

Burnet Surplus Land Bid Solicitation No. 2020-001

PURCHASE AGREEMENT AND BIDDING INSTRUCTIONS CITY OF BURNET SALE OR REAL PROPERTY (APPROXIMATELY 42 TOTAL ACRES OF LAND LOCATED WEST OF THE BURNET MUNICIPAL GOLF COURSE)

1. Sale of Burnet Land. The City of Burnet, Texas, a home-rule municipality of the State of Texas, acting by and through the City of Burnet Council, desires to sell and is soliciting offers to purchase certain City of Burnet-owned land ("Burnet Land")

2. The Burnet Land. The Burnet Land is described as follows:

Approximately forty-two (42) total acres of land depicted on attached Exhibit A as follows:

- Approximately twenty (20) acres, highlighted in blue;
- Approximately eight and 2/10 (8.2) acres, highlighted in burnt orange;
- Less than one acre highlighted in white (City owns this tract in fee simple subject to an ingress and egress easement held by the adjoining landowner);
- Approximately two (2) acres, highlighted in red; and
- Approximately 11.64 acres, highlighted in green.

Note: The aforementioned 11.64 acres is more specifically described in the Warranty Deed to the City recorded in the Real Property Records of the County Clerk of Burnet County on December 26, 2001 as Record No. 014088; and the balance of the property is part of a Vesting Deed, recorded in Volume 558, Page 680 of the Deed Records of Burnet County, Texas, Deed Records of Burnet County, Texas

3. Bid Information. This Purchase Agreement and Bidding Instructions document is the official bid form that must be completed and returned by interested bidders in accordance with the instructions herein. Interested bidders must:

- (a) furnish the information requested in Section 23 below;
- (b) sign this Purchase Agreement and Bidding Instructions document ("Purchase Agreement");
- (c) provide the Bid Deposit, as described in Section 8 below; and
- (d) place the Purchase Agreement and the Bid Deposit in a sealed envelope properly identified as containing a "Bid for Purchase of Burnet Land (BURNET SURPLUS LAND BID SOLICITATION NO. 2020-001)" addressed and delivered to:

City of Burnet
% City Manager
PO Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

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It is the bidder's sole responsibility to deliver the bid documents properly completed, on time, to the proper location.

4. ANY PARTY THAT ELECTS TO INSPECT THE BURNET LAND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BURNET (“CITY”) ITS OFFICERS, EMPLOYEES, AGENTS AND FIDUCIARIES (COLLECTIVELY THE “INDEMNIFIED PARTIES”) FROM ANY AND ALL DAMAGES, CLAIMS AND LOSSES OF ANY NATURE, INCLUDING THOSE ASSOCIATED WITH PROPERTY DAMAGE, PERSONAL INJURY, BODILY INJURY, OR DEATH, ATTORNEY'S FEES AND COURT COSTS, ARISING FROM THE PARTY'S OR THE PARTY'S AGENTS OR CONTRACTORS PRESENCE ON OR USE OR INSPECTION OF THE BURNET LAND (INCLUDING ANY ENVIRONMENTAL ASSESSMENTS PERFORMED ON THE BURNET LAND) OR THE CONDITION OF THE BURNET LAND. IT IS THE EXPRESS INTENT OF THE PARTIES HERETO THAT THIS INDEMNITY SHALL APPLY TO AND PROTECT THE INDEMNIFIED PARTIES FROM DAMAGES CAUSED BY THE INDEMNIFIED PARTIES' SOLE AND/OR CONCURRENT NEGLIGENCE AND/OR STRICT LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL OVERRIDE AND CONTROL ANY CONTRARY PROVISIONS IN THE TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 101). THE OBLIGATIONS OF A PARTY TO INDEMNIFY THE INDEMNIFIED PARTIES AS PROVIDED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF WHETHER SUCH PARTY SUBMITS A BID TO PURCHASE THE BURNET LAND OR WHETHER SUCH PARTY'S BID IS ACCEPTED BY CITY. THIS SECTION 4 SHALL SURVIVE CLOSING OF THIS PURCHASE AGREEMENT IF SUCH PARTY'S BID IS ACCEPTED BY CITY. ALL ENTRIES ONTO THE BURNET LAND SHALL BE CONDITIONED UPON SUCH INTERESTED PARTY'S EXECUTION OF THE “RELEASE AND INDEMNITY AGREEMENT” ATTACHED HERETO AS EXHIBIT “B”.
5. Bid Due Date. Sealed bids will be received until Friday, October 2, 2020, (the “Bid Deadline”) at the address shown in Section 3. above.
6. Notice of Acceptance. City will give notice of the acceptance of a bid to the successful bidder (the “Successful Bidder”), if any, within sixty (60) days after the Bid Deadline. Bids shall expire and are automatically rejected by City if not accepted within sixty (60) days of the Bid Deadline.
7. Title Exceptions. The Burnet Land will be conveyed by special warranty deed and subject to (i) all visible and apparent easements (ii) all matters of record relating to the Burnet Land as shown in the Real Property Records of Burnet County, Texas, and (iii) all applicable zoning, platting and other governmental ordinances, laws, rules and regulations (collectively, the “Permitted Exceptions”). City makes no representations about whether the Burnet Land has access to any public right of way. Additionally, the Successful Bidder must obtain any applicable permits for Successful Bidder’s use of the Burnet Land and Successful Bidder must assemble the Burnet Land with any adjoining property owned by Successful Bidder and plat such properties, to the extent required by the Burnet Code of Ordinances, which obligations shall survive Closing.
8. Bid Deposit. All bids must be accompanied by an earnest money bid deposit (“Bid Deposit”) in the form of a cashier’s check made out to City of Burnet in the amount of five (5) percent of the

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bid amount. If a bid is not accepted by City, the cashier's check will be returned to the unsuccessful bidder at the address provided by bidder in Section 23 within 10 business days of the date that the bid is rejected. The Successful Bidder's Bid Deposit shall be nonrefundable except in the event of a default by City under this Agreement or as provided in Section 11 or Section 14; but shall be applied to the Bid Price (as defined in Section 23 below) at Closing, if and only if Closing occurs hereunder.

9. Special terms. Special terms and conditions by which the Burnet Land is offered for sale are as follows:
- (a) **Best Value.** The Burnet Land is adjacent to the Burnet Municipal Golf Course. Preservation of the function and aesthetics of Burnet Municipal Golf Course is of paramount importance. Consequently, when considering bid proposals, in addition to bid price, City Council shall consider the bidder's plan to preserve and enhance the Burnet Municipal Golf Course. As a point of clarification, it does not serve the public good to award the Burnet Land to the highest bidder if that bidder's plan to develop the Burnet Land impairs the value of the Burnet Municipal Golf Course. At minimum, bidders should provide preliminary plans for development of the Burnet Land demonstrating the vision to preserve and enhance the Burnet Municipal Golf Course.
 - (b) **No partial sale.** The approximately 42-acre Burnet Land shall be sold as one transaction and the City shall not entertain offers to purchase anything less than the entire Burnet Land as shown on Exhibit "A."
 - (c) **Minimum price.** The minimum price the City shall accept for the Burnet Land is \$9,000.00 per acre.
 - (d) **Purchase price adjustments for acreage increase/decrease.** The acreage of the Burnet Land is approximated at 42-acres (the "Base Area"); however, the actual acreage contained within the boundaries of the Burnet Land will not be ascertained until a survey, as contemplated by Section 14, is completed. In the event the survey reflects a land area greater than or less than the Base Area, the purchase price shall be increased or decrease (as the case may be) to a price which is equal to the actual total acreage reflected by the survey, multiplied by the price per acre offered by the successful bidder.
 - (e) **Utility and access easements.** The City shall retain utility easements within the property. The actual determination of the easement location shall be determined by the survey. The land highlighted in white on Exhibit "A" is encumbered by an ingress and egress easement held by the adjoining landowner.
 - (f) **Burnet Municipal Golf Course Easement.** In addition, the City shall reserve a 25-foot-wide easement along the perimeter of the Delaware Springs Municipal Golf Course. The purpose of this easement is to provide a buffer between the golf course and the adjoining lots. The use of the easement shall be restricted to a vegetation buffer and no fence or structure shall be permitted within the easement. No monetary credit against the purchase price shall be given for reservation of the easement protecting the golf course; however the successful bidder will be entitled to a parkland dedication credit (to offset parkland dedication

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obligations when subdividing the Burnet Land) equal to the total area of the easement buffer protecting the golf course. The actual determination of the easement location shall be determined by the survey.

- (g) **Burnet Municipal Golf Course protection.** As the land highlighted in blue and burnt orange on Exhibit “A” directly connects to the Burnet Municipal Golf Course the City shall have sole discretion to direct the surveyor to survey that land in a manner that protects the Tee-box and other elements of the Burnet Municipal Golf Course.
- (h) **Restrictions on use of Burnet Land.** The use of the developable Burnet Land shall be restricted to development of single-family, duplex, triplex, quadplex and multi-family housing subdivisions.
- (i) **Special Warranty Deed.** The property shall be conveyed by Special Warranty Deed substantially similar to **Exhibit “C.”** Although the City may agree to slight modifications to the Reservation and Covenants and Conditions paragraphs stated in Exhibit “C” the conveying instrument shall reserve the easements and restrict the use of the Burnet Land as stated in this Section.
- (j) **Survival of closing.** The terms and conditions, including but not limited to the purchase price adjustment and open space credit provisions, shall survive closing.

10. As Is Condition. **THE BURNET LAND WILL BE CONVEYED IN ITS PRESENT “AS IS” CONDITION. IF THE PURCHASE AGREEMENT CLOSES, SUCCESSFUL BIDDER ACCEPTS THE BURNET LAND IN ITS PRESENT CONDITION. SUCCESSFUL BIDDER ACKNOWLEDGES THAT IT IS NOT RELYING UPON THE ACCURACY OR COMPLETENESS OF ANY REPRESENTATION, BROCHURE, RENDERING, PROMISE, STATEMENT OR OTHER ASSERTION OR INFORMATION WITH RESPECT TO THE BURNET LAND MADE OR FURNISHED BY OR ON BEHALF OF, OR OTHERWISE ATTRIBUTED TO, THE CITY OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, ANY AND ALL SUCH RELIANCE BEING HEREBY EXPRESSLY AND UNEQUIVOCALLY DISCLAIMED, BUT IS RELYING SOLELY AND EXCLUSIVELY UPON ITS OWN EXPERIENCE AND ITS INDEPENDENT JUDGMENT, EVALUATION AND EXAMINATION OF THE BURNET LAND. SUCCESSFUL BIDDER FURTHER UNEQUIVOCALLY DISCLAIMS (I) THE EXISTENCE OF ANY DUTY TO DISCLOSE ON THE PART OF CITY OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIONS AND (II) ANY RELIANCE BY SUCCESSFUL BIDDER ON THE SILENCE OR ANY ALLEGED NONDISCLOSURE OF CITY OR ANY OF IT AGENTS, EMPLOYEES OR REPRESENTATIVES. SUCCESSFUL BIDDER TAKES THE BURNET LAND UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT FOR LIMITED WARRANTIES OF TITLE SET FORTH IN THE CLOSING DOCUMENTS). SUCCESSFUL BIDDER EXPRESSLY WARRANTS AND REPRESENTS THAT NO PROMISE OR AGREEMENT WHICH IS NOT HEREIN EXPRESSED HAS BEEN MADE TO IT AND HEREBY DISCLAIMS ANY RELIANCE UPON ANY SUCH ALLEGED PROMISE OR AGREEMENT. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES.**

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SUCCESSFUL BIDDER HAS AGREED TO DISCLAIM RELIANCE ON CITY AND TO ACCEPT THE CITY LAND “AS-IS” WITH FULL AWARENESS THAT THE BURNET LAND’S PRIOR USES OR OTHER MATTER COULD AFFECT ITS CONDITION, VALUE, SUITABILITY OR FITNESS; AND SUCCESSFUL BIDDER CONFIRMS THAT SUCCESSFUL BIDDER IS HEREBY ASSUMING ALL RISK ASSOCIATED THEREWITH. SUCCESSFUL BIDDER UNDERSTANDS THAT THE DISCLAIMERS OF RELIANCE AND OTHER PROVISIONS CONTAINED HEREIN COULD LIMIT ANY LEGAL RECOURSE OR REMEDY SUCCESSFUL BIDDER OTHERWISE MIGHT HAVE. SUCCESSFUL BIDDER ACKNOWLEDGES THAT IT HAS SOUGHT AND HAS RELIED UPON THE ADVICE OF ITS OWN LEGAL COUNSEL CONCERNING THIS PROVISION. PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING AND SHALL NOT MERGE, AND ARE ALSO INCLUDED IN THE SPECIAL WARRANTY DEED.

11. Inspections and Assessments of Burnet Land. Within ninety (90) calendar days of the date that the notice of acceptance described in Section 6 above is delivered to the Successful Bidder (the “Inspection Period”), the Successful Bidder shall conduct, at the Successful Bidder’s sole cost, any inspections and environmental assessments on the Burnet Land that the Successful Bidder may elect, subject to the indemnity and other provisions of Section 4 of this Agreement, and shall secure any financing needed to purchase the Burnet Land. The Successful Bidder’s failure to conduct inspections and environmental assessments and secure financing shall not excuse the Successful Bidder from any obligations under this Agreement. However, in the event that the Successful Bidder obtains a Phase I environmental site assessment of the Burnet Land (“Successful Bidder’s Phase I”) from an Environmental Professional (as defined in 40 CFR Part 312.10(b)) on or before the expiration of the Inspection Period recommends a Phase II environmental site assessment or other invasive environmental site assessment be performed on the Burnet Land, then in such case, if a copy of the Successful Bidder’s Phase I is delivered to City within the Inspection Period, the Successful Bidder may terminate this Agreement by delivering written notice to City within the Inspection Period and receive back the Bid Deposit. If an Environmental Professional (as defined in 40 CFR Part 312.10(b)) desires to communicate with City, the communication must be in writing and delivered to City at the address stated in Section 20, below. The Successful Bidder may not conduct a Phase II environmental site assessment on the Burnet Land, or other invasive tests, including boring and drilling, upon the Burnet Land, without City’s prior written consent, a condition of which shall be City approval, in City reasonable discretion, of Successful Bidder’s plan for conducting such Phase II environmental site assessment or other invasive tests on the Burnet Land.
12. Closing Documents from City. City will convey the Burnet Land to the Successful Bidder by Special Warranty Deed (the “Deed”) in the form attached hereto as Exhibit “C”. The Deed shall be countersigned by the Successful Bidder to evidence acceptance of the terms contained therein. City and the Successful Bidder agree to execute any other closing documents that may be reasonably required by the Title Company.
13. Closing. The closing date (“Closing”) will be on the first business day occurring ten (10) calendar days after expiration of the Inspection Period for conducting any inspections and environmental assessments on the Burnet Land described in Section 11 above, or on such earlier date as City

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and Successful Bidder shall mutually agree. The Closing will be at the office of the following title company ("Title Company"):

Attorney Abstract
117 E. Jackson Street
Burnet, Texas 78611

At Closing, the Successful Bidder shall: (i) pay the Bid Price (as defined in Section 23), as reduced by the Bid Deposit previously paid to City, and as may be adjusted (as defined in Section 9), in cash or immediate good funds equivalent; and, (ii) Successful Bidders portion of closing costs as described in Section 17.

14. Title Policy and Survey. Within fifteen (15) calendar days of the date that the notice of acceptance described in Section 6 above is delivered to the Successful Bidder City shall provide a preliminary commitment for title insurance for the Burnet Land and for all easements and rights of way benefiting the Burnet Land (collectively the "Insured Burnet Land"), to be issued in accordance with the terms hereof. Within said fifteen (15) calendar day period Title Company shall furnish Successful Bidder, with true legible copies of all documents affecting title to the Insured Burnet Land. Successful Bidder may object to any exception(s) contained in such commitment by providing written notice of such to City on or before five (5) days following Successful Bidder's receipt of the Survey (as hereinafter defined). Any exceptions contained in such preliminary title commitment to which Successful Bidder fails to object in this manner and within this period shall be deemed permitted by Successful Bidder ("Permitted Title Exceptions").

In the event either the preliminary commitment for title insurance or the true legible copies are not timely delivered to Successful Bidder a day shall be added to the Section 11 Inspection Period for each day of delay; provided, however, Successful Bidder may terminate this Agreement pursuant to Section 19, should either the preliminary commitment for title insurance or the true legible copies are not delivered to Successful Bidder within thirty (30) calendar days of the date that the notice of acceptance described in Section 6 above is delivered to the Successful Bidder.

City shall have until ten (10) days preceding Closing within which to remove all such defects or objections made by in respect to matters affecting title or matters disclosed on the survey at its sole cost and expense. City shall not be required to incur any cost to do so in excess of City's administrative costs, nominal fees to governmental agencies or utility providers, and other costs, not to exceed One Thousand and no/100 Dollars (\$1,000.00); provided however, if City's costs are anticipated to exceed One Thousand and no/100 Dollars (\$1,000.00), Successful Bidder shall have the option to (a) cancel this Agreement and receive a full refund of the Bid Deposit less Ten and no/ 100 Dollars (\$10.00) to be delivered to the City as consideration for this Agreement and for Successful Bidder's termination rights during the Title Review Period, or (b) waive Successful Bidder's objections and accept such title as City is able to convey, or (c) have the option of paying City's costs to cure such title objection in excess of One Thousand and no/100 Dollars (\$1,000.00).

Within thirty (30) days following the date that the notice of acceptance described in Section 6 above is delivered, City shall provide, at Successful Bidder's sole expense, an updated Land Title

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Survey ("Survey") of the Burnet Land as required by the Title Company. As the City has public utilities placed on the Burnet Land, in locations not currently designated as easements, the surveyor shall show on the survey, at the direction of the City, such public utilities locations as public utility easements or public rights-of-way easements. Successful Bidder may object to any items or conditions shown upon such Survey, including any encroachments on the Burnet Land, which show the Burnet Land, or any of it, not to be in conformity with the representations and warranties contained herein or which items or conditions, in Successful Bidder's opinion and in its sole discretion, may otherwise in any way affect title or Successful Bidder's Intended Use (as hereinafter defined) and any items or conditions affecting the Burnet Land which are not shown upon the Survey. Successful Bidder shall make such objections ("Survey Objections") by providing written notice thereof to City on or before five (5) days following Successful Bidder's receipt of the Survey. Any items or conditions to which Successful Bidder fails to object in this manner and within this time period shall be deemed permitted by Successful Bidder ("Permitted Survey Exceptions").

In the event the Survey is not timely delivered to Successful Bidder a day shall be added to the Section 11 Inspection Period for each day of delay; provided, however, Successful Bidder may terminate this Agreement pursuant to Section 19, should the Survey not be delivered to Successful Bidder within sixty (60) calendar days from the date that the notice of acceptance described in Section 6 above is delivered to the Successful Bidder.

The legal description contained upon the Survey, as approved by the Successful Bidder, shall be inserted as the description contained in the deed referenced in Section 12. City shall have until ten (10) days preceding Closing within which to remove all Successful Bidder's Survey Objections at City's sole cost and expense. City shall diligently and in good faith attempt to cure the conditions giving rise to Successful Bidder's objections. City shall not be required to incur any cost to do so in excess of City's administrative costs, nominal fees to governmental entities or utility providers, and other costs not to exceed One Thousand and no/100 Dollars (\$1,000.00); provided however, if City's costs are anticipated to exceed One Thousand and no/100 Dollars (\$1,000.00), Successful Bidder shall have the options of (a) cancel this Agreement and receive a full refund of the Bid Deposit less Ten and No/ 100 Dollars (\$10.00) to be delivered to the City as consideration for this Agreement and for Successful Bidder's termination rights during the Survey Review Period, or (b) waive Successful Bidder's objections and proceed with this Agreement notwithstanding the same.

At Closing, the Title Company shall issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance (the "Owner's Title Policy") but modified to be consistent with the Title Commitment, in the aggregate amount of the Purchase Price, with such Title Commitment, and such Owner's Title Policy when issued, setting forth the state of title to the Burnet Land and all exceptions thereto including, without limitation, easements, restrictions, restrictive covenants, other covenants, rights-of-way, liens, reservations and other conditions or encumbrances, if any, affecting or relating to the Burnet Land and insuring title vested in Successful Bidder, subject only to the Permitted Title Exceptions. City shall be responsible for the costs of the aforementioned Texas Owner's Policy of Title Insurance. Successful Bidder is responsible for all costs for any additional endorsements or modifications to such title policy.

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15. Proration. The Burnet Land is currently exempt from real property taxes. Taxes for the year of Closing and future years will be the obligation of the Successful Bidder. If this transfer or the Successful Bidder's use of the Burnet Land after Closing results in the assessment of additional taxes, penalties or interest, including without limitation "rollback taxes" (the "Assessments") for periods prior to Closing, the Assessments will be the obligation of the Successful Bidder. Obligations imposed by this Section 15 shall survive Closing.
16. Broker's Commissions. Successful Bidder and City each represent to the other that neither has entered into any agreement or incurred any obligation which might result in the obligation to pay a sales or brokerage commission or finder's fee with respect to this transaction. Therefore, Successful Bidder shall indemnify and hold harmless City from the commission, fee or claim of any person, firm or corporation employed or retained or claiming to be employed or retained by Successful Bidder to bring about, or to represent it in, the transactions contemplated hereby. City will indemnify and hold harmless Successful Bidder from the commission, fee or claim of any person, firm or corporation employed or retained or claiming to be employed or retained by City to bring about, or to represent them in the transactions contemplated hereby. This obligation to indemnify under this Section 16 shall survive Closing.
17. Closing Costs. Any escrow fee charged by Title Company shall be paid equally by City and the Successful Bidder. Each party will be responsible for paying its own attorney's fees and the cost of recording any documents delivered to it or them at Closing. City shall pay the costs for the title policy; save and except the costs for any additional endorsements or modifications to such title policy, which shall be borne by Successful Bidder. The costs of the Survey shall be borne by Successful Bidder. All other closing costs are as set forth in this Purchase Agreement.
18. Intentionally omitted.
19. Default. If for any reason the Successful Bidder fails to comply with any of the provisions of this Purchase Agreement, or if any of the representations or warranties of the Successful Bidder contained in this Purchase Agreement are incorrect or become incorrect or untrue, City, at its election, may (i) terminate this Purchase Agreement and retain the Bid Deposit, (ii) waive any unmet requirements and proceed to Closing, (iii) enforce specific performance of this Purchase Agreement, or (iv) pursue any remedies it may have at law or in equity. If City fails to comply with this Purchase Agreement, the Successful Bidder's sole and exclusive remedy under this Purchase Agreement shall be to terminate this Agreement, and so long as the Successful Bidder is not also in default, the Bid Deposit shall be returned by City to the Successful Bidder.
20. Property Information. City has obtained information on the Burnet Land, set forth in more detail in Exhibit "D" attached hereto (the "Property Information Documents"), which will be made available to all prospective Bidders. Copies of this information may be obtained from:

City of Burnet
City Secretary
PO Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

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City does not make any representation or warranty as to the quality, accuracy or completeness of any data or information contained in the Property Information Documents, and advises the Successful Bidder to independently verify any such data or information. If the Property Information Documents include a Phase I environmental assessment, City does not warrant whether it will qualify Successful Bidder as an “innocent purchaser” under CERCLA, 42 USC 9601 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361 et seq., and City recommends that the Successful Bidder conduct its own environmental assessment of the Burnet Land. Further, City does not represent or warrant that the Property Information Documents constitute all the documents in City possession related to the Burnet Land.

21. Notices. Any notices to be given hereunder by or to the Successful Bidder shall be given by transmitting by fax machine to the number shown below, placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other addresses as the respective party may direct in writing to the other, or by personal or overnight delivery to such address, and such notice shall be deemed delivered upon such fax transmission with proof of transmission, placing in the mail, or upon such personal or overnight delivery:

(a) CITY

(b) BIDDER

City of Burnet
% City Manager
PO Box 1369
1001 Buchanan Drive, Suite 4

As set out in Section 23 below.

Burnet, Texas 78611
Fax: 512-756-8586

22. Right to Reject. City reserves the right to reject any and all offers to purchase the Burnet Land and nothing in this Agreement shall require City to accept any offer or to complete a sale of the Burnet Land.

23. Bid Information.

(a) SURPLUS PROPERTY: **Bid Solicitation No. 2020-001**
Approximately 42acres west of Delaware Springs Golf Course.

(b) BIDDER:

Name: _____

Address: _____

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Phone: _____
Fax: _____

- c. BID PRICE: \$ _____ (the "Bid Price")
- d. Preliminary Plans for development of Burnet Land (attached).

24. Disclaimers.

- (a) **Notice Regarding Title.** THE TEXAS REAL ESTATE LICENSE ACT REQUIRES A REAL ESTATE AGENT TO ADVISE A BUYER THAT BUYER SHOULD HAVE AN ATTORNEY EXAMINE AN ABSTRACT OF TITLE TO THE PROPERTY BEING PURCHASED; OR A TITLE INSURANCE POLICY SHOULD BE OBTAINED. NOTICE TO THAT EFFECT IS HEREBY GIVEN TO BIDDER.
- (b) **Notice Regarding Possible Liability for Additional Taxes (Texas Property Code-Section 5.010).** If for the current ad valorem tax year the taxable value of the Burnet Land that is the subject of this Purchase Agreement is determined by a special appraisal method that allows for appraisal of the Burnet Land at less than its market value, the person to whom the Burnet Land is transferred may not be allowed to qualify the Burnet Land for that special appraisal in a subsequent tax year and the Burnet Land may then be appraised at its full market value. In addition, the transfer of the Burnet Land or a subsequent change in the use of the Burnet Land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the Burnet Land. The taxable value of the Burnet Land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the Burnet Land is located.
- (c) **Annexation Disclosures.** The Burnet Land is located within the corporate limits of the City of Burnet Texas.
- (d) **Utility District.** The Burnet Land is not located within a Utility District.
- (e) **Notice of Water and Sewer Service.** The Burnet Land is located in the water service area of the City of Burnet, which is the utility service provider authorized by law to provide water service to the Burnet Land, and the City of Burnet is the sewer service provider. There may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to the Burnet Land. You are advised to contact the City of Burnet to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to the Burnet Land.

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(f) **Property Condition Disclosure.** The Successful Bidder agrees and acknowledges that any dwelling or residential building, if any, located on the Burnet Land has a value less than five percent (5%) of the overall value of the Burnet Land and therefore City is not required to submit any property condition disclosure pursuant to Texas Property Code Sec. 5.008. Additionally, the Successful Bidder agrees and acknowledges that the Burnet Land is not “residential real property” subject to any federally mandated lead paint disclosures.

25. Entire Agreement. This Purchase Agreement and the Exhibits attached hereto contain all agreements between the parties hereto and no agreement not contained herein shall be recognized by the parties. The captions used herein are for convenience only and shall not be used to construe this Purchase Agreement. Exhibits “A” - “D” attached hereto are incorporated herein for all purposes.
26. Governing Law. This Purchase Agreement shall be governed by the laws of the State of Texas and is performable in Burnet County, Texas.
27. Binding Effect. By signing below, the bidder agrees that if City accepts the Bid Price, bidder will purchase the Burnet Land for the Bid Price in accordance with the provisions hereof and will comply with and be bound by the terms and conditions set out herein. All representations, warranties, covenants and obligations of bidder herein shall survive Closing.

Signature pages to follow.

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IN WITNESS WHEREOF, the party submitting this bid has caused this Purchase Agreement for Burnet Land described herein to be duly executed and delivered (in the case of a party that is an entity, by their proper and duly authorized officer) as of the day and year written below, and each undersigned represents and warrants to City that such person has the authority to execute and deliver this Purchase Agreement on behalf of the person or entity for which he/she is signing.

EXECUTED by Bidder this _____ day of _____, 2020.

BIDDER: _____
Name: _____
Title: _____

*If there is more than one bidder, each bidder must sign.

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____ known by me to be the person whose name is subscribed to the foregoing instrument and that such person has executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this _____ day of _____, 2020.

NOTARY PUBLIC, STATE OF TEXAS

[Seal]

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[Seal]

CITY OF BURNET

Bid accepted by CITY this _____ day of _____, 2020.

CITY OF BURNET

By: _____
Crista Goble Bromley, Mayor

ATTEST

Kelly Dix, City Secretary

Exhibits:

- Exhibit "A" - Description of Burnet Land
- Exhibit "B" - Release and Indemnity Agreement
- Exhibit "C" - Form of Special Warranty Deed
- Exhibit "D" - List of Property Information Documents

RECEIPT OF PURCHASE AGREEMENT AND INSTRUCTIONS

Receipt of the foregoing Purchase Agreement and Instructions is hereby acknowledged on this _____ day of _____, 2020.

BURNET ABSTRACT & TITLE CO

By: _____

Printed Name: _____

Title: _____

EXHIBIT "A"

DESCRIPTION OF CITY LAND

EXHIBIT "B"

RELEASE AND INDEMNITY AGREEMENT

In consideration for receiving permission from the City of Burnet ("CITY") to enter upon the real property located in Burnet, County, Texas and described on Exhibit "A" attached hereto and incorporated herein (the "Property"), the undersigned ("Releasor") hereby agrees to and acknowledges the following:

1. COMPLIANCE WITH RULES AND SAFETY REQUIREMENTS. Releasor and its agents, employees and contractors shall at all times during their entry upon the Property cooperate and comply with all rules and safety requirements for the Property.

2. RESTORATION. Following Releasor's entry upon the Property, Releasor must restore at no cost to CITY any damage to the Property caused by Releasor or its agents, employees and contractors.

3. RELEASE. The City of Burnet ("CITY") and CITY and their officers, employees, agents and fiduciaries shall not be liable for any injury, loss or damage suffered by Releasor or its agents, employees and contractors on or upon the Property **EVEN IF SUCH INJURY, LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR WILLFUL ACT OF CITY OR CITY, THEIR AGENTS, EMPLOYEES OR CONTRACTORS, OR ANY OTHER PERSON OPERATING AT THE PROPERTY.**

4. INDEMNIFICATION. **RELEASOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS CITY AND CITY, THEIR OFFICERS, EMPLOYEES, AGENTS AND FIDUCIARIES (COLLECTIVELY "THE INDEMNIFIED PARTIES") FROM ANY AND ALL DAMAGES, CLAIMS AND LOSSES OF ANY NATURE, INCLUDING THOSE ASSOCIATED WITH PROPERTY DAMAGE, PERSONAL INJURY, BODILY INJURY, OR DEATH, ATTORNEY'S FEES AND COURT COSTS, ARISING FROM THE RELEASOR'S OR THE RELEASOR'S AGENTS' OR CONTRACTORS' PRESENCE ON OR USE OR INSPECTION OF THE PROPERTY (INCLUDING ANY ENVIRONMENTAL ASSESSMENTS PERFORMED ON THE PROPERTY) OR THE CONDITION OF THE PROPERTY. IT IS THE EXPRESS INTENT OF THE PARTIES HERETO THAT THIS INDEMNITY SHALL APPLY TO AND PROTECT THE INDEMNIFIED PARTIES FROM DAMAGES CAUSED BY THE INDEMNIFIED PARTIES' SOLE AND/OR CONCURRENT NEGLIGENCE AND/OR STRICT LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL OVERRIDE AND CONTROL ANY CONTRARY PROVISIONS IN THE TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 101).**

Signature page to follow.

5. BINDING EFFECT. This agreement is binding upon Releasor and its successors. This agreement may not be assigned by Releasor.

To be effective as of this _____ day of _____, 2020

RELEASOR:

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____
_____, _____ of _____, known by me to
be the person whose name is subscribed to the foregoing instrument and that such person has executed
the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this _____ day of _____, 2020.

NOTARY PUBLIC, STATE OF TEXAS

[Seal]

EXHIBIT "C"

FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

SPECIAL WARRANTY DEED

Effective Date: _____

Grantor: City of Burnet, Texas

Grantor's Mailing Address: 1901 5th Street, Burnet, Burnet County, TX 77414

Grantee:

Grantee's Mailing Address:

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements): Being approximately _____ acres located in Burnet County, Texas, and being more particularly described in the metes and bounds and survey, attached hereto as Exhibit A and Exhibit "B" respectively and made a part hereof for all purposes (the "Property").

Exceptions to Conveyance: All visible and apparent easements, all applicable zoning, platting and other governmental ordinances, laws, rules and regulations, and all matters of record relating to the Property as shown in the Real Property Records of Burnet County, Texas. The Property may not have access to a public right of way.

Reservations from Conveyance: Grantor reserves from this conveyance the following:

- (a) Public Utility Easement. As shown on Exhibit "B" Grantor retains easements for the above, and below ground, placement, use, maintenance, repair, replacement and expansion of public utilities, including, but not limited to water, wastewater, drainage and electrical facilities.
- (b) Delaware Spring Municipal Golf Course Vegetation Buffer Easement. As shown on Exhibit "B" Grantor retains a 25-foot wide easement between that area of the Property abutting Delaware Spring Municipal Golf Course. The purpose of this easement is to provide a natural vegetation buffer between the Property and the Delaware Spring Municipal Golf Course greens and fairways. Grantee shall not disturb the soil within the Delaware Spring Municipal Golf Course Vegetation Buffer Easement area in any manner. The following is strictly prohibited within the Delaware Spring Municipal Golf Course Vegetation Buffer Easement area: (i) placement of any improvement or storage of any personal property; placement of any fencing; or operation of any motorized vehicle. Grantee shall maintain the Delaware Spring Municipal Golf Course Vegetation Buffer Easement in its natural state to the maximum practical extent. Grantor retains the right limit access to the Delaware Spring Municipal Golf Course Vegetation Buffer Easement area by: (i) placing and maintaining warning signs, identifying the easement area; and (ii) installing fencing, to protect all or part of the easement area from trespass.

COVENANTS AND CONDITIONS RESTRICTING THE USE OF THE PROPERTY: The following provisions shall be deemed as covenants running with the land, and conditions of grant, inuring to the benefit of Grantor:

- (a) The Property shall not be used for any purpose other than single family, duplex, triplex, quadplex and multi-family residential uses those uses reasonably necessary to support such residential uses, including an on-site storm-water retention pond and parks and recreational amenities as may be reflected on the plat of the Subdivision.
- (b) Grantee shall protect and maintain the Delaware Spring Municipal Golf Course Vegetation Buffer Easement reserved to Grantor.
- (c) Grantor may enforce these covenants by any manner authorized by law or equity.
- (d) As provided in Texas Property Code Section 5.006, upon prevailing on an action to enforce these covenants, Grantor shall be awarded its attorney fees, in addition to Grantor's costs and claim.

Grantor, for the Consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from and Exceptions to Conveyance and Warranty, when the claim is by, through or under Grantor, but not otherwise; but without any other warranty of any kind or nature, and without limitation on such disclaimer of warranties.

By accepting this deed, Grantee acknowledges that the **PROPERTY IS BEING CONVEYED IN ITS PRESENT "AS IS" CONDITION AND GRANTEE ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION. GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON THE ACCURACY OR COMPLETENESS OF ANY REPRESENTATION, BROCHURE, RENDERING, PROMISE, STATEMENT OR OTHER ASSERTION OR INFORMATION WITH RESPECT TO THE PROPERTY MADE OR FURNISHED BY OR ON BEHALF OF, OR OTHERWISE ATTRIBUTED TO, GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, ANY AND ALL SUCH RELIANCE BEING HEREBY EXPRESSLY AND UNEQUIVOCALLY DISCLAIMED, BUT IS RELYING SOLELY AND EXCLUSIVELY UPON ITS OWN EXPERIENCE AND ITS INDEPENDENT JUDGMENT, EVALUATION AND EXAMINATION OF THE PROPERTY. GRANTEE FURTHER UNEQUIVOCALLY DISCLAIMS (I) THE EXISTENCE OF ANY DUTY TO DISCLOSE ON THE PART OF GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIONS AND (II) ANY RELIANCE BY GRANTEE ON THE SILENCE OR ANY ALLEGED NONDISCLOSURE OF GRANTOR OR ANY OF IT AGENTS, EMPLOYEES OR REPRESENTATIVES. GRANTEE TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT FOR LIMITED WARRANTIES OF TITLE SET FORTH IN THE CLOSING DOCUMENTS). GRANTEE EXPRESSLY WARRANTS AND REPRESENTS THAT NO PROMISE OR AGREEMENT WHICH IS NOT HEREIN EXPRESSED HAS BEEN MADE TO IT AND HEREBY DISCLAIMS ANY RELIANCE UPON ANY SUCH ALLEGED PROMISE OR AGREEMENT. GRANTEE HAS AGREED TO DISCLAIM RELIANCE ON GRANTOR AND TO ACCEPT THE PROPERTY "AS-IS" WITH FULL AWARENESS THAT THE PROPERTY'S PRIOR USES OR OTHER MATTER COULD AFFECT ITS CONDITION, VALUE, SUITABILITY OR FITNESS; AND GRANTEE CONFIRMS THAT GRANTEE IS HEREBY ASSUMING ALL RISK ASSOCIATED THEREWITH. GRANTEE UNDERSTANDS THAT THE DISCLAIMERS OF RELIANCE AND OTHER PROVISIONS CONTAINED HEREIN COULD LIMIT ANY LEGAL RECOURSE OR REMEDY GRANTEE OTHERWISE MIGHT HAVE. GRANTEE ACKNOWLEDGES THAT IT HAS SOUGHT AND HAS RELIED UPON THE ADVICE OF ITS OWN LEGAL COUNSEL CONCERNING THIS PROVISION.**

When the context requires, singular nouns and pronouns include the plural.

This conveyance is being made subject to ad valorem taxes for the year 2020 and all subsequent years, which are assumed by Grantee. Any "rollback" taxes assessed against the Property are hereby assumed by Grantee.

Remainder of page intentionally blank and signature page to follow.

GRANTOR:

CITY OF BURNET:

By: _____
Crista Goble Bromley, Mayor

STATE OF TEXAS §
COUNTY OF BURNET §

This instrument was acknowledged before me on this _____ day of _____, 2020 by Crista Goble Bromley in her capacity as mayor of the City of Burnet.

[Seal]

NOTARY PUBLIC, STATE OF TEXAS

ACCEPTED BY GRANTEE:

By: _____

Printed Name: _____

Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2020 by _____) _____ in his/her capacity as _____ of _____.

[Seal]

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

TO FORM OF SPECIAL WARRANTY DEED

Metes and Bounds

EXHIBIT B

TO FORM OF SPECIAL WARRANTY DEED

Survey

EXHIBIT "D"

LIST OF PROPERTY INFORMATION DOCUMENTS

Burnet Abstract and Title Insurance Title Commitment, the commitment is ordered and will be published as part of this request for bids when made available by the title company.

Vesting Deed, recorded in Volume 558, Page 680 of the Deed Records of Burnet County, Texas, Deed Records of Burnet County, Texas

Vesting Deed, recorded in Volume 1032, Page 0988 of the Deed Records of Burnet County, Texas, Deed Records of Burnet County, Texas

Boundary Agreement, recorded as Document No. 201401086 of the Deed Records of Burnet County, Texas, Deed Records of Burnet County, Texas