinida.

POR _____ CONTRA _____

Sección 3.06. -Alcalde y alcalde Pro-tem.

El alcalde será el jefe oficial del gobierno de la ciudad. El alcalde será el Presidente y deberá presidir todas las reuniones del Concejo Municipal. El alcalde puede hacer movimientos y puede votar en cada proposición ante el Consejo de ciudad. Mientras que el alcalde o el Presidente Suplente no tendrán poder de veto, que él/ella tendrá el poder de declarar un retraso de votación inicial en un asunto hasta la próxima sesión de Consejo ~~ordinaria en cuestiones relacionadas con la ciudad~~ Ordenanzas. El alcalde, salvo que disponga lo contrario por el Concejo Municipal, firmar todos los documentos oficiales tales como ordenanzas, resoluciones, transportes, otorgan bonos, plats oficiales, contratos y acuerdos. El alcalde nombrará a comisiones especiales como recomendable y como instruido por el Ayuntamiento. El alcalde deberá desempeñar dichas otras obligaciones coherentes con esta carta o que puedan ser impuestos por el Ayuntamiento.

Measure No. 4

Measure 4 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION D

The Amendment of the City Charter clarifying that a Council Member who resigns to run for another City office remains in office until their successor is qualified and sworn in to office.

FOR _____ AGAINST _____

Section 3.07. - Vacancies, Forfeiture, and Filling of Vacancies.

A. **Vacancies.** The office of a City Council Member or the Mayor shall become vacant upon the death, incapacity, resignation, or removal from office in any manner authorized by law, or forfeiture of office by the office holder.

B. **Forfeiture of Office.** If the Mayor or any City Council Member

1. fails to maintain the qualifications set forth in Section 3.03 of this Charter (unless the residence of a member of the Council is de-annexed, then the member shall serve the remainder of his/her term of office), or
2. has been found by at least five (5) affirmative votes of the City Council to have violated any express prohibition of this Charter, or
3. is convicted of a crime involving moral turpitude or a felony, or
4. fails to attend three (3) consecutive regular Council meetings without being excused by the City Council, then the City Council shall, at its next regular meeting, declare the office to be vacant and shall fill such vacancy as set forth below, or
5. ~~has more than one year remaining on their term and files to run for another elected position within the city government.~~

the City Council shall, at its next regular meeting, declare the office to be vacant and shall fill such vacancy as set forth below.

C. **Resignation by filing or another elected position**

If a City Council Member or the Mayor has more than one year remaining on their term and files to run for another elected position within the City government then said filing shall be considered a resignation of their current position. However, the resigning individual shall holdover in their current position until their successor is sworn in to office.

D. **Filling of Vacancies.**

1. When a single or double vacancy occurs in the City Council, the remaining members of the City Council shall:
 - a. Appoint a qualified person to fill the unexpired term(s). An appointment must be approved by an affirmative vote of at least five (5) members of the City Council members; or
 - b. Order an election to fill the unexpired term(s) at the next regular general election.
2. Should three (3) vacancies exist on City Council at the same time then City Council shall order an election to fill the vacancies on the next available uniform election date as provided by law.
3. All appointments to City Council shall serve until the next regular election.
4. All appointments to City Council shall be qualified to serve pursuant to Section 3.03 of this Charter and shall take office immediately upon appointment.

Medida 4 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPUESTA D

La enmienda de la Constitución de la ciudad de aclarar que un concejal que dimite para postularse para otro cargo de ciudad permanece en el cargo hasta que su sucesor es calificado y jurado oficina.

POR _____ CONTRA _____

Sección 3.07. -Vacantes, confiscación y relleno de vacantes.

A. **ofertas.** La oficina de un miembro del Concejo Municipal o el alcalde será vacante a la muerte, incapacidad, renuncia o destitución del cargo de ninguna manera autorizada por ley, o pérdida de la oficina del titular de la oficina.

B. **pérdida de oficina.** Si el alcalde o cualquier miembro del Consejo de ciudad

1. no mantener los requisitos establecen en la sección 3.03 de esta carta (a menos que la residencia de un miembro del Consejo es la anexa, entonces el miembro servirá el resto de su mandato), o
2. se ha encontrado por menos de cinco 5 votos afirmativos del Ayuntamiento haya violado una prohibición expresa de esta carta, o
3. es condenado por un delito que implica depravación moral o un delito grave, o
4. no asistir a tres 3 consecutivas reuniones ordinarias del Consejo sin ser excusado por el Ayuntamiento, entonces el Ayuntamiento, en su reunión ordinaria siguiente, declarar a la oficina a ser vacante y deberá llenar tal vacante como se indica a continuación, o
5. ~~tiene más de un año restante en su término y postularse para otro cargo electo dentro del gobierno de la ciudad.~~

el Ayuntamiento, en su reunión ordinaria siguiente, declarará la oficina a ser vacante y deberá llenar tal vacante como se indica a continuación.

C. renuncia por presentación u otra posición elegido

Si un miembro del Concejo Municipal o el alcalde tiene más de un año restante en su término y archivos a otra posición elegido en el gobierno de la ciudad entonces dijo presentación se considerará una renuncia de su actual posición. Sin embargo, el individuo dimisionaria será retenida en su posición actual hasta que su sucesor es jurado oficina.

D. Relleno de vacantes.

1. cuando una vacante individual o doble en el Ayuntamiento, los restantes miembros del Concejo Municipa deberán:
 - a. designar una persona calificada para llenar el término restante. Una cita debe ser aprobada por el voto afirmativo de por lo menos cinco 5 miembros de los miembros del Consejo de la ciudad; o
 - b. ordenar una elección para llenar el término restante en la próxima elección general regular.

2. deben existir tres 3 vacantes en el Concejo de la ciudad al mismo tiempo entonces Concejo Municipal deberá ordenar una elección para llenar las vacantes en la próxima fecha de la elección uniforme disponibles conforme a lo dispuesto por la ley.
3. todas las citas al Ayuntamiento ejercerá hasta las próximas elecciones regulares.
4. todas las citas al Ayuntamiento deberán estar calificadas para servir conforme a seccion 3.03 de esta carta y tendrán oficina inmediatamente después de la cita.

Measure No. 5

Measure 5 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION E

The Amendment of the City Charter eliminating the provisions related to the City's authority to issue bonds as duplicate of the authority provided for in State law.

FOR _____

AGAINST _____

~~Section 7.14. — Bonds.~~

- ~~A. — **Borrowing.** The City Council shall have the power, except as prohibited by law, to borrow money by whatever method it may deem to be in the public interest.~~
- ~~B. — **General Obligation Bonds, Notes and Certificates of Obligation.** The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds, notes and certificates of obligation and any other evidence of indebtedness authorized by State law for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All bonds or certificates of obligation shall be issued in conformity with the laws of the State and shall be used only for the purposes for which they were issued.~~
- ~~C. — **Revenue Bonds.** The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and laws of the State, and to issue revenue bonds to evidence the obligation so created. Revenue bonds shall be a charge upon and payable from the properties, or interest pledged in them, or the income from them, or both. The holders of the revenue bonds shall never have the right to demand payment out of monies raised or to be raised by taxation. All revenue bonds shall be issued in conformity with the laws of the State and shall be used only for the purposes for which issued.~~
- ~~D. — **Bonds Incontestable.** All bonds of the City having been issued and sold and having been delivered to the purchasers shall be incontestable. All bonds issued to refund in exchange for outstanding bonds previously issued shall, after the exchange, be incontestable.~~
- ~~E. — **Borrowing for Capital Improvements.** The procedure for adopting any ordinance related to this Section shall be as follows:~~

1. ~~A copy of the proposed ordinance shall be furnished to each member of the City Council, the City Attorney and the City Manager.~~
2. ~~Any ordinance considered that relates to this Section shall be adopted or rejected with or without amendment at the meeting at which it is introduced.~~
3. ~~Any reading of an ordinance related to this Section shall be by caption only unless a reading in whole or in part is requested by any City Council member, provided that the City Council by majority vote does not deny any request for a reading of the ordinance in whole or in part.~~
4. ~~An ordinance authorizing the issuance of obligations for other than emergency appropriations may be finally adopted at the meeting in which it is introduced. Section 3.15 shall not apply to such ordinances.~~

Section 3.14. - Ordinances and Resolutions.

The enacting clause of all ordinances shall be: "Be it ordained by the City Council of the City of Burnet, Texas..." Ordinances, and formal resolutions that establish programs, adopt policy, provide any rule or regulation applicable to the general public, or establish requirements for any general administrative function of the City, shall be introduced in the City Council only in written or printed form and shall contain only one subject each.

Resolutions that give directions to the City Manager on a business matter, approve an administrative action, contract or bid, and that approve plans and actions in the course of the day-to-day business of the City, will be sufficient if shown by recording the motion and vote in the minutes of the City Council. Ordinances making appropriations shall be confined to appropriations.

Any reference to the reading of an ordinance made in this Charter shall be understood to mean the reading of the caption of the ordinance only unless a specific request is made by any Council Member for the ordinance to be read in part or in full. Any ordinance that levies a fine or penalty or deals with the budget, taxes, franchises or public utilities or the setting of their rates shall be read at two (2) regular meetings. Such Ordinances shall be published in full or by caption with a summary in two (2) successive issues of a newspaper of general circulation in the City of Burnet and as files available for download via the Internet with the first publication at least fourteen (14) days before the final reading and passage of the Ordinance.

~~Exceptions may be made to the provisions of the previous paragraph for any ordinance introduced pursuant to, and which complies with, all requirements of Section 7.14 of this Charter, entitled "Bonds," and may be voted on for adoption or rejection at the meeting at which it is introduced without need for a second reading.~~

~~No ordinance that is not an emergency ordinance or an ordinance related to Section 7.14 of this Charter, shall be finally passed until it has been read on two (2) separate days not less than twenty-four (24) hours apart.~~

Commented [CZ1]: Include with Measure deleting section 7.14

Commented [CZ2]: Include with Measure deleting section 7.14

Medida N° 5

Medida 5, se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DEL PIMPINELA LA PROPOSICIÓN E

La enmienda de la Constitución de la ciudad eliminando las disposiciones relacionadas con la autoridad de la ciudad para emitir bonos como duplicado de la autoridad prevista en la ley estatal.

POR _____ CONTRA _____

Sección 7.14. Bonos.

- A. ~~préstamos.~~ El Ayuntamiento tendrá el poder, ~~excepto como prohibido por la ley, a pedir prestado dinero por cualquier método que considere sea de interés público.~~
- B. ~~bonos de obligación General, notas y certificados de obligación.~~ La ciudad tendrá el poder de tomar prestado dinero en el crédito de la ciudad y a emitir bonos de obligación general, notas y certificados de obligación y cualquier otra evidencia de deuda autorizada por la ley del estado para mejoras públicas permanentes, o para cualquier otro público fines no prohibidos por la Constitución y las leyes del estado y al tema bonos de reembolso reembolsar bonos en circulación de la ciudad previamente emitido. Todos los bonos o certificados de obligación se expedirán conforme a las leyes del estado y se utilizará únicamente para los fines para los cuales fueron publicados.
- C. ~~bonos de ingresos de.~~ La ciudad tendrá la posibilidad de pedir un préstamo para construcción, compra, mejora, ampliación o reparación de servicios públicos, instalaciones o cualquier otra función municipal autoliquidables no prohibida por la Constitución y las leyes del estado y al tema bonos de ingresos que evidencia la obligación así creado. Bonos de ingresos será un cargo a y pagaderos de las propiedades, o interés comprometido en ellos, o los ingresos de ellos, o ambos. Los titulares de los bonos de ingresos no tendrá derecho para exigir el pago de dinero elevado o levantado por impuestos. Todos los ingresos bonos se expedirán conforme a las leyes del estado y se utilizará únicamente para los fines para los que emitió.
- D. ~~bonos indiscutibles.~~ Todos los bonos de la ciudad después de haber sido emitido y vendido y haber sido entregados a los compradores será indiscutible. Todos los bonos emitidos para devolver a cambio de bonos en circulación emitidos previamente, tras el intercambio, será indiscutibles.
- E. ~~préstamos para mejoras de Capital.~~ El procedimiento para la adopción de cualquier ordenanza relacionada con esta sección deberá ser como sigue:
1. una copia de la ordenanza propuesta se entregará a cada miembro del Ayuntamiento, el abogado de la ciudad y el administrador de la ciudad.
 2. cualquier ordenanza considera que se refiere a esta sección será adoptada o rechazada con o sin enmiendas en la sesión en la que se introduce.
 3. cualquier lectura de una ordenanza relacionada con esta sección será por título a menos que una lectura en todo o en parte sea solicitada por cualquier miembro del Concejo Municipal, siempre que el Concejo Municipal por mayoría de votos no negar cualquier solicitud para una lectura de la ordenanza en su totalidad o en parte.
 4. una ordenanza que autoriza la emisión de obligaciones para que no sean créditos de emergencia podrá adoptarse finalmente en la reunión en la que se introduce. Sección 3.15 no se aplicará a tales ordenanzas.

Sección 3.14. -Ordenanzas y resoluciones.

La cláusula de foro de todas las ordenanzas será: "Ser ordenado por el Ayuntamiento de la ciudad de Burnet, Texas..." Ordenanzas y resoluciones formales que establecen programas de política, proporcionan cualquier regla o reglamento aplicable al público en general y se establecen requisitos para cualquier función administrativa general de la

ciudad, se introducirán en el Ayuntamiento sólo en escrito o impreso y deberá contener sólo uno cada tema.

Resoluciones que dan instrucciones al administrador de la ciudad en una cuestión de negocios, aprobar una acción administrativa, contrato o licitación, y que aprueban los planes y acciones en el curso de la actividad cotidiana de la ciudad, será suficiente si se muestra al grabar el movimiento y voto en el Acta del Concejo Municipal. Ordenanzas que los créditos se limitará a los créditos.

Cualquier referencia a la lectura de una ordenanza hecha en esta carta se entenderá en el sentido de la lectura de la leyenda de la ordenanza a menos que una petición específica es hecha por cualquier miembro del Consejo de la ordenanza para leer en parte o en su totalidad. Se entenderán cualquier ordenanza que derramas una multa o sanción o aborda el presupuesto, impuestos, franquicias o empresas de servicios públicos o el ajuste de sus tasas en dos 2 reuniones ordinarias. Tales ordenanzas se publicarán en total o por el título con un resumen en 2 dos sucesivos números de un periódico de circulación general en la ciudad de Burnet y como archivos disponibles para su descarga a través de Internet con la primera publicación por lo menos catorce 14 días antes de la lectura final y la aprobación de la Ordenanza.

~~Se pueden hacer excepciones a las disposiciones del párrafo anterior para cualquier ordenanza introducido de conformidad con, y que cumple, todos los requisitos de la sección 7.14 de esta carta, titulada "Bonos" y podrán poner a votación para su aprobación o rechazo en la reunión en la que se introduce sin necesidad de una segunda lectura.~~

~~No hay ordenanza que no es una Ordenanza de emergencia o una ordenanza relacionados con la sección 7.14 de esta carta, será finalmente aprobada hasta que se ha leído en dos 2 días separados no menos de veinticuatro 24 horas de diferencia.~~

Measure No. 6

Measure 6 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION F

The Amendment of the City Charter to provide that Council Members shall be inducted into office at the same City Council meeting that the votes are canvassed.

FOR _____

AGAINST _____

Section 5.07. - Taking of Office.

Each newly elected person to the City Council shall be inducted into office at the ~~first~~ regular City Council meeting ~~following the canvassing of the votes.~~

Medida N° 6

Medida 6 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPUESTA F

La enmienda de la Constitución de la ciudad para proveer que los miembros del Consejo deberá ser incluidos en oficina en la misma sesión de Concejo Municipal que los votos se hará el escrutinio.

POR _____

CONTRA _____

Sección 5.07. -Toma de oficina.

Cada persona recién elegido al Concejo Municipal será instalado en oficina en la reunión del Consejo de ciudad ~~regular primer siguientes~~ la ~~escrutinio~~ ing ~~de~~ los votos.

Measure No. 7

Measure 7 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION G

The Amendment of the City Charter to provide that initiative and referendum petitions must be signed by five (5) percent of the number of voters registered to vote at the last general City election.

FOR _____

AGAINST _____

Section 6.02. - Power of Initiative.

Subject only to the limitations provided in this Article, the people of the City shall have the power to propose legislation on any local government issue, except legislation appropriating money, levying taxes, affecting zoning, annexing land, or setting rates, fees or charges, and, if the City Council fails to adopt an ordinance so proposed, to adopt or reject the proposed legislation at an election. An initiated ordinance may be submitted to the City Council by a petition signed by at least two hundred (200) registered voters of the City or ~~twenty five~~ twenty five percent (~~20-5~~%) of the number of voters registered to vote in the previous municipal election whichever number is greater.

Section 6.03. - Power of Referendum.

The voters of this City shall have the power to approve or reject at the polls any ordinance enacted by the City Council that is subject to the Referendum process under this Charter, except for bonds that have been legally awarded to a successful bidder or other legal obligations. The petition for Referendum shall require the signatures of at least two hundred (200) registered voters or ~~twenty five~~ twenty five percent (~~20-5~~%) of the number of voters registered to vote in the previous municipal election whichever number is greater.

Medida N° 7

Medida 7 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN G

La enmienda de la Constitución de la ciudad para proveer que peticiones de iniciativa y referéndum deben ser firmados por cinco 5 por ciento del número de votantes registrados para votar en las últimas elecciones generales de la ciudad.

POR _____

CONTRA _____

Sección 6.02. -Poder de iniciativa.

Sujeto únicamente a las limitaciones siempre y cuando en este artículo, la gente de la ciudad tendrá el poder de proponer legislación sobre cualquier gobierno tema local, salvo legislación apropiarse de dinero, recaudación de impuestos, que afecta a zonificación, anexión de tierra o ajuste de tasas, honorarios o cargos, y, si el Ayuntamiento no logra adoptar una ordenanza lo propuesta, a adoptar o rechazar la legislación propuesta en una elección. Una ordenanza iniciada podrá presentar al Ayuntamiento una petición firmada por al menos doscientos 200 votantes registrados de la ciudad o ~~veinte cinco~~ por ciento (~~20-5~~%) del número de votantes registrado para votar en la anterior elección municipal cualquier número es mayor.

Sección 6.03. -Poder de referéndum.

Los votantes de esta ciudad tendrá el poder de aprobar o rechazar en las urnas cualquier ordenanza promulgada por el Concejo Municipal que sea sujeto al proceso de referéndum conforme a esta carta, salvo los bonos que se han concedido legalmente a un adjudicatario u otros legal obligaciones. La petición de referéndum requiere las firmas de al menos doscientos 200 votantes registrados o ~~veinte cinco~~ por ciento (~~20-5~~) del número de votantes registrados para votar en el anterior elección municipal cualquier número es mayor.

Measure No. 8

Measure 8 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION H

The Amendment of the City Charter to provide that recall petitions must be signed by qualified voters of the City equal in number to the greater of five hundred (500) registered voters or ten (10) percent of the number of voters registered to vote at the last general City election.

FOR _____

AGAINST _____

Section 6.10. - Power of Recall.

The people of the City reserve the power to recall any elected officer of the City and may exercise the power by filing with the City Secretary a petition stating cause for the removal of the elected officer. Such petitions shall be signed by ~~at least at least the~~ greater of either five hundred (500) registered voters or thirty ten percent (3 10%) of the registered voters of the City registered to vote at the last general election. Within fifteen (15) business days after a recall petition is filed, the City Secretary shall determine whether it is properly signed by the requisite number of registered voters residing within the City and shall verify the petition as sufficient or insufficient. If the certificate of the City Secretary shows a Recall Petition to be insufficient, the City Secretary shall notify in writing the persons filing the petition. The written notification shall detail the defects that must be corrected if the petition is to be found sufficient. The petition may then be amended within fifteen (15) business days from the date of such notice by the filing of a supplementary petition and the submitting of additional papers that are signed and filed as prescribed for the original petition. Within fifteen (15) business days after the amendment is filed, the City Secretary shall examine the amended petition and certify as to its sufficiency. If the amended petition is then found to be insufficient, no further proceedings shall be had with regard to it. A separate petition shall be required for each officer to be recalled.

Medida N° 8

Medida 8 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN H

La enmienda de la Constitución de la ciudad para proveer que peticiones de destitución deben ser firmados por votantes calificados de la ciudad igual en número a los más de quinientos 500 votantes registrados o diez 10 por ciento del número de votantes registrados para votar en la última ciudad general eleccion.

POR _____ CONTRA _____

Sección 6.10. -Poder de la memoria.

La gente de la ciudad reserva el poder recordar cualquier funcionario electo de la ciudad y puede ejercer el poder mediante la presentación de una petición indicando la causa para la remoción del funcionario electo con el Secretario de la ciudad. Dichas peticiones serán firmadas por ~~al menos~~ la mayor de cada quinientos 500 votantes registrados o treinta diez por ciento (3 10) de los votantes registrados de la ciudad inscrito para votar en las últimas elecciones generales. Dentro de los quince 15 días después de una petición de destitución, el Secretario Municipal determinará si está debidamente firmada por el número de electores registrados que residan dentro de la ciudad y verificará la petición como suficiente o insuficiente. Si el certificado de la Secretaria de la ciudad muestra una petición de memoria insuficiente, el Secretario Municipal deberá notificar a las personas presentar la petición por escrito. La notificación escrita deberá detallar los defectos que deben corregirse si la petición es suficiente. La petición podrá ser modificada luego dentro de quince 15 días hábiles desde la fecha de dicha notificación por la presentación de una petición complementaria y la presentación de documentos adicionales que se firmó y presentó igual a la petición original. Dentro de los quince 15 días después de la enmienda, el Secretario Municipal examinará la petición modificada y certificar en cuanto a su suficiencia. Si la petición enmendada luego resulta para ser insuficiente, no hay procesos más se tenía con respecto a él. Se exigirá una petición separada para cada oficial recordar.

Measure No. 9

Measure 9 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION I

The Amendment of the City Charter eliminating the requirement of an ordinance for certain expenditures.

FOR _____ AGAINST _____

Section 7.10. - Overspending of Appropriations Prohibited.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with authorized appropriations and unless the City Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or

incurring of obligation in violation of the provisions of this Charter shall be void and any payment made shall be illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the City for any amount so paid. Except as prohibited by law, however, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed in whole or in part by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, ~~but only if such action is made or approved by ordinance.~~

Medida N° 9

Medida 9 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN

La enmienda de la Constitución de la ciudad eliminando el requisito de una ordenanza para ciertos gastos.

POR _____ CONTRA _____

Sección 7.10. -Exceso de créditos prohibidos.

No se efectuará ningún pago o directamente incurrido contra cualquier asignación o apropiación excepto de acuerdo con autorizado créditos y a menos que el administrador de la ciudad o su designado primero certifica que hay un saldo suficiente de tal asignación o apropiación y eso fondos están o estarán disponibles para cubrir la demanda o cumplir con la obligación cuando es debido y pagadero. Cualquier autorización de pago o incurrir en obligación en violación de las disposiciones de esta carta orgánica será nula y será ilegal cualquier pago realizado. Una violación de esta disposición será causa de remoción de cualquier funcionario que a sabiendas autorizado o había realizado tal pago o había incurrido dicha obligación. Tal oficial también puede ser responsable a la ciudad para cualquier cantidad así pagada. Excepto como prohibidas por la ley, sin embargo, nada en esta carta se interpretará para impedir la fabricación o autorización de pagos o elaboración de contratos para mejoras de capital a ser financiados en todo o en parte por la emisión de bonos o para prevenir la realización de cualquier o contrato de arriendo para los pagos más allá del final del año fiscal, ~~pero sólo si dicha acción está hecha o aprobada por ordenanza.~~

Measure No.10

Measure 10 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION J

The Amendment of the City Charter requiring the City Manager to submit a five (5) year capital program with the annual budget.

FOR _____ AGAINST _____

Section 7.02. - Submission of Budget and Budget Message.

On or before the 15th day of August of each fiscal year, the City Manager shall submit to the City Council a budget for the ensuing fiscal year, a five (5) year projected operating budget, five (5) year capital program and an accompanying message.

Commented [CZ3]: Include with measure deleting Section 7.15

Section 7.15. – Capital Program.

~~A. – **Submission to City Council.** The City Manager shall prepare and submit to the City Council a five year capital program no later than the final date for submission of the budget.~~

~~B. – **Contents.** The capital program shall include~~

- ~~1. a clear general summary of its contents;~~
- ~~2. a list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for each;~~
- ~~3. cost estimates and recommended time schedules for each improvement or other capital expenditure;~~
- ~~4. method of financing upon which each capital expenditure is to rely, and~~
- ~~5. the estimated annual cost of operating and maintaining the facilities to be constructed or acquired.~~

~~The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.~~

Section 7.16. – City Council Action on Capital Program.

~~A. – **Notice and Hearing.** The City Council shall publish in one or more newspapers of general circulation in the 1 as files available for download via the Internet the general summary of the capital program and a notice sta following:~~

- ~~1. The times and places where copies of the capital program are available for inspection by the public.~~
- ~~2. The time and place, not less than two weeks after such publication, for a public hearing on the capital program.~~

~~Adoption. The City Council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the last day of the last month of the current fiscal year~~

Medida No.10

Medida 10 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN J

La enmienda de la Constitución de la ciudad que requiere el administrador de la ciudad a presentar un programa de capital de cinco 5 años con el presupuesto anual.

POR _____ CONTRA _____

Sección 7.02. -Presentación del presupuesto y mensaje de presupuesto.

En o antes del 15 de agosto de cada año fiscal, el administrador municipal presentará al Concejo Municipal un presupuesto para el año fiscal subsiguiente, un presupuesto proyectado cinco 5 años, programa de capital de cinco 5 años y un mensaje que lo acompaña.

Sección 7.15. Programa capital.

~~A. presentación al Consejo de la ciudad.~~ El administrador de la ciudad deberá preparar y presentar al Ayuntamiento un programa de capital de cinco años no más tarde de la fecha límite para la presentación del presupuesto.

~~B. contenido.~~ Deberá incluir el programa de capital

- ~~1. un resumen general clara de su contenido;~~
- ~~2. una lista de todas las mejoras y otros gastos de capital que se proponen para ser realizadas durante la resultante del siguiente de cinco 5 ejercicios, con información de apoyo adecuado en cuanto a la necesidad de cada uno;~~
- ~~3. costo estima y recomienda horarios para cada mejora u otros gastos de capital;~~
- ~~4. método de financiación que cada gasto de capital es confiar, y~~
- ~~5. el costo anual estimado de operación y mantenimiento de las instalaciones a ser construidas o adquiridas.~~

~~Lo anterior deberá ser había revisada y extendida cada año con respecto a mejoras pendientes o en proceso de construcción o adquisición.~~

Sección 7.16. Ayuntamiento acción en el programa Capital.

~~A. Aviso y audiencia.~~ El Ayuntamiento publicará en uno o más periódicos de circulación general en el 1 como archivos disponibles para descargar vía Internet el resumen general del programa capital y un aviso sta siguientes:

- ~~1. Los tiempos y lugares donde están disponibles para inspección por el público copias del programa capital.~~
- ~~2. El momento y lugar, no menos de dos semanas después de dicha publicación, para una audiencia pública sobre el programa capital.~~

~~Adopción.~~ El Ayuntamiento mediante resolución adoptará el programa de capital con o sin enmienda después de la audiencia pública y en o antes del último día del último mes del actual año fiscal

Measure No. 11

Measure 11 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION K

The Amendment of the City Charter eliminating the requirement of the creation of a comprehensive plan.

FOR _____

AGAINST _____

Section 9.04. — Comprehensive City Plan.

~~The City Council shall cause to be written and shall adopt a comprehensive plan for the City which shall not be inconsistent with State law. This master plan shall be reviewed and updated as needed by the City Council.~~

Medida N° 11

Medida 11 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN K

La enmienda de la Constitución de la ciudad eliminando el requisito de la creación del plan integral.

POR _____ CONTRA _____

Sección 9.04. - Plan de la ciudad global.

~~El Ayuntamiento hará escrita y deberá adoptar un plan integral para la ciudad que no será incompatible con la ley estatal. Este plan maestro será revisado y actualizado según sea necesario por el Ayuntamiento.~~

Measure No. 12

Measure 12 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION L

The Amendment of the City Charter requiring City Council and City Staff to comply with state nepotism laws.

FOR _____ AGAINST _____

Section 10.03. - Ethics.

~~C. — Nepotism. No person related within the second degree by affinity or within the third degree by consanguinity to the Mayor or any other member of the City Council or to the City Manager shall be appointed to any office, position or clerkship or other service of the City. No person so related to the Director of Finance shall be employed under him/her. This prohibition shall not apply to a person who is a current City employee and has been a City employee for six (6) months or longer at the time of the election of the Mayor or Council Member or not less than 30 days at the time of the appointment of the City Manager or other appointed City officer. City Council shall adhere to and comply with the applicable nepotism laws provided by State law.~~

Medida N° 12

Medida 12 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN L

La enmienda de la Constitución de la ciudad que requiere el Ayuntamiento y personal de la ciudad cumplir con las leyes del estado nepotismo.

POR _____ CONTRA _____

Sección 10.03. -Ética.

~~C. nepotismo. Ninguna persona relacionada con dentro del segundo grado por afinidad o dentro del tercer grado por consanguinidad, el alcalde o cualquier otro miembro del Concejo Municipal o administrador de la ciudad será nombrada para cualquier cargo, posición o escribano u otro servicio de la ciudad. Ninguna persona tan relacionada con el Director de finanzas deberá emplearse bajo él. Esta prohibición no se aplicará a una persona que es un actual empleado de la ciudad y ha sido un empleado de la ciudad durante seis 6 meses o más en el momento de la elección del alcalde o miembro del Consejo de no menos de 30 días en el momento de la designación de administrador de la ciudad o otro había nombrado ciudad. Ayuntamiento deberá cumplir y cumplir con las leyes aplicables de nepotismo ley estatal.~~

Measure No. 13

Measure 13 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION M

The Amendment of the City Charter providing notice of claims against the City consistent with State law.

FOR _____ AGAINST _____

Section 10.08. — Notice of Claim.

~~A. — Personal Injury and Property Damage. The City shall not be held liable for a claim for the death or injury to a person or for damage to property unless the claimant or legal representative files a written statement of claim with the City Secretary within sixty (60) days after the event alleged to have caused the death, injury or damage. The statement must describe the nature and extent of the injury or damage; describe the place and circumstances of the alleged causal event; itemize by monetary amount the injury or damage; and, for personal injuries, names of witnesses, if any, to the event.~~

~~B. — Claims in General. Except as provided for by the State Constitution or in a case of conflict with State statute in this Charter, the City shall not be liable for any damages, attorneys fees, costs of court, or other monies regarding any matter whatsoever whether arising out of any action authorized by statute, for declaratory judgment, for equitable remedy, or for any damage, claim or suit arising out of contract. The person who seeks such remedy, relief or damage, or someone on his/her behalf, shall~~

~~1. give the City Secretary notice in writing not less than thirty (30) days prior to the filing of a claim, suit or cause of action, stating specifically the allegations of and basis for the claim, suit or request for remedy; the facts, contract provisions or~~

~~_____ circumstances supporting the suit; the specific remedy or damages sought; the
_____ names of all City officers and employees against whom there is complaint; and a
_____ list of the names and addresses of all witnesses known to the claimant upon
_____ whose testimony the claimant is relying to establish the injury or damage; and~~

~~_____ 2. meet, confer and negotiate with the City upon request of the City Manager or
_____ the City Council for the purpose of reaching an acceptable compromise and
_____ settlement.~~

A. The City shall never be liable for any personal injury, whether resulting in death or not, unless the person injured or someone in his behalf, or in the event the injury results in death, the person or persons who may have a cause of action under the law by reason of such death injury, shall file a notice in writing with the City Manager within ninety (90) days after the same has been received, stating specifically in such notice when, where and how the exact injury occurred and the full extent thereof, together with the amount of damages claimed or asserted. The notice requirements provided for herein do not apply if the City has actual notice that death has occurred, or that the claimant has received some injury. Further, should the claimant provide good cause for failure to comply with the notice requirements herein then said notice requirements shall not apply.

B. The City shall never be liable for any claim for damage or injury to personal property unless the person whose personal property has been injured or damaged or someone in his behalf, shall file a claim in writing with the City Manager within ninety (90) days after said damage or injury has occurred and the full extent thereof, and the amount of damage sustained. The City shall never be liable for any claim for damage or injury to real property caused by negligent act or omission of its officers, servants, agents, or employees, unless the person whose real property has been injured or damaged or someone in his behalf, shall file a claim in writing with the City Manager within ninety (90) days after said damage or injury has occurred, stating specifically when, where and how the injury or damage occurred and the amount of damage claimed. The notice requirements provided for herein do not apply if the City has actual notice that the claimant's property has been damaged. Further, should the claimant provide good cause for failure to comply with the notice requirements herein then said notice requirements shall not apply.

Medida N° 13

Medida 13 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN M

La enmienda de la carta de la ciudad de notificación de reclamos contra la ciudad coherente con la ley estatal.

POR _____ CONTRA _____

Sección 10.08. -Aviso de reclamación.

~~A. lesiones y daños a la propiedad. La ciudad no serían responsable de una reclamación por la muerte o lesiones a una persona o daños a la propiedad a menos que el solicitante o representante legal archivos una declaración por escrito de reclamación con el Secretario de la ciudad dentro de sesenta 60 días después del evento presuntamente han causado th e muerte, lesiones o daños. La declaración debe describir la naturaleza y~~

~~extensión de las lesiones o daños; describir el lugar y las circunstancias del evento causal alegado; detallar cantidad monetaria la lesión o el daño; y, para lesiones personales, nombres de testigos, si los hubiere, para el evento.~~

~~B. reclamaciones en General. Salvo lo dispuesto por la Constitución del estado o en caso de conflicto con la ley del estado en esta carta orgánica, la ciudad no será responsable por cualquier daños, honorarios de abogados, costos del Tribunal, o de otros fondos con respecto a cualquier asunto que sea ya sea que surjan de cualquier acción autorizada por estatuto, sentencia declaratoria, para remedio equitativo, o por cualquier daño, reclamación o juego derivadas de contrato. La persona que busca tal remedio, alivio o daño o alguien en su nombre,~~

~~1. notificar al Secretario de la ciudad por escrito no menos de treinta 30 días antes de la presentación de una reclamación, demanda o causa de acción, indicando específicamente las denuncias de las base para la reclamación, adaptarse o solicitar remedio; los hechos, las disposiciones del contrato o circunstancias apoyar la demanda; solicita el remedio específico o daños; los nombres de todos los oficiales de la ciudad y empleados contra los cuales no hay queja; y una lista de los nombres y direcciones de todos los testigos conocidos al reclamante sobre cuyo testimonio se basa el demandante para establecer la lesión o daño; y~~

~~2. conocer, otorgar y negociar con la ciudad a petición del administrador de la ciudad o el Ayuntamiento con el fin de alcanzar un compromiso aceptable y el establecimiento.~~

A. la ciudad nunca será responsable por cualquier lesión personal, ya sea dando por resultado muerte o no, a menos que la persona lesionada o alguien en su nombre, o en caso de lesión resulta en muerte, la persona o personas que pueden tener una causa o acción bajo la ley por razón de tal herida de muerte, deberá presentar un aviso por escrito con el administrador de la ciudad dentro de noventa 90 días después de la misma, indicando específicamente en tal cuenta de Cuándo, dónde y cómo ocurrió la lesión exacta y la extensión completa, junta con la cantidad de daños y perjuicios reclamados o afirmado. Los requisitos de notificación previstos en este documento no se aplican si la ciudad tiene la notificación que se ha producido la muerte, o que el reclamante ha recibido algunas lesiones. Además, debe proporcionar el reclamante buena causa para no cumplir con los requisitos de aviso aquí y dijo no se aplicarán los requisitos de aviso.

B. la ciudad nunca será responsable por cualquier reclamación por daños a la propiedad personal a menos que la persona cuyos bienes personales ha sido lesionado o dañado o alguien en su nombre, deberá presentar una reclamación por escrito con el administrador de la ciudad dentro de noventa 90 días después de dicho d Amage o lesión ha ocurrido y la magnitud misma y la cantidad de daño sufrido. La ciudad nunca será responsable por cualquier reclamación por daños a propiedad causado por negligencia u omisión de sus agentes, empleados, agentes o empleados, a menos que la persona cuya propiedad ha sido herido o dañado o alguien en su nombre, deberá presentar un reclamación por escrito con el administrador de la ciudad dentro de noventa 90 días después de dicho daño o lesión ocurrido, indicando específicamente cuando, dónde y cómo ocurrió la lesión o el daño y el monto de los daños reclamados. Los requisitos de notificación previstos en este documento no se aplican si la ciudad tiene notificación que ha sido dañado propiedad del reclamante. Además, debe proporcionar el reclamante buena causa para no cumplir con los requisitos de aviso aquí y dijo no se aplicarán los requisitos de aviso.

Measure No. 14

Measure 14 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION N

The Amendment of the City Charter requiring any ordinance that levies a fine or penalty or deals with the budget, taxes, franchises or public utilities or the setting of their rates shall be read at two (2) meetings.

FOR _____

AGAINST _____

Section 3.14. - Ordinances and Resolutions.

The enacting clause of all ordinances shall be: "Be it ordained by the City Council of the City of Burnet, Texas..." Ordinances, and formal resolutions that establish programs, adopt policy, provide any rule or regulation applicable to the general public, or establish requirements for any general administrative function of the City, shall be introduced in the City Council only in written or printed form and shall contain only one subject each.

Resolutions that give directions to the City Manager on a business matter, approve an administrative action, contract or bid, and that approve plans and actions in the course of the day-to-day business of the City, will be sufficient if shown by recording the motion and vote in the minutes of the City Council. Ordinances making appropriations shall be confined to appropriations.

Any reference to the reading of an ordinance made in this Charter shall be understood to mean the reading of the caption of the ordinance only unless a specific request is made by any Council Member for the ordinance to be read in part or in full. Any ordinance that levies a fine or penalty or deals with the budget, taxes, franchises or public utilities or the setting of their rates shall be read at two (2) ~~regular~~ meetings. Such Ordinances shall be published in full or by caption with a summary in two (2) successive issues of a newspaper of general circulation in the City of Burnet and as files available for download via the Internet with the first publication at least fourteen (14) days before the final reading and passage of the Ordinance.

Medida N° 14

Medida 14 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN N

Se entenderán la enmienda de la Constitución de la ciudad que requiere cualquier ordenanza que derramas una multa o sanción o aborda el presupuesto, impuestos, franquicias o empresas de servicios públicos o el ajuste de sus tasas en dos 2 reuniones.

POR _____

CONTRA _____

Sección 3.14. -Ordenanzas y resoluciones.

La cláusula de foro de todas las ordenanzas será: "Ser ordenado por el Ayuntamiento de la ciudad de Burnet, Texas..." Ordenanzas y resoluciones formales que establecen programas de política, proporcionan cualquier regla o reglamento aplicable al público en general y se establecen requisitos para cualquier función administrativa general de la ciudad, se introducirán en el Ayuntamiento sólo en escrito o impreso y deberá contener sólo uno cada tema.

Resoluciones que dan instrucciones al administrador de la ciudad en una cuestión de negocios, aprobar una acción administrativa, contrato o licitación, y que aprueban los planes y acciones en el curso de la actividad cotidiana de la ciudad, será suficiente si se muestra al grabar el movimiento y voto en el Acta del Concejo Municipal. Ordenanzas que los créditos se limitará a los créditos.

Cualquier referencia a la lectura de una ordenanza hecha en esta carta se entenderá en el sentido de la lectura de la leyenda de la ordenanza a menos que una petición específica es hecha por cualquier miembro del Consejo de la ordenanza para leer en parte o en su totalidad. Se entenderán cualquier ordenanza que derramas una multa o sanción o aborda el presupuesto, impuestos, franquicias o empresas de servicios públicos o el ajuste de sus tasas en dos 2 reuniones ordinarias. Tales ordenanzas se publicarán en total o por el título con un resumen en 2 dos sucesivos números de un periódico de circulación general en la ciudad de Burnet y como archivos disponibles para su descarga a través de Internet con la primera publicación por lo menos catorce 14 días antes de la lectura final y la aprobación de la Ordenanza.

Measure 15

Measure 15 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION O

The Amendment of the City Charter creating a due process hearing procedure for alleged forfeiture of Office and penalties for violating a prohibition of the City Charter.

FOR _____

AGAINST _____

Section 3.16 Council Investigative Body; Hearings; Process.

A. General. In addition to any other specific authority of investigation and hearing provided for in this Charter, the City Council shall have the power to inquire into the official conduct of any department, agency, office, officer, employee, or contract service provider of the City, and for that purpose shall have the power to administer oaths and subpoena witnesses, compel the attendance of witnesses and the production of books, papers and other evidence material to the inquiry. The City Council shall by ordinance provide the process, procedures and requirements for the subpoena of persons, books, papers and other evidence, the giving of notice, and the fine or penalty for the failure or refusal of any person to comply with a subpoena, and shall have the power to punish the misconduct in the manner provided by the ordinance.

B. Hearings Process for Forfeitures of Office and Prohibitions.

1. All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;
2. The officer holder subject to any investigation and/or hearing under this section shall be entitled to written notice, delivered by certified mail return receipt requested, of the allegations of forfeiture and/or the alleged violation of this Charter as applicable; delivery shall be complete on the fifth business day following upon deposit of the written notice, postpaid and properly addressed, in the mail.
3. A special meeting shall be called to hold the hearing; said special meeting to be held no earlier than fourteen (14) days subsequent from the delivery of written notice and no later than ninety (90) days after delivery of written notice, unless otherwise agreed to by a majority of the City Council and the individual subject to the hearing.
4. A Member of City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote;
5. City Council shall adopt by ordinance rules of procedures to be followed;
6. The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals;
7. The individual who is subject to the hearing shall be provided a copy of the results of the investigation, including any written testimony acquired during the investigation, an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;
8. City Council may ask questions of any individual giving testimony;
9. No Public comment shall be allowed;

10. In the case of a violation of Section 3.07 of this Charter City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of the City Council declare the office of said office holder to be forfeited and vacant;

11. In the case of a violation of Section 3.09 of this Charter City Council may on the affirmative vote of a majority of the City Council may take any of the following actions: directing further investigation, requesting further information, take a vote of censure; or, upon the affirmative vote of two-thirds of City Council, declare the office of said office holder to be forfeited and vacant; and

12. Any Investigation conducted pursuant to this section shall be conducted by an outside, independent third party.

Medida 15

Medida 15 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN O

La enmienda de la Constitución de la ciudad creando un procedimiento de la audiencia de debido proceso por supuesta confiscación de oficina y las sanciones por violar una prohibición de la Constitución de la ciudad.

POR _____ CONTRA _____

Sección 3.16 órgano Consejo de investigación; Audiencias; Proceso.

A. General. Además de cualquier otra autoridad específica de investigación y audiencia, previstas en esta carta orgánica, el Concejo Municipal estará facultado para investigar al funcionario realizar de cualquier departamento, agencia, oficina, oficial, empleado o contrato de servicio proveedor de la ciudad y para ello tendrá el poder de administrar juramentos y citación de testigos, obligar la comparecencia de testigos y la producción de libros, documentos y otro material de evidencia para la investigación. El Concejo Municipal por ordenanza facilitará el proceso, procedimientos y requisitos para la citación de las personas, libros, documentos y otras pruebas, la entrega de la notificación y la multa o sanción para el incumplimiento o negativa de cualquier persona a cumplir con una citación, y tendrán el poder para castigar la mala conducta en la forma prevista por la Ordenanza.

B. audiencias proceso de confiscaciones de las prohibiciones y.

1. todas las audiencias celebradas bajo este inciso se efectuará en sesión abierta, salvo que el Concejo Municipal podrá llevar a cabo una sesión a puerta cerrada

para recibir asesoramiento de su abogado de conformidad con la ley de reuniones abiertas Texas;

2. el titular de la oficial sujeto a cualquier investigación o audiencia bajo esta sección tendrá derecho a un aviso por escrito, entregada por correo certificado solicitado, de los alegatos de confiscación o la presunta violación de esta carta como acuse de recibo aplicable; entrega será completa en el quinto día hábil siguiente al depósito de la notificación escrita, pospago y correctamente dirigida, en el correo.
3. una reunión especial se llamará para celebrar la audiencia; dijo la reunión extraordinaria que se celebrará no antes de los 14 catorce días posteriores de la entrega de notificación escrita y no más tarde de noventa 90 días después de la entrega de notificación escrita, salvo que se acuerde por una mayoría del Ayuntamiento y el sujeto individual a la audiencia.
4. un miembro del Ayuntamiento que inició o es objeto de la investigación o la audiencia no se sentará en la tarima y no podrá participar en la deliberación o votación;
5. el Ayuntamiento adoptará por normativa de la Ordenanza de procedimientos a seguir;
6. el Consejo Municipal hará constar la naturaleza de la audiencia y las acusaciones a considerarse, deberá ser proporcionados los resultados de cualquier investigación y presentación de las pruebas contra el funcionario incluyendo, pero sin limitarse a testimonios de personas;
7. el individuo que está sujeto a la audiencia se facilitará una copia de los resultados de la investigación, incluyendo cualquier testimonio escrito adquirido durante la investigación, una oportunidad para responder a los alegatos y presentar cualquier evidencia relevante, incluyendo , pero no limitado a, testimonio de las personas;
8. Consejo de la ciudad puede hacer preguntas de cualquier individual dando testimonio;
9. ningún comentario público se admitirá;

10. en el caso de una violación de la sección 3.07 de esta carta Ayuntamiento declarará voto sobre la caducidad y el voto afirmativo de dos tercios del Concejo Municipal la oficina de dicho funcionario a ser decomisados y vacantes;
11. en el caso de una violación de la sección 3.09 del Ayuntamiento de esta carta puede en el voto afirmativo de la mayoría del Concejo Municipal puede tomar cualquiera de las siguientes acciones: dirigir más investigación, solicitando más información, tome una voto de censura; o, con el voto afirmativo de dos tercios del Concejo Municipal, declarar la oficina de dicho funcionario a ser decomisados y vacantes; y
12. cualquier investigación llevada a cabo en virtud de esta sección se efectuarán por un exterior independiente.

Measure 16

Measure 16 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION P

The amendment of the City Charter requiring City Council City Council to either hold an election or appoint an individual to vacancy where the remaining term is less than one year.

FOR _____

AGAINST _____

Section 3.07. - Vacancies, Forfeiture, and Filling of Vacancies.

C. Filling of Vacancies.

1. When a single or double vacancy occurs in the City Council, the remaining members of the City Council ~~shall~~ may:
 - a. If the remaining term(s) is less than one year in duration either appoint a qualified person to fill the unexpired term(s) or hold a special election to fill the unexpired term(s). An appointment must be approved by an affirmative vote of at least five (5) members of the City Council members; or
 - b. If the remaining terms(s) is one year or more, order an election to fill the unexpired term(s) at the next regular general election.
2. Should three (3) vacancies exist on City Council at the same time then City Council shall order an election to fill the vacancies on the next available uniform election date as provided by law.
3. All appointments to City Council shall serve until the next regular election.

4. All appointments to City Council shall be qualified to serve pursuant to Section 3.03 of this Charter and shall take office immediately upon appointment.

Medida 16

Medida 16 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN P

La enmienda de la Constitución de la ciudad que requieren Ayuntamiento Ayuntamiento celebrar una elecciones o nombrar a una persona para vacante en el plazo restante es inferior a un año.

POR _____ CONTRA _____

Sección 3.07. -Vacantes, confiscación y relleno de vacantes.

C. relleno de vacantes.

1. cuando se produce una vacante de simple o doble en el Ayuntamiento, los restantes miembros del Consejo Municipal deberá puede:
 - a. si el término restante es inferior a un año de duración o designar una persona calificada para llenar el término restante o sostener una elección especial para llenar el término restante. Una cita debe ser aprobada por el voto afirmativo de por lo menos cinco 5 miembros de los miembros del Consejo de la ciudad; o
 - b. si el resto de los términos (s) es de un año o más, o según una elección para llenar el término restante en la próxima elección general regular.
2. deben existir tres 3 vacantes en el Concejo de la ciudad al mismo tiempo entonces Concejo Municipal deberá ordenar una elección para llenar las vacantes en la próxima fecha de la elección uniforme disponibles conforme a lo dispuesto por la ley.
3. todas las citas al Ayuntamiento ejercerá hasta las próximas elecciones regulares.
4. todas las citas al Ayuntamiento deberán estar calificadas para servir conforme a sección 3.03 de esta carta y tendrán oficina inmediatamente después de la cita.

Measure 17

Measure 17 shall be placed on the ballot in the form of the following Proposition:

CITY OF BURNET PROPOSITION Q

The Amendment of the City Charter deleting certain prohibitions and criminal penalties inconsistent with or repetitive of State law.

FOR _____ AGAINST _____

Section 10.02. – Prohibitions

A. ~~Activities Prohibited.~~

1. ~~No person shall be appointed to, removed from or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or in any manner commit or attempt to commit any fraud preventing the impartial execution of the provisions, rules and regulations or proposed promotion.~~
2. ~~No person who seeks appointment with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person in connection with his/her test, appointment, proposed appointment, promotion or proposed promotion.~~
3. ~~No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose from any City employee to be used in conjunction with any City election.~~
4. ~~No City employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a City election or to campaign funds to be used in support of or opposition to any candidate for election to City Office or City ballot issue. Further, no City employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for City office. This Section shall not be construed to limit any person choosing to exercise rights as a citizen to express opinions or to cast a vote. Further, this Section shall not be construed to prohibit any person from active participation in political campaigns at any other level of government.~~
5. ~~Any other activities prohibited by State law.~~

- B. ~~Penalties.~~ Any person convicted of a violation of this Section shall be ineligible for a period of five (5) years following such conviction to hold any City office or position, and if that person is an officer or employee of the City, he/she shall

~~immediately forfeit his/her office or position. The City Council shall establish by ordinance any further provisions and penalties as it may deem appropriate.~~

Medida 17

Medida 17 se colocarán en la boleta en la forma de la siguiente proposición:

CIUDAD DE BURNET PROPOSICIÓN Q

La enmienda de la Constitución de la ciudad eliminar algunas prohibiciones y sus sanciones penales como inconsistente con o repetitivas de leyes estatales o federales.

POR _____ CONTRA _____

Sección 10.02. – Prohibiciones

~~A. Actividades prohibidas.~~

- ~~1. Ninguna persona será nombrada, removido de cualquier forma favorecida o discriminados con respecto a cualquier posición de la ciudad o nombrado oficina administrativa de la ciudad debido a raza, género, edad, discapacidad, religión, país de origen o político o afiliación. Ninguna persona deberá hacer cualquier declaración falsa, certificado, marca, calificación o informe con respecto a cualquier examen, certificación o nombramiento de acuerdo con las disposiciones de este estatuto o en el cualquier confirmación de manera intencionalmente o intento cometer cualquier fraude impidiendo la ejecución imparcial de las disposiciones, normas y reglamentos o promoción propuesta.~~
- ~~2. Ninguna persona que busca cita con respecto a cualquier posición de la ciudad o ciudad nombrada oficina administrativa dará directa o indirectamente, prestar o pagar dinero, servicio u otra cosa valiosa a cualquier persona con respecto a su prueba, cita, propuesta de nombramiento, promoción o promoción propuesta.~~
- ~~3. Ninguna persona a sabiendas o voluntariamente solicitar o ayudar en solicitar cualquier contribución para cualquier partido político o el propósito político de cualquier empleado de la ciudad, suscripción o evaluación para utilizarse conjuntamente con cualquier elección de la ciudad.~~
- ~~4. Ningún empleado de la ciudad será a sabiendas o intencionalmente hacer, solicitar o recibir cualquier contribución a los fondos de campaña de cualquier~~

~~partido político o Comité para usarse en una elección de la ciudad o a los fondos de campaña para ser utilizado en apoyo de o su oposición a cualquier candidato para las elecciones de la ciudad Emisión de boleta de oficina o ciudad. Además, ningún empleado de la ciudad a sabiendas o intencionalmente participará en cualquier aspecto de cualquier campaña política en nombre de u oposición a cualquier candidato para la oficina de la ciudad. Esta sección no se interpretará en el sentido de limitar a cualquier persona a ejercer los derechos como ciudadano para opinar o emitir un voto. Además, esta sección no se interpretará para prohibir a cualquier persona de participación activa en las campañas políticas en cualquier otro nivel de gobierno.~~

~~5. Cualquier otra actividad prohibida por la ley del estado.~~

~~B. **penas.** Cualquier persona condenada de una violación de esta sección será inelegible para un período de cinco 5 años siguientes a dicha condena a sostener cualquier oficina de la ciudad o la posición, y si esa persona es un funcionario o empleado de la ciudad, inmediatamente él o ella perderá su oficina o posición. El Concejo Municipal establecerá por ordenanza cualquier otra disposiciones y sanciones que considere adecuado.~~

SECTION 4. The Burnet County Clerk and his/her employees and appointees, and the election judges, alternate judges and clerks properly appointed for the election, shall hold and conduct the election in the manner provided by contract with the City and the law governing the holding of general elections by home rule cities of the State of Texas; and the official ballots, together with such other election materials as are required by the *Tex. Elec. Code*, shall be prepared in both the English and Spanish languages and shall contain such provisions, markings and language as is required by law.

Sección 4. *El Secretario del Condado de Burnet y sus empleados y personas designadas y la jueces electorales, jueces alternos y empleados apropiadamente designados para la elección, se mantenga y llevar a cabo la elección en la forma prevista por el contrato con la ciudad y la ley que rige la celebración de elecciones generales por las ciudades de la autonomía del estado de Texas; y las papeletas oficiales, junto con otros materiales de elección de tales como son requeridas por el Código de ELEC. Tex., será preparado en inglés y español y deberá contener tales disposiciones, marcas y lenguaje como es requerido por ley.*

SECTION 5. Early voting, both by personal appearance and by mail, will be conducted by the Burnet County Clerk, who is designated and appointed as the Early Voting Clerk, in accordance with the *Texas Election Code*. Early voting by personal appearance shall be conducted at the times, places, and locations authorized by state law and the Burnet County Clerk. Early voting shall commence on Monday, April 23, 2018, and continue

through Monday, May 1, 2018. Early voting shall also be held at any time and location authorized by the Burnet County Clerk.

Sección 5. *Votación temprana de, tanto en persona como por correo, se realizará por el Secretario del Condado Burnet, que es designado y designado como la votación adelantada, según el Código electoral de Texas. Votación temprana en persona se realizarán en los tiempos, lugares y lugares autorizados por la ley del Estado y el Secretario del Condado de Burnet. Votación temprana deberá comenzar en lunes, 23 de abril de 2018 y continuar hasta martes, 1 de mayo de 2018. Votación anticipada también se celebrarán en cualquier tiempo y lugar autorizado por el Secretario del Condado de Burnet.*

SECTION 6. The election precincts for the election shall be the election precincts established by Burnet County, provided that each shall contain and include geographic area that is within the City. The polling place for each such election precinct shall be the polling place established by Burnet County for such election precincts in Burnet County and voting by residents of the City. The polls shall remain open on the day of the election from 7:00 a.m. to 7:00 p.m. The returns for precincts in Burnet County will be provided by precinct and the Burnet County Clerk shall tabulate and provide the election returns for the election.

Sección 6. *Tprecintos electorales de él para la elección serán los precintos electorales establecidos por el Condado de Burnet, siempre que cada uno deberá contener e incluir el área geográfica que está dentro de la ciudad. El lugar de votación para cada recinto de dicha elección será el lugar de votación establecido por el Condado de Burnet para dichos precintos electorales en el Condado de Burnet y votar por los residentes de la ciudad. Las urnas deberán permanecer abiertas el día de la elección de 7:00 a 19:00 Los rendimientos de precintos en el Condado de Burnet serán proporcionados por el recinto y el Secretario del Condado de Burnet deberá tabular y proporcionar que devuelve las elecciones para la elección.*

SECTION 7. The City Secretary, or designee, is instructed to aid the Burnet County Clerk in the acquisition and furnishing of all election supplies and materials necessary to conduct the election as provided by the Election Agreement. The City Secretary is further authorized to give or cause to be given notices required for the election, and to take such other and further action as is required to conduct the election in compliance with the *Tex. Elec. Code* and *City Charter*; provided that, pursuant to the Election Agreement between Burnet County and the City, the Burnet County Clerk shall have the duty and be responsible for organizing and conducting the election in compliance with the *Tex. Elec. Code*; and for providing all services specified to be provided in the Election Agreement. The Burnet County Clerk shall give the notices required by the *Tex. Elec. Code* to be given for the election not required to be given by the City under the Election Agreement.

Sección 7. *El Secretario de la ciudad, o la persona designada, es instruido a la Secretaria del Condado de Burnet de ayuda en la adquisición y suministro de todos los suministros de elección y materiales necesarios para llevar a cabo las elecciones previstas por el acuerdo de elección. El Secretario de la ciudad más está autorizado a dar o causar dar avisos que se requiera para la elección, y para tomar las medidas adicionales y otras que se requiere para llevar a cabo la elección según las Tex. ELEC. código y la Constitución de la ciudad; siempre que, en virtud del acuerdo de elección entre la ciudad y Condado de Burnet, el Secretario del Condado de Burnet tendrá el deber y ser responsable de organizar y realizar las elecciones de conformidad con el Código de Tex. ELEC.; y para proporcionar todos los servicios especifican en el acuerdo*

de elección. El Secretario del Condado de Burnet dará las notificaciones requeridas por el Tex. ELEC. código de la elección no debe ser dada por la ciudad bajo el acuerdo de elección.

SECTION 8. The presiding judges, alternate presiding judges and clerks for the election shall be selected and appointed by Burnet County and its appointees in compliance with the requirements of state law, and such judges and clerks so selected by Burnet County and its appointees are hereby designated and appointed by the city council as the election officers, judges and clerks, respectively, for the holding of said general election. The presiding judges, alternate presiding judges and clerks shall perform the functions and duties of their respective positions that are provided by state law. The city council will further confirm and appoint the election judges and alternate election judges that are appointed by Burnet County for the election.

Sección 8. El Presidente de jueces, magistrados presidentes alternos y secretarios para la elección deberán ser seleccionados y nombrados por el Condado de Burnet y su designación en el cumplimiento de los requisitos de la ley del Estado, y dichos jueces y secretarios así seleccionados por el Condado de Burnet y sus designados por la presente son designados y nombrados por el Consejo de la ciudad como escrutadores, jueces y secretarios, respectivamente, para la celebración de elecciones generales de dicho. El presidentes de jueces, magistrados presidentes alternos y secretarios ejercerá las competencias y funciones de sus respectivas posiciones que son proporcionados por la ley del estado. El Consejo de la ciudad aún más confirmar y nombrar a los jueces de la elección y la elección alternativa jueces que son nombrados por el Condado de Burnet para la elección.

SECTION 9. Notice of the election shall be given by posting a notice containing a substantial copy of this Ordinance on the bulletin board used for posting notice of meetings of the governing body at the City Hall and at the aforesaid election day polling places not later than the twenty-first (21st) day before the election, and by publishing said Notice of Election at least one time, not earlier than thirty (30) days nor later than ten (10) days prior to said election, in a newspaper of general circulation in the City. The notice that is posted, and the notice that is published in a newspaper of general circulation within the city, will be written in both English and Spanish.

Sección 9. Aviso de la elección se dará mediante la publicación de un aviso que contiene una copia sustancial de esta ordenanza en el tablón de anuncios que utilizan para publicación de aviso de las reuniones del órgano rector en el City Hall y en los centros de votación dicho día de la elección a más tardar el día 21 (21) antes de las elecciones y por publicar dicho aviso de elección al menos una vez, no anterior a treinta 30 días ni después de diez 10 días antes de dicha elección, en un periódico de circulación general en la ciudad. El aviso de que se registra y el aviso que se publica en un periódico de circulación general dentro de la ciudad, se escribirá en inglés y español.

SECTION 10. The election shall be held and conducted by the Burnet County Clerk in compliance with state law and the Election Agreement. And, this Ordinance shall be in force and effect from and after its passage on the date shown below.

Sección 10. La elección se celebró y llevada a cabo por el Secretario del Condado de Burnet en cumplimiento de la ley del Estado y el acuerdo de elección. Y, esta ordenanza estará en vigencia desde y después de su paso en la fecha que se muestra a continuación.

SECTION 11. It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, *Chapter 551, Texas Government Code*.

Sección 11. *Queda oficialmente se encuentra y se determinó que esta reunión fue abierta al público, y se dará el aviso público del tiempo, lugar y propósito de esta reunión, como establece la ley de reuniones abierto, capítulo 551, código de Gobierno de Texas.*

Passed and Approved on first reading this the 23rd day of January, 2018.

Pasado y aprobado en primera lectura esto el día 23 de enero de 2018.

Passed and Approved on second and final reading this the 13 day of febrero, 2018

Pasado y aprobado en la segunda y última lectura de esto el día 13 de febrero de 2018

**CITY OF BURNET, TEXAS
CIUDAD DE BURNET, TEXAS**

Crista Goble Bromley, Mayor
Crista Goble Bromley, alcalde

Attest:

Atestiguar:

Kelly Dix, City Secretary
Kelly Dix, Secretario de la ciudad

ORDER OF ELECTION FOR MUNICIPALITIES

An election is hereby ordered to be held on **May 4, 2024** for the purpose of: **A Special Election** to vote on the question of the adoption of amendments to the Charter of the City of Burnet.

Early voting by personal appearance will be conducted each weekday at:
AgrLife Auditorium, located at 607 N. Vandever Street, Burnet, Texas and the Marble Falls Courthouse S. Annex, located at 810 Steve Pkwy., Marble Falls, TX 78654.

April 22, 2024	8am-5pm
April 23, 2024	8am-5pm
April 24, 2024	8am-5pm
April 25, 2024	7am-7pm
April 26, 2024	8am-5pm
April 29, 2024	7am-7pm
April 30, 2024	8am-5pm

Applications for ballot by mail shall be mailed to:

**Douglas Ferguson
Burnet County Elections Administrator
220 South Pierce Street
Burnet, TX 78611**

*Applications for ballots by mail and federal Post Card Applications must be received no later than the close of business on: **April 23, 2024***

Issued this the 13th day of February, 2024.

Gary Wideman, Mayor

Dennis Langley, Council Member

Joyce Laudenschlager, Council Member

Mary Jane Shanes, Council Member

Philip Thurman, Council Member

Ricky Langley, Council Member

Tres Clinton, Council Member

Instruction Note: A copy of this election order must be delivered to the County Clerk/Elections Administrator and Voter Registrar not later than 60 days before election day.

ORDEN DE ELECCIÓN DE LOS MUNICIPIOS

Por la presente se ordena que se celebre una elección el **4 de mayo de 2024** con el propósito de: **Una elección especial** para votar sobre la cuestión de la adopción de enmiendas a la Carta Constitutiva de la Ciudad de Burnet.

La votación anticipada por comparecencia personal se llevará a cabo todos los días de la semana en: AgrLife Auditorium, ubicado en 607 N. Vandevveer Street, Burnet, Texas y el Palacio de Justicia de Marble Falls S. Annex, ubicado en 810 Steve Pkwy., Marble Falls, TX 78654.

22 de abril de 2024	De 8 a.m. a 5 p.m.
23 de abril de 2024	De 8 a.m. a 5 p.m.
24 de abril de 2024	De 8 a.m. a 5 p.m.
25 de abril de 2024	De 7 a.m. a 7 p.m.
26 de abril de 2024	De 8 a.m. a 5 p.m.
29 de abril de 2024	De 7 a.m. a 7 p.m.
30 de abril de 2024	De 8 a.m. a 5 p.m.

Las solicitudes de boleta por correo se enviarán por correo a:

Douglas Ferguson
Administrador de Elecciones del Condado de Burnet
220 Calle South Pierce
Burnet, TX 78611

*Las solicitudes de boletas por correo y tarjetas postales federales deben recibirse a más tardar al cierre de operaciones el: **23 de abril de 2024***

Emitido el día 3 de febrero de 2024.

Gary Wideman, Alcalde

Dennis Langley, Concejal

Joyce Laudenschlager, Concejal

Mary Jane Shanes, Concejal

Philip Thurman, Concejal

Ricky Langley, Concejal

Tres Clinton, Concejal

Nota de instrucción: Se debe entregar una copia de esta orden electoral al Secretario del Condado/Administrador de Elecciones y al Registrador de Votantes a más tardar 60 días antes del día de las elecciones.



Administration

ITEM 4.2

David Vaughn
City Manager
512.715.3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: February 8, 2024

Agenda Item: Discuss and consider action: A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, SELECTING A GENERAL CONTRACTOR TO CONSTRUCT THE NEW CITY HALL PROJECT; AWARDING A CONTRACT TO SAID GENERAL CONTRACTOR; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT: H. Erkan

Background: Last year City Council authorized the solicitation of proposals for the construction of a new city hall pursuant to the competitive sealed proposals; and appointed a selection subcommittee. There were ten responsive proposals, and the subcommittee task was to review each proposal, interview each respondent, and score the proposals under the criteria established as part of the solicitation process. This year City Council expanded the subcommittee's charge to include ranking the proposals and negotiating a contract with the general contractor who submitted the highest ranked proposal.

Information: This resolution confirms the subcommittee's recommendation and awards a contract with the general contractor the subcommittee ranked the highest.

Fiscal Impact: The contract amount is \$6,810,000.00.

Recommendation: Approve Resolution No. R2024-11 as presented.

RESOLUTION NO. R2024-11

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AWARDED SELECTING A GENERAL CONTRACTOR TO CONSTRUCT THE NEW CITY HALL PROJECT; AWARDED A CONTRACT TO SAID GENERAL CONTRACTOR; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT.

WHEREAS, last year City Council authorized the solicitation of proposals for the construction of a new city hall (the “project”) pursuant to the competitive sealed proposals; and appointed a selection committee; and

WHEREAS, there were ten responsive proposals; and,

WHEREAS, in accordance with its charge, the subcommittee review each proposal, interview each respondent, ranked the proposals under the criteria established as part of the solicitation process; and negotiated a contract with the general contractor who submitted the highest ranked proposal; and

WHEREAS, City Council finds, determines, and declares that it is not bound by the subcommittee's recommendation but is free to select the contractor it finds most qualified to complete the project; and

WHEREAS, City Council, giving due deliberation to each proposal as well as the subcommittee’s recommendation finds, determines, and declares that **Graystone Construction Company** is a qualified general contractor to offer the best value to the City for completing the project; and

WHEREAS, City Council, finds, determines, and declares 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 as required by Chapter 551 of the Texas Government Code:

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Findings. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section two. Selection. The firm **Graystone Construction Company**, is hereby selected as the City Hall contractor.

Section three. Approval. The contract attached hereto is hereby approved in the amount of **\$6,810,000.00**.

Section four. Authorization. The city manager is hereby authorized and directed to execute, on behalf of the City, a contract substantially similar to the form approved in the

section above on or after **the sixteenth day after the award**; and execute such ancillary documents and take such other actions as may be reasonably necessary to facilitate the purpose of this resolution.

Section five. Effective Date. This resolution shall take effect immediately upon its passage, and approval as prescribed by law; save and except the authorization granted hereby shall not be effective until the date prescribed in section four above.

PASSED AND APPROVED this the 6th day of February, 2024.

CITY OF BURNET, TEXAS

Gary Wideman, Mayor

ATTEST:

Kelly Dix, City Secretary

DRAFT AIA® Document A101® – 2017

Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the «28» day of «February» in the year «2024»
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

«Burnet City Hall»
«301 E. Jackson St,
Burnet, Texas»

THE OWNER:
(Name, legal status and address)

«City of Burnet, Texas »« »
«1001 Buchanan Drive, Suite 4
Burnet, TX 78611 »

THE CONTRACTOR:
(Name, legal status and address)

«Corporate Office:
Greystone Construction Company
2995 Winners Circle Drive #200
Shakopee, MN 55379»« »
«Project Office
409 West Main Street, Suite 202
Round Rock, TX 78664 »

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

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A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ARTICLE A.2 OWNER'S INSURANCE – The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, General Conditions, or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

ARTICLE A.3 CONTRACTOR'S INSURANCE and BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the Burnet City Manager, which shall be clearly labeled "City of Burnet, Texas, City Hall Project" in the Description of Operation block of the Certificate. The original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title, and phone number, and be mailed directly from the agent to the Owner. The Owner shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the Burnet City Manager, and no officer or employee, other than the City Council, shall have authority to waive this requirement.

§ A.3.1.2 Additional Insurance Obligations.

§ A.3.1.2.1 The Owner reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent, but in no instance will Owner allow modifications whereupon Owner may incur increased risk.

§ A.3.1.2.2 The Contractor is required to obtain Worker's Compensation Insurance for the duration of the Work.

§ A.3.1.2.3 The Aggregate Limits of Insurance required by Section A.3.2.1.1 shall apply, in total, to this Contract only. This shall be indicated on the insurance certificate or an attached policy amendment.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 Subject to Contractor's right to maintain reasonable deductibles, in such amounts as are approved by the Owner, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence policy, and not a claims made policy, by companies authorized and submitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the Owner.

§ A.3.2.1.1 Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:

- (1) Premises - Operations.
- (2) Independent Contractor's Protective.
- (3) Products and Completed Operations.
- (4) Personal and Advertising Injury.
- (5) Contractual, including specified provision for Contractor's obligations under Paragraph 3.18.
- (6) Broad Form Property Damage including Completed Operations.
- (7) Owned, Non-owned and Hired Motor Vehicles.

The insurance required by Subparagraph A.3.2.1.1 shall be written for not less than the following limits, or greater if provisions of this Contract:

- (1) **COMMERCIAL GENERAL LIABILITY:**

- (a) General Aggregate (per project) \$2,000,000
- (b) Products/Completed Operations \$1,000,000
- (c) Personal and Advertising Injury \$1,000,000
- (d) Each Occurrence \$1,000,000
- (e) Fire Damage (Any one fire) \$100,000
- (f) Medical Expense (Any one person) \$5,000
- (2) BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):
 - (a) Combined Single Limit \$1,000,000
 - OR
 - (b) Bodily Injury & Property Damage (each) \$750,000
- (3) WORKER'S COMPENSATION:
 - (a) State Statutory
 - (b) Employers Liability \$100,000 Per Accident
\$500,000 Disease, Policy Limit
\$100,000 Disease, Each Employee

§ A.3.2.1.3 PROPERTY INSURANCE

§ A.3.2.2.1 The Contractor shall purchase sufficient Builder's Risk and other property insurance necessary to protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ A.3.2.2.2 Contractor's Builder's Risk and other property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.3.2.2.3 The Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Owner, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to Owner, at the address provided in § A.3.2.5, herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said change.

§ A.3.2.3 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (a) Name the Owner and its officers, employees, volunteers, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under contract with the Owner, with the exception of the workers' compensation and professional liability policies;
- (b) The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations; and the policy shall provide for an endorsement that the "other insurance" clause shall not apply to the Owner.; and
- (c) Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the Owner.

§ A.3.2.4 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by Owner, Contractor shall notify the Owner of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor did not know of the change in advance. Such notice shall be given to the Owner at the following address:

City of Burnet, Texas
 City Manager
 P.O. Box 1369
 1001 Buchanan Drive

Suite 4
Burnet, Texas 78023

§ **A.3.2.5** If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsements. In addition to any other remedies the Owner may have upon the Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

§ **A.3.2.6** Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.

§ **A.3.2.7** It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner for liability arising out of operations under this Contract.

§ **A.3.3 Contractor's Other Insurance Coverage** – Intentionally deleted.

§ **A.3.4 Performance Bond, Payment Bond, and Warranty Bond**

§ **A3.4.1** Contractor shall, with the execution and delivery of the Contract, furnish and file with Owner, in the amounts required in this § A.3.4, The bond shall be in favor of Owner and shall be executed by an approved surety company authorized to do business in the State of Texas as provided in § A.3.4.1 and § A.3.4.2. Said surety bonds shall be as follows:

(a) **PERFORMANCE BOND.** A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications, and all other Contract Documents, including any extensions thereof, for the protection of Owner.

(b) **PAYMENT BOND.** A good and sufficient bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

(c) **WARRANTY/MAINTENANCE BOND.** Prior to approval or acceptance of the work by Owner, Contractor shall furnish a warranty/maintenance bond in form and substance acceptable to Owner, in the amount of ten percent (10%) of the contract amount of the Improvements, insuring the repair and replacement of all defects due to faulty material and workmanship that appear within one (1) year from the date of acceptance (the "Substantial Completion" date).

§ **A.3.4.1** Each surety bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of Section A.3.4.2 herein and approved by Owner. The surety bonds shall be accompanied by an appropriate Power-of-Authority clearly establishing the extent and limitations of the authority of each signer to so sign.

§ **A.3.4.2** No surety will be accepted by Owner that is in default, delinquent on any bonds or that is a party to any litigation against Owner. All bonds shall be made and executed on forms approved by Owner and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to Owner. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in

Travis, Williamson, or Burnet County, Texas. Each surety shall designate an agent resident in Travis, Williamson, or Burnet County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

ARTICLE A.4 Special Terms and Conditions – Intentionally deleted.



DRAFT AIA® Document A101® - 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the «28 » day of «February » in the year «2024 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

«City of Burnet, Texas »« »
«1001 Buchanan Drive, Suite 4 »
«Burnet, TX 78611 »
« »

and the Contractor:
(Name, legal status, address and other information)

«Corporate Office:
Greystone Construction Company »« »
«2995 Winners Circle Drive #200 »
«Shakopee, MN 55379 »
« »
Project Office:
409 West Main Street, Suite 202
Round Rock, TX 78664 »

for the following Project:
(Name, location and detailed description)

«Burnet City Hall»
«301 E. Jackson St,
Burnet, Texas»
«New City Hall for Burnet, Texas. The project is approx. 16,500 SF and will house the development services, court, city council chambers, administrative offices, finance, and support spaces.
»

The Architect:
(Name, legal status, address and other information)

«SEAUX-PIERCE Architecture »« »
«1014 Sailmaster Street »
«Austin, TX 78734 »
« »

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- [« »] The date of this Agreement.
- [«X»] A date set forth in a notice to proceed issued by the Owner.
- [« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
- [« »]

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[] Not later than «12 Months» («396 ») calendar days from the date of commencement of the Work.

[] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «SIX MILLION EIGHT HUNDRED TEN THOUSAND » (\$ «6,810,000 »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
n/a	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« Contractor acknowledges and agrees that the Owner will suffer financial loss in an amount that is difficult to quantify if the Project is not Substantially or Finally Completed on the dates set forth in the Contract Documents. Accordingly, the Owner may assess liquidated damages against the Contractor (and its surety) in an amount equal to \$500.00 per day, as a fixed, agreed, and liquidated damages and not a penalty, for each day of delay until substantial completion. Further Contractor acknowledges and agrees the amount of liquidated damages called for herein is a reasonable forecast of just compensation in the event of delay of Substantially or Finally Completion. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the Owner. »

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « 30th » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « 30th » day of the «following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « forty » («40 ») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

Notwithstanding the foregoing, all payments shall be made by the City in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251, which shall control in the event of any conflict.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«10% »

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«N/A »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« N/A »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

[**« X»**] Litigation in a court of competent jurisdiction

[**« »**] *Other (Specify)*

~~« Binding arbitration if subsequently agreed to by both parties under terms then determined to apply or, in the event of non agreement, litigation in a court of competent jurisdiction. »~~

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

«David Vaughn »
«City of Burnet »
«P.O. Box 1369 »
«1001 Buchanan Drive #4 »
«Burnet, TX 78611 »
« »

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds.

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Exhibit A, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

<< N/A >>

§ 8.7 Other provisions:

<< >>

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

<< N/A >>

- .5 Drawings

Number	Title	Date
Refer to Project Manual - SCH	Schedule of Drawings	9-15-2023

- .6 Specifications

Section	Title	Date	Pages
Division 00-32	Project Manual	9-15-2023	811

- .7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	October 25, 2023	23
Addendum No. 2	November 14, 2023	75
Addendum No. 3	November 21, 2023	2

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[N/A] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

N/A »

[N/A] The Sustainability Plan:

Title	Date	Pages

[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
1. Supplementary conditions address by AIA Document A-201 additions and deletions.	Other Conditions		

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- « 1) Bid Documents
- 2) City of Burnet Approved Standard Construction Specifications »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

« David Vaughn »

(Printed name and title)

CONTRACTOR (Signature)

« Gordie Schmitz »
« Greystone Construction,
President / Principal »

(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Burnet City Hall»
«301 E. Jackson St,
Burnet, Texas»

THE OWNER:

(Name, legal status and address)

«City of Burnet, Texas »« »
«1001 Buchanan Drive, Suite 4
Burnet TX. 78611 »

THE ARCHITECT:

(Name, legal status and address)

«Seaux-Pierce Architecture »« »
«1014 Sailmaster Street, Lakeway TX. 78734 »

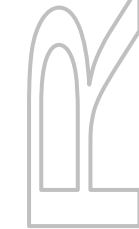
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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Exhibit A to the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents ~~do not~~ includes the advertisement or invitation to bid, Instructions to Bidders, sample forms, other written information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to Architect who shall render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 In general, the Drawings are intended to establish the location, quantity and relationship of Work, and the Specifications are intended to define the type and quality of materials and workmanship requirements of the Work shown. In cases of conflict between the Drawings and Specifications or with either, the Contractor shall submit prompt request for information/ direction to the Architect before proceeding, in accordance with Sections 4.2.11, 4.2.12 and 4.2.14.

§ 1.2.4 Before bidding, ordering any material or doing any Work, each contractor shall verify all measurements and conditions, existing and new, at the jobsite and be responsible for the correctness of the same. No extra charge or compensation will be allowed on account of difference between actual dimensions and conditions and the ones indicated on the Drawings.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in [Section 4.2.1](#), the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 Intentionally deleted. The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

~~§ 2.1.3 The Owner reserves the right to observe the Work at any time. The presence of the Owner or its representatives at the project site does not imply concurrence or approval of the Work. The Contractor shall call specific items to the attention of the Architect if the Contractor requires information/direction.~~

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract in accordance with Texas Business and Commerce Code §56.054(e). ~~The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Intentionally deleted.~~

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is

required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner’s Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.1 If, after achieving Substantial Completion, the Contractor then defaults, or neglects to complete or fails to provide resources adequate to complete the Project within the adjusted Contract Time for Substantial Completion as defined in Subparagraph 8.1.1, the Owner may carry out the work after giving the Contractor a single seven-day written notice of the Contractor's default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such

default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Owner. If Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during Work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the Drawings and Specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.~~

§ 3.2.1.1 The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding, or representation is expressly stated in this Contract.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or

3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner ~~and Architect~~ that all materials and equipment furnished under the Contract ~~will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants shall be in specified condition and quality, and shall be new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor further warrants that all workmanship shall be of the specified quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades. This warranty shall extend for the entire period described in Section 12.2.2. However, unless caused by the Contractor, the~~ Contractor's warranty excludes remedy for damage or defect caused by abuse, the ~~alterations to Work not executed~~ modifications not performed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1 Article 3.6 notwithstanding, the Owner, as a political subdivision of the State, is exempt from the payment of Texas Sales Tax on materials required for the Work and the Contractor shall not include taxes for which the Owner is exempt. . Texas limited sales tax exemption certificates will be furnished upon request. If billed, the Owner will remit payment less sales tax.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for payment of any charges imposed for excessive re-inspections. For purposes of this Section 3.7.1, excessive shall mean any inspections in excess of two inspections necessitated by factors within the control of the Contractor.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work ~~knowing it that the Contractor knows or reasonably should have known~~ to be contrary to applicable laws, statutes, ordinances, codes, rules ~~and or~~ regulations, or lawful orders of public authorities, the Contractor shall assume ~~appropriate~~ responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.2.1 The Contractor shall notify the Owner, in writing through the Architect, of any proposed change in superintendent, including the reason therefore, prior to making such change. The superintendent shall not be changed except with the consent of the Owner, which shall not be unreasonably withheld.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.1.2 The construction schedule shall provide a graphic representation of activities and events that will occur during performance of the Work in sufficient detail to show the sequencing of the various trades for each floor level, wing, or work area.

§ 3.10.1.3 The construction schedule shall set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but

shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH: (I) THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES CONTEMPLATED BY THIS CONTRACT BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS, INTENTIONAL TORTS, INTELLECTUAL PROPERTY INFRINGEMENT, OR A FAILURE TO PAY A SUB-CONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR OR CONTRACTOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONTRACTOR EXERCISES CONTROL (WHETHER ACTIVE OR PASSIVE) OF CONTRACTOR OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS; (II) THE FAILURE OF CONTRACTOR, OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS, TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF CONTRACTOR TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL, STATE OR LOCAL, IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT. CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES, OR ANY ONE OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF CONTRACTOR, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH CONTRACTOR'S LIABILITY TO SUCH EMPLOYEE OR FORMER EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNITEE FOR THE INDEMNITEE'S OWN NEGLIGENCE OR WILLFUL MISCONDUCT. ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONTRACTOR, OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS, IN PERFORMING SERVICES UNDER THIS CONTRACT.

With respect to the Indemnity Contractor provides herein, Contractor agrees to the following:

- a) Contractor shall provide Written Notice to Owner within twenty-four (24) hours of any Claim or demand against Owner or Contractor that is known to Contractor and regards, relates to and/or arises out of activities under this Contract;
- b) Unless Owner expressly waives its right of approval in writing to Contractor, Owner shall have the right to approve defense counsel to be retained by Contractor in fulfilling its obligation under this § 3.18 to defend and indemnify Owner, and Owner's approval shall not be unreasonably withheld. Contractor shall retain Owner-approved defense counsel within ten (10) Days of Owner's Written Notice that City is invoking its right to Indemnification under this Contract. If Contractor fails to retain Owner-approved defense counsel within such time period, Owner shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all defense fees and costs incurred by Owner;
- c) Without relieving Contractor of any of its obligations under this § 3.18, Owner also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, and to participate in any defense provided by Contractor pursuant to this § 3.18.; and
- d) Contractor's indemnity obligations under this § 3.18, shall not be limited in any way by the limits of any insurance coverage or by any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor, any Subcontractor, supplier, or any other person or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment.

~~The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Notwithstanding these responsibilities, no act or omission by the Architect shall be considered a waiver of any of the Owner's rights or interests.~~

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for

installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 In the Specifications or on the Drawings, where the words "as directed," "as required," "as approved," "as permitted" or words of like effect are used, it is to be understood that direction, requirement, approval or permission of the Architect is intended. Similar words, such as "approved," "acceptable," "satisfactory," or words of like import mean approved by, acceptable to, or satisfactory to the Architect."

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of

receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor is responsible for determining that all of the Contractor's Subcontractors are duly licensed in accordance with the federal, state and local licensing laws.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, ~~and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.~~ Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Intentionally deleted.

§ 5.3.2 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following:

- .1 A provision providing that the Owner is a third-party beneficiary of the Subcontract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, expressed or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement; and,
- .2 A provision providing that the Subcontractor (or Sub-subcontractor) shall promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has, or should have had knowledge; and,
- .3 A provision incorporating the following Sections of these General Conditions of the Contract: Sections 3.2, 3.5., 3.18, and 5.4.

§ 5.3.3 The Contractor shall assure the Owner, by affidavit or in such other manner as the Owner may approve, that all agreements between the Contractor and its Subcontractor(s) incorporate the provisions of Subparagraph 5.3.2 as necessary to preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or

Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 The Contractor and each Separate Contractor shall together, and without reliance on the Owner's or Architect's determination, establish the conditions of the premises before commencement of the Work on each such separate contract, and the parties shall adjust all claims for damages to each others' work between themselves, but the Owner may withhold the value of all such corrections from payments to both contractors pending settlement of disputes between the contractors concerning such damage.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; **and**
- .3 The extent of the adjustment, if any, in the Contract Time; **and**
- .4 Agreement on any Change Order shall constitute a mutual release by the Contractor and the Owner for any and all liability under this Contract attributable to such facts or circumstances giving rise to the Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes

in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, which must be described in the Construction Change Directive:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such

agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar ~~day unless otherwise specifically defined.~~

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

~~§ 8.2.4 Failure by the Contractor to commence actual physical work on the Project within ten (10) days from the date of commencement, unless agreed otherwise, will entitle the Owner to consider the Contractor in substantial breach of its obligations under this Contract. In this event, the Owner may terminate the Contract in accordance with the Contract Documents.~~

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, delays caused by governmental entities (e.g. inspections) or utility providers, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner ~~pending mediation and binding~~ dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect may determine (provided such delay is not attributable to, caused by the negligence or wrongful acts of, or resulting from the failure of Contractor or its Subcontractors, Suppliers, or Sub-subcontractors of any tier to comply with their obligations arising under the Contract). Contractor shall give the Owner written notice of any such delay, including delay caused by the Architect, as soon as possible but in any event within seventy-two (72) hours of the beginning of the claimed delay.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 Contractor has taken into account Contractor's expected downtimes due to typical weather conditions for the location of the Project at the time that the work is performed, or recognized holidays. The Contractor's failure to properly staff the job, failure to manage the work, or failure to allow for normal, reasonable weather delays shall not entitle the Contractor to additional Contract Time. No extensions of Contract Time due to weather delays shall be considered by the Owner unless the Owner is satisfied that the weather was significantly severe and unusual for long periods of time in which the Work is performed and that the overall Project Contract Time was, in fact, truly impacted by the severe and unusual weather." The Amendment shall include the project schedule and the amount of weather days included in the schedule. In the event of a delay described in Section 8.3.1, Contractor shall be entitled to an extension of the Contract Time and a corresponding increase in the Contract Sum for Contractor's extended general conditions costs.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

Notwithstanding the other provisions of this Article 9, the Owner's payments obligations hereunder, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code; and time for payment shall be determined by §2251(a)(3) therein.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Owner and Architect.

§ 9.8.3.2 The inspection shall include a demonstration by the Contractor that all equipment, systems, and operable components of the Work function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the Architect's issuance of a written list of unfinished Work and defective Work, commonly referred to as a "punch list", each item of which must be finished and corrected prior to Final Completion.

§ 9.8.3.3 The Architect and its consultants shall conduct all Substantial Completion inspections. The Owner may elect to have other persons of its choosing participate in the inspections. Representatives of other authorities having jurisdiction may be present, at their sole discretion, at the Substantial Completion inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements.

§ 9.8.3.4 If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the Owner from occupying or utilizing the Work for its intended use, the Contractor shall complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for a follow-up inspection by the Architect to determine Substantial Completion.

§ 9.8.3.5 The Contractor shall proceed promptly and diligently to complete and correct items on the list of unfinished or defective Work. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3.6 If more than two (2) Substantial Completion inspections are required, the Contractor shall reimburse the Owner for all costs of any subsequent reinspection if the circumstances necessitating the reinspection are based on factors within the Contractor's control (i.e.: work not completed, defective work, etc.) or, at the Owner's option, the costs may be deducted from payments due to the Contractor.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2.1 Final Completion shall be achieved no later than thirty (30) days after Substantial Completion unless modified by a Change Order.

§ 9.9.2.2 The Contractor shall notify the Owner, in writing of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect, who will attach its endorsement as to whether or not it concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date stated. The Architect's endorsement is a convenience to the Owner only and shall not relieve the Contractor of its responsibility in the matter, nor shall the Architect's endorsement be deemed to be evidence that the Work was finally complete and ready for inspection and testing. In the event that the Architect does not concur with the Contractor's statement, the Architect shall inform the Contractor of the basis for the Architect's non-concurrence. The Contractor may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed in accordance with this Subparagraph. The final inspection and testing shall be conducted in the same manner as the inspection for Substantial Completion, including, but not limited to, the requirements of Clauses 9.8.3.3, 9.8.3.4, 9.8.3.5 and 9.8.3.6 of this Contract.

§ 9.9.2.3 In the event that the Architect does not find the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall then submit a request for a follow-up inspection in accordance with and subject to Section 9.10.1.2 to determine Final Completion. If more than two (2) Final Completion inspections are required, the Contractor shall reimburse the Owner for all costs of reinspection if the circumstances necessitating the reinspection are based on factors within the Contractor's control (i.e.: work not completed, defective work, etc.) or, at the Owner's option, the costs may be deducted from payments otherwise due to the Contractor.

§ 9.9.2.4 Approval of Work at or as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract, including but not limited to the warranty referenced therein.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; ~~or~~
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 or claims otherwise reserved in writing and contemporaneously sent with final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, including records of subcontractors, which records shall be open to audit by the authorized representative of the Owner or the Owner during the performance of the Work and for twelve (12) months after Final Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Written notice of the emergency, including an estimate of cost and probable effect of delay on the progress of the Work, shall be given by the Contractor to the Architect as soon as possible, but in no case more than three (3) days after the start of the emergency.

ARTICLE 11 INSURANCE AND BONDS This Article 11 is deleted in its entirety and the subject matter (Insurance and Bonds) is addressed in Exhibit A to the Agreement.

§ 11.1 Contractor's Insurance and Bonds

~~§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, or elsewhere in the Contract Documents.~~

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~

~~§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

~~§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~

§ 11.2 Owner's Insurance

~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract~~

Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

~~§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

~~§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination including inspections of work-in-progress required by all authorities having jurisdiction over the Project, then the portion of Work so covered shall, upon demand of the Architect or the authority having jurisdiction, and be replaced at the Contractor's expense without change in the Contract Time.~~

~~§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.~~

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

~~§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may at its sole discretion either (i) correct it in accordance with Section 2.5 or (ii) require the Warranty/Maintenance Bond surety to correct the work.~~

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules and venue for any claim or cause of action shall lie within Burnet County, Texas, or in the United States District Court for the Western District of Texas, Austin Division. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public

authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ Payments due and unpaid under the Contract Documents shall bear interest at a rate determined in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

§ 13.6 Contract requirements for subdivisions of Texas state government

§ 13.6.1 Under Texas law, Owner may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that of the following: (i) the company neither Boycotts Israel; nor will not Boycott Israel during the term of the contract (Chapter 2271, Texas Government Code); (ii) the company is neither identified on a list prepared and maintained by the comptroller; nor does business with Iran, Sudan, or a foreign terrorist organization (Chapter 2252, subchapter F, Texas Government Code); (iii) the company neither has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; nor will not discriminate during the term of the contract against a firearm entity or firearm trade association (Chapter 2274, Texas Government Code); and (iv) neither boycott energy companies; nor will not boycott energy companies during the term of the contract (Chapter 2274, Texas Government Code).

The signatory executing this contract on behalf of Contractor verifies that the Contractor, at the time of execution of this Contract is, and during the term of this Contract shall be, in full compliance with the requirements of Chapters 2270, 2252 subchapter F, and 2274 Texas Government Code as those chapters apply to the matters discussed in the paragraph above.

§ 13.6.2 For certain contracts needing City Council approval, the Owner may not accept or enter into a contract until it has received from the Contractor a completed Texas Ethics Commission ("TEC") Form 1295 complete with a certificate number assigned by the TEC pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the Owner from entering into this Contract.

§ 13.6.3 The signing parties to this agreement do not intend to confer any rights upon any persons not a party to this Contract. Accordingly, this Contract shall not be construed to create any third-party beneficiaries.

§ 13.6.4 Contractor and Subcontractors shall comply with Texas Government Code, Chapter 2258, as amended, in performing on this Project, if applicable. In accordance with Chapter 2258, as amended, the prevailing wage rates as set forth in the Contract shall be paid on this Project and shall be posted at the job site or other area generally accessible to the employees working on the Project. In the event that the Contractor or Subcontractor seeks to hire a craft or type of worker not listed in the wage rates. For overtime work and legal holidays, the hourly rate shall be one and one-half times the basic hourly rate set forth in the schedule of prevailing wage rates, which is incorporated herein for all purposes.

§ 13.6.4.1 The Contractor and any Subcontractor(s) shall keep a record showing the name, occupation, and actual per diem wages paid each worker employed by the Contractor or Subcontractor in the construction of the Project. The Owner may require an affidavit stating that the Contractor has complied with the prevailing wage rate provisions of the Contract prior to acceptance of the Project or at any time during or after completion of the Contract.

§ 13.6.4.2 The Owner reserves the right to conduct interviews with the Contractor's and Subcontractor's employees to insure compliance with Texas Government Code, Chapter 2258, as amended, and with all applicable local, state and federal laws. Upon written request by Owner, the Contractor shall be responsible for submitting the above required records to the Owner for all employees performing work on the Project, whether employed by the Contractor or a Subcontractor. Each submittal shall be certified by the Contractor as to completeness and accuracy.

§ 13.6.4.3 A Contractor in violation of Texas Government Code, Chapter 2258, as amended, is liable for a penalty as provided therein. Nothing herein shall preclude the Contractor or Subcontractor from paying higher wages than specified herein.

§ 13.6.4.4 In the event that Owner receives written information or complaint attesting to a violation of the prevailing wage rate, Owner shall proceed under Texas Government Code, Chapter 2258.

§ 13.6.4.5 Contractor acknowledges and agrees that Contractor is required by Texas Local Government Code, Section 176.006 to complete a conflict-of-interest questionnaire, if applicable to the Contractor. This obligation shall be ongoing throughout the term of this Contract.'

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing

portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 ~~repeatedly refuses or fails to supply enough properly skilled workers or proper materials; fails to complete the Work within the Contract Time specified in the Contract Documents, including any authorized adjustments; or~~
- .2 fails to make payment to Subcontractors ~~or suppliers, or Suppliers for materials or labor,~~ in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly (defined as occurring on two or more occasions) disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction; or
- .4 ~~otherwise is guilty of substantial breach of a provision of the Contract Documents~~ fails to comply with any of the other material provisions of this Contract.

§ 14.2.2 ~~When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety—~~The Owner's right to terminate this Contract under Subparagraph 14.2.1 may be exercised if the Contractor does not cure such failure within seven (7) days (or more if authorized in writing by the Owner) after receipt of the notice from the Owner specifying the general nature of the failure. The Owner shall notify the Contractor's surety within a reasonable time. When terminating pursuant to Paragraph 14.2.1, the Owner may, without prejudice to any other rights or remedies of the Owner, and subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, unless this time period is otherwise altered by the Contract Documents.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation of any Claim. If an initial decision has not been rendered within 30 days to litigation of any Claim unless thirty (30) days have passed~~ after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker the Architect and no decision has been rendered in writing. The Architect~~ will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) ~~approve the Claim, forward the claim to Owner with a recommendation that the claim be approved,~~ (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. ~~The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the ~~Initial Decision Maker will either reject or approve the Claim Architect will either reject the Claim or forward the Claim to the Owner with recommendation that the Claim be approved-~~in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state

the reasons therefor; and (3) notify the parties ~~and the Architect, if the Architect is not serving as the Initial Decision Maker,~~ of any change in the Contract Sum or Contract Time or both. The initial decision shall be final ~~and binding on the parties but subject to mediation as provided in Section 15.3 below.~~ ~~and, if~~ If the parties fail to resolve their dispute through mediation, ~~to binding or other~~ dispute resolution agreed to by the parties, either party may proceed with litigation in a court of competent jurisdiction.

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1~~
~~Intentionally deleted.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~
~~Intentionally deleted.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~
~~Intentionally deleted.~~

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to non-binding mediation as a condition precedent to ~~binding dispute resolution~~ any other form of dispute resolution or litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing; and delivered to the other party to the Contract, within thirty (30) days of the date of the Initial Decision Maker's decision provided under Section 15.2.5 above; and shall subsequently be filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~
~~Intentionally deleted.~~

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 15.4 Arbitration~~ Intentionally deleted.

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~



Report of the CITY HALL CONTRACTOR SELECTION COMMITTEE

January 26, 2024
City of Burnet, Texas

City of Burnet City Council
1001 Buchanan Drive, Suite #4
Burnet, Texas 78611

Dear Mayor and Council:

On behalf of the City Hall Contractor Selection Subcommittee, I am pleased to submit the rankings of the City Hall Construction Contractor Proposals as follows:

1. *Graystone Construction Company*
2. *Broadus Construction Company*
3. *Nash Builders Ltd.*
4. *Gilger Contractors, LLC*
5. *Century Const.*
6. *O'Haver Contractors*
7. *The Trevino Group, Inc.*
8. *Tegrity Contractors Inc.*
9. *Trimbuilt Const. Inc.*
10. *Mirador Enterprises, Inc.*

The proposals are ranked such that No. 1 is the highest ranked, and No. 10 is the lowest ranked Proposal.

In accordance with its charge, the Subcommittee shall begin negotiations of a contract with the general contractor that submitted the highest ranked proposal. Upon successful negotiations the Subcommittee shall present the contract to City Council for its consideration. The City will make available the scoring 7 days after the project is awarded.

Respectfully submitted,

David Vaughn
City Manager