



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

Notice is hereby given that a **Regular City Council Meeting** will be held by the governing body of the City of Burnet on the **28th day of April, 2020** at **3:00 p.m.** in the Council Chambers, Burnet Municipal Airport, 2402 S. Water, Burnet, Tx. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. A Zoom Webinar with toll free conference call capability has been established for access as follows:

Computer: Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81344341847?pwd=ZVB5VXRXeWVydHNzaGJS3BNZDMxdz09>

OR: Go to: www.zoom.us

Enter Webinar ID when prompted: 813 4434 1847 #

Enter Password when prompted: 203165 #

If you would like to address the Council with a Public Comment while logged-in online, please use the “raise your hand” feature.

By Telephone Call: 888-475-4499 or 877-853-5257 (Toll Free Numbers)

Enter Webinar ID when prompted: 813 4434 1847#

Enter Password when prompted: 203165 #

If you would like to address the Council with a Public Comment while dialed in via telephone, please use the “raise your hand” feature, by pressing *9 while on the phone.

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:

1. REPORTS/SPECIAL PRESENTATIONS: None.

2. CONSENT AGENDA ITEMS:

(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)

2.1) Approval of the April 14th, 2020 Special City Council Meeting minutes

2.2) Approval of the April 23rd, 2020 Special City Council Meeting minutes

3. PUBLIC HEARINGS: None.

4. ACTION ITEMS:

4.1) Discuss and consider action: A RESOLUTION BY THE COUNCIL OF THE CITY OF BURNET, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT MADE PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 WITH BURNET ECONOMIC DEVELOPMENT CORPORATION, REGARDING THE GRANT OF CERTAIN INCENTIVES RELATING TO IMPROVEMENTS TO A SECTION OF HOUSTON CLINTON DRIVE FOR THE BENEFIT OF BEDC'S HWY 281 SOUTH BUSINESS PARK; REPEALING ALL RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE: D. Vaughn

4.2) Discuss and consider action: Authorize the City Manager to execute the contracts with Gabriel, Roeder, Smith & Co (GRS) for actuarial services: P. Langford

4.3) Discuss and consider action: Appointment of members to the Burnet Economic Development Corporation Board of Directors:

4.4) Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING ORDINANCE 2019-24; THE ORIGINAL BUDGET ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020 FOR THE CITY OF BURNET, TEXAS, FUNDING ACCOUNTS IN BUDGET DUE TO UNFORESEEN SITUATIONS; CONTAINING FINDINGS PROVIDING FOR SAVINGS AND SEVERABILITY: P. Langford

4.5) Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 8.11 FAMILY AND MEDICAL LEAVE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K. Sames

4.6) Discuss and consider action: A RESOLUTION AUTHORIZING THE ACCEPTANCE OF PAYMENT OF FUNDS APPROPRIATED IN THE PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE: P.

Langford

4.7) Discuss and consider action: Engineering Services Contract with Jones and Carter: D. Vaughn

4.8) Discuss and consider action: Authorize the City Manager to execute a contract with Cuatro Consultants for services as the City Engineer for the City of Burnet: D. Vaughn

4.9) Discuss and consider action: A RESOLUTION AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF THE PAYMENT OF FUNDS THE GOVERNOR'S PUBLIC SAFETY OFFICE HAS MADE AVAILABLE FROM THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE: D. Vaughn

4.10) Discuss and consider action: Authorization to purchase a 2020 Ford Type 1 Ambulance manufactured by Frazier: M. Ingram

4.11) Discuss and consider action: Authorization to purchase a 2020 Ford Type 3 Transport Ambulance: M. Ingram

4.12) Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn

4.13) Discuss and consider action: Authorization to proceed with possible budget amendments due to COVID-19 response: D. Vaughn

5. REPORTS: None.

5.1) Addendum to the City Council Agenda: Department and Committee Reports/Briefings: The City Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

6. REQUESTS FROM COUNCIL FOR FUTURE REPORTS:

7. ADJOURN:

Dated this 24th, day, of April, 2020

CITY OF BURNET

CRISTA GOBLE BROMLEY, MAYOR

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 April 24, 2020, 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:

The City Council Chamber 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).

STATE OF TEXAS {}
COUNTY OF BURNET {}
CITY OF BURNET {}

On this the 14th day of April, 2020, the City Council of the City of Burnet, TX convened in Special Session, at 3:00 p.m., at the regular meeting place thereof with the following members present. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. This meeting of the governing body will be streamed on the City of Burnet Facebook page allowing citizens to post questions to be presented to the City Council. A telephone conference line has been established for access via telephone by calling 512-807-0370 Pin 7788; the following subjects were discussed, to-wit:

Mayor	Crista Goble Bromley (present in chambers)
Council Members call in on conference:	Danny Lester, Paul Farmer, Cindia Talamantez
	Joyce Laudenschlager, Tres Clinton, Mary Jane Shanes
City Manager	David Vaughn
City Secretary	Kelly Dix

Guests: Mark Ingram, Patricia Langford, Habib Erkan, Adrienne Feild

CALL TO ORDER: The meeting was called to order by Mayor Bromley, at 3:12 p.m.

ROLL CALL: City Secretary Kelly Dix called the Roll. Mayor Bromley was present in Chambers. Council Member Shanes, Farmer, Clinton, Talamantez, Lester and Laudenschlager called in on the zoom conference. Quorum was established.

REPORTS/SPECIAL PRESENTATIONS: COVID-19 Pandemic Update Report: D. Vaughn:

Annual Audit Report: Jaynes, Reitmeier, Boyd & Therrell, P. C.: P. Langford: Diana Ward logged into the Zoom meeting and reviewed the Comprehensive Annual Financial Report and the report on internal controls with the City Council.

Proclamation: Child Abuse Prevention Month: Mayor Bromley: Mayor Bromley presented the Proclamation declaring April 2020 Child Abuse Prevention Month.

CONSENT AGENDA ITEMS:.

(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)

Approval of the April 2, 2020 Special City Council Meeting minutes:

Council Member Joyce Laudenschlager moved to approve the consent agenda as presented. Council Member Cindia Talamantez seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all voted in favor. The motion carried unanimously.

ACTION ITEMS:

Discuss and consider action: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS EXTENDING A DECLARATION OF LOCAL DISASTER; ESTABLISHING RULES AND REGULATIONS FOR THE DURATION OF THE DISASTER; RESTRICTING CERTAIN ACTIVITIES: D. Vaughn: Council Member Joyce Laudenschlager moved to approve Ordinance 2020-09 as presented, Council Member Tres Clinton seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all voted in favor. The motion carried unanimously.

Discuss and consider action: Direction to staff pertaining to utility accounts: D. Vaughn: Council Member Cindia Talamantez made a motion authorizing the City Manager to continue to halt disconnections, waive late fees and work with citizens on a payment plan for a period not to exceed thirty days, but with an option to extend the

period if Council approved. Council Member Joyce Laudenschlager seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all voted in favor. The motion carried unanimously.

Discuss and consider action: A RESOLUTION APPROVING THE 2021 BLUEBONNET FESTIVAL MARKETING AGREEMENT WITH THE BURNET CHAMBER OF COMMERCE; AUTHORIZING THE APPROPRIATION HOTEL OCCUPANCY TAX TO FUND THE AGREEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY: D. Vaughn

Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn: Council Member Danny Lester moved to approve Resolution R2020-06 as presented. Council Member Paul Farmer seconded. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all voted in favor. The motion carried unanimously.

Discuss and consider action: Authorization to proceed with possible budget amendments due to COVID-19 response: D. Vaughn: City Manager David Vaughn reviewed fund balances, capital projects, projected revenues and expenses with Council so as to provide a synopsis of current financial impact due to the COVID-19 Pandemic. No action taken.

REQUESTS FROM COUNCIL FOR FUTURE REPORTS: Council Member Mary Jane Shanes shared with all present her grateful thanks to Doug Fipps at Delaware Golf Course for the donation of milk and eggs to LACare. ADJOURN: There being no further business a motion to adjourn was made by Council Member Joyce Laudenschlager at 4:49 p.m., seconded by Council Member Mary Jane Shanes. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all voted in favor. The motion carried unanimously.

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary

STATE OF TEXAS {}
COUNTY OF BURNET {}
CITY OF BURNET {}

On this the 23rd day of April, 2020, the City Council of the City of Burnet, TX convened in Special Session, at 3:00 p.m., at the regular meeting place thereof with the following members present. In order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19), a Declaration of a Public Health Emergency was executed by Mayor Bromley on March 19, 2020. The Council Chambers will be closed to public attendance. This meeting of the governing body will be streamed on the City of Burnet Facebook page allowing citizens to post questions to be presented to the City Council. A telephone conference line has been established for access via telephone by calling 512-807-0370 Pin 7788; the following subjects were discussed, to-wit:

Mayor	Crista Goble Bromley (present in chambers)
Council Members call in on conference:	Danny Lester, Paul Farmer, Cindia Talamantez
	Joyce Laudenschlager, Tres Clinton, Mary Jane Shanes
City Manager	David Vaughn
City Secretary	Kelly Dix

Guests: Mark Ingram, Habib Erkan, Adrienne Feild

CALL TO ORDER: The meeting was called to order by Mayor Bromley, at 3:02 p.m.

ROLL CALL: City Secretary Kelly Dix called the Roll. Mayor Bromley was present in Chambers. Council Member Shanes, Farmer, Clinton, Talamantez, Lester and Laudenschlager called in on the zoom conference. Quorum was established.

CONSENT AGENDA ITEMS: None.

ACTION ITEMS:

Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn: Fire Chief Mark Ingram informed all present:

- The current pandemic statistics.
- EMS staff is temperature checking all city employees in every department, daily and recording. So far all is well.
- The Burnet Fire Department and Burnet County Emergency Services have partnered on setting up a COVID-19 Testing site at the Burnet County Fairgrounds that will be operated every Tuesday and Thursday from 9am to Noon for the next few weeks. Information on the process to be tested is listed on the City of Burnet website and the Burnet County website.
- There will be an additional testing day on Saturday, April 25th at the Fair Grounds operated by the Military National Guard beginning at 9:00am.
- Chief Ingram expressed the need for replacement of the 2013 Ford 911 Ambulance and the 2013 Ford Transfer Van and will present the request on the April 28, 2020 City Council Agenda.

City Manager David Vaughn informed all present:

- The annual Day Out With Thomas event has been cancelled by the Austin Steam Train Association as well as the Purse Bingo event held by the Hill Country Children’s Advocacy Center.
- An item will be presented at the next City Council Meeting requesting authorization to proceed with submission of a grant to the Governor’s Office for reimbursement of expenses due to the pandemic.
- Staff is currently contacting delinquent utility accounts to set up payment plans.

Discuss and consider action: Authorization to proceed with possible budget amendments due to COVID-19 response: D. Vaughn: No action taken.

REQUESTS FROM COUNCIL FOR FUTURE REPORTS: Council Member Tres Clinton requested a daily use report for all ambulances and transport vehicles.

ADJOURN: There being no further business a motion to adjourn was made by Council Member Mary Jane Shanes at 3:35 p.m., seconded by Council Member Joyce Laudenschlager. City Secretary Kelly Dix called a roll vote. Council Members Lester, Shanes, Laudenschlager, Clinton, Farmer, Talamantez and Mayor Bromley all

voted in favor. The motion carried unanimously.

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



Administration

ITEM 3.1

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: April 28, 2020

Agenda Item: Discuss and consider action: A RESOLUTION BY THE COUNCIL OF THE CITY OF BURNET, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT MADE PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 WITH BURNET ECONOMIC DEVELOPMENT CORPORATION, REGARDING THE GRANT OF CERTAIN INCENTIVES RELATING TO IMPROVEMENTS TO A SECTION OF HOUSTON CLINTON DRIVE FOR THE BENEFIT OF BEDC'S HWY 281 SOUTH BUSINESS PARK; REPEALING ALL RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation:

RESOLUTION R2020-07

A RESOLUTION BY THE COUNCIL OF THE CITY OF BURNET, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT MADE PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 WITH BURNET ECONOMIC DEVELOPMENT CORPORATION, REGARDING THE GRANT OF CERTAIN INCENTIVES RELATING TO IMPROVEMENTS TO A SECTION OF HOUSTON CLINTON DRIVE FOR THE BENEFIT OF BEDC'S HWY 281 SOUTH BUSINESS PARK; REPEALING ALL RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, under Chapter 380 of the Texas Local Government Code, City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;

WHEREAS, Burnet Economic Development Corporation's ("BEDC") was established by the City Council of the City of Burnet as a Type B Economic Development Corporation in part for creating new economic development opportunities in the community; and

WHEREAS, BEDC, in furtherance of such purpose the BEDC purchased a 13.51 acre parcel on the west side of U. S. HWY 281 South (the "Property"); and

WHEREAS, BEDC desires to make improvements to the segment of Houston Clinton Drive abutting the property and provide utilities to the Property in order to make the Property more attractive for economic development; and

WHEREAS, City Council finds that the development of the Property, will contribute to the economic development of the City by the potential creation of new jobs and increased employment, generating, increased development, increased real property value and tax revenue for the City, increased related neighborhood services and shall have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

WHEREAS, City desires to offer incentives to BEDC to enable BEDC to develop the Properties pursuant to the attached 380 Agreement (the "Agreement") in substantial conformity with the City's economic development plan; and

WHEREAS, City and BEDC are executing and entering into this Agreement to set forth certain terms and obligations of City and BEDC with respect to such matters, including any grant payment, rebate or other incentives made to BEDC of certain City funds for BEDC's investment, construction and use of the Properties;

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations

and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law;

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

Section one. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section two. Authorization. The City Manager is hereby authorized to execute, on behalf of the City, an Agreement, substantially similar to Exhibit "A", attached hereto, and such ancillary documents reasonably necessary to fulfill the purpose of this resolution.

Section three. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't Code*.

Section four. Conflicts. Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

Section five. Severability. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

Section six. Effective Date. This Resolution shall take effect upon its adoption.

PASSED AND APPROVED on this the 28th day of April 2020.

CITY OF BURNET, TEXAS

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter called “Agreement”) is entered into to be effective as of the 28th day of April, 2020 (hereinafter called “Effective Date”), by and between the City of Burnet, Texas (hereinafter called “City”), a Texas municipal corporation located in Burnet County, Texas, and the Burnet Economic Development Corporation, formed under the Texas Development Corporation Act of 1979 (hereinafter called “BEDC”), otherwise known as the “Parties” to this Agreement.

RECITALS

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, under Chapter 380 of the Texas Local Government Code, City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;

WHEREAS, BEDC was established by the City Council of the City of Burnet as a Type B Economic Development Corporation in part for creating new economic development opportunities in the community; and

WHEREAS, BEDC, in furtherance of such purpose acquired title to the Property, (also known herein as “Property” and more specifically shown in “Exhibit A” attached hereto); and

WHEREAS, BEDC desires to develop the Property in order to stimulate economic development of the Property; and

WHEREAS, City Council finds that the development of the Property will contribute to the economic development of the City by the potential creation of new jobs and increased employment, generating, increased development, increased real property value and tax revenue for the City, increased related neighborhood services and shall have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, City desires to offer incentives to BEDC to enable BEDC to develop the Property pursuant to this Agreement in substantial conformity with the City’s economic development plan; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of City and BEDC with respect to such matters, including any grant payment, rebate or other incentives made to BEDC of certain City funds for BEDC’s investment, construction and use of the Property; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and

interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties; and

WHEREAS, City Council has, by separate Resolution, adopted these recitals and authorized the City Manager to execute this Agreement to make certain economic development grants and incentives to BEDC in recognition of the positive economic benefits which will accrue to City through BEDC's efforts to develop the Property; and

WHEREAS, the Board of Directors of the BEDC has, by separate Resolution, adopted these recitals and authorized the President of the Board of Directors to execute this Agreement on behalf of the BEDC.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, City and BEDC agree as follows:

ARTICLE I

AUTHORITY & BINDING REPRESENTATIONS

City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, and by the Resolution authorizing same and shall constitute a valid and binding obligation of City. The above Recitals (hereinafter called "Recitals") are incorporated by reference herein. BEDC's execution and performance of this Agreement constitutes a valid and binding obligation of BEDC obligating BEDC to proceed with the development of the Property as provided by this Agreement. City acknowledges that BEDC is acting in reliance upon City's performance of its obligations under this Agreement (including those presented in the Recitals) in making its decision to commit substantial resources to develop the Property and BEDC acknowledges that City is acting in reliance upon BEDC's representations (including those presented in the Recitals) and its full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the Property.

ARTICLE II

DEFINITIONS

"Plans" means those certain water line construction plans prepared by Civil Engineer consultant Hugo Elizondo for approval by the City of Burnet.

"Property" means the approximate 13.51-acre platted subdivision located on U. S Hwy 281, Burnet County, Texas, as more specifically shown on Exhibit "A".

“Rebuild” means the reconstruction of a public road in accordance with the City of Burnet’s Construction Design Standards.

ARTICLE III **PROJECT SCOPE**

SECTION 3.1 Project Scope

The Project (“Project”) consists of road improvements, water line improvements and utility tap installation as follows:

- Road improvements: rebuild of that segment of Houston Clinton Drive abutting the north perimeter of the Property, from U. S. Hwy 281 to the Burnet Municipal Airport;
- Water line improvements: the construction of a 12-inch water line within the Houston Clinton Street rights of way, and extending to be connected to an existing 12-inch water line located within the Burnet Municipal Airport, in accordance with the Plans; and
- Utility tap installation: the installation of sewer taps, water taps and electric connections along Houston Clinton Drive for the benefit of the Property

Questions concerning the specifications of the Project shall be resolved by the City Manager. Any modifications or deviations from the Plans shall be as agreed upon by the City Manager and the President of the BEDC Board of Directors, and/or their designees

SECTION 3.2 Compliance with Law

BEDC and City shall comply with all federal, state and local laws in regards to development of the Property.

ARTICLE IV BEDC'S OBLIGATIONS

SECTION 4.1 Project Expenses

BEDC shall pay for all expenses associated with the Project excluding City labor and City owned equipment.

SECTION 4.2 - Indebtedness Incurred by *BEDC*

The payment of all indebtedness and obligations incurred by BEDC in connection with the Project shall be solely the obligations of BEDC. City shall not be obligated to pay any indebtedness or obligations of BEDC.

ARTICLE V CITY'S OBLIGATION

SECTION 5.1 – Development Work.

Using its own manpower, equipment and resources the City, under its supervision, shall complete, or cause to be completed, the Project as provided for in ARTICLE III herein. In the event of any dispute between the BECD and City as to what constitutes completion of the Project, the decision of the City Manager shall be final.

SECTION 5.2 - Fee Waiver.

Pursuant to the terms of this Agreement, City agrees to waive all permit fees. For the purposes of this grant, however, the fees waived by this section shall not include any fee that is passed through the City by a consultant or third party public agency.

SECTION 5.3 - Economic Development Funds.

Amounts payable under this Agreement constitute economic development funds under Art. III, Sec. 52-a, Texas Constitution, are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of City, and therefore are not considered to be a constitutional debt of City.

ARTICLE VI
TERM OF AGREEMENT

The “Term” of this Agreement shall include and extend until December 31, 2021.

ARTICLE VII
INDEMNIFICATION

TO THE EXTENT AUTHORIZED BY LAW, *BEDC* AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY OF BURNET, ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE “*CITY*”) HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO OR IS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY *BEDC* UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARTICLE VIII
DAMAGE WAIVER

BEDC shall not hold City responsible for any damage to the Property occurring as a result of work on the Project.

ARTICLE IX
PERSONAL LIABILITY OF PUBLIC OFFICIALS

No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement. Under no circumstances shall City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE X
INFORMATION

BEDC shall, at such times and in such form as City may require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by City.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1 – Entire Agreement.

This Agreement, including exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

SECTION 11.2–Amendment.

This Agreement may only be amended, altered, or revoked by written instrument signed by all Parties. A section of this Agreement may be revised by addendum that includes only that section, signed by all Parties.

SECTION 11.3 – Successors and Assigns.

In this Agreement, unless a clear contrary intention appears, reference to any Party includes such Party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement is not assignable without the prior written permission of the other parties thereto. BEDC agrees that it will not dissolve or terminate its existence during the Term of this Agreement unless such obligations are assumed as provided herein.

SECTION 11.4 – Waiver.

No term or condition of this Agreement shall be deemed to have been waived, nor, shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

SECTION 11.5 – Remedies.

Upon breach of any of the covenants contained in the Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved Party shall have such remedies as are available in law or equity for breach of contract.

SECTION 11.6 – Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

BEDC:

Burnet Economic Development Corporation
Attn: President
P.O. Box 1369
Burnet, TX 78611

CITY:

City of Burnet
Attn: City Manager
P.O. Box 1369
Burnet, TX 78611

SECTION 11.7 – Applicable Law.

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Burnet County, Texas.

SECTION 11.8 – Severability.

In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

SECTION 11.9 – No Joint Venture.

Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 11.10 – Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signatures on next page.]

To be effective as of the latter day executed below:

CITY OF BURNET:

By: _____

David Vaughn, City Manager

Date: _____

ATTEST:

By: _____
Kelly Dix, City Secretary

**BURNET ECONOMIC DEVELOPMENT
CORPORATION:**

By: _____
Cary Johnson, President
Date: _____

ATTEST:

By: _____
Kelly Dix, City Secretary

Exhibit "A" Entitled Utility Layout, Burnet E.D.C Tract, 13.51 Acre EDC Tract Final Plat and CLOMR



Administration

ITEM 4.2

Patricia Langford
Director of Finance
(512)-715-3205
plangford@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: Authorize the City Manager to execute the engagement letter with Gabriel, Roeder, Smith & Co (GRS) for actuarial services per the Master Agreement: P. Langford.
Background:	The Governmental Accounting Standards Board (GASB) has issued Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions. GASB 75 replaces the requirements of GASB 45 and establishes new accounting and financial reporting requirements for other postemployment benefit (OPEB) plans.
Information:	The OPEB liability is required to be determined through an actuarial valuation. All assumptions underlying the determination of the total OPEB liability are required to be made in conformity with Actuarial Standards of Practice issued by the Actuarial Standards Board.
Fiscal Impact:	This is a budgeted line item and the City has sufficient funds available. The biennial contract amount is \$9,805 which is a \$450 increase over the previous actuarial contract.
Recommendation:	Recommend approval of Master Agreement with Gabriel, Roeder, Smith & Co. for actuarial services and authorize the City Manager to execute the engagement letter.



April 1, 2020

Ms. Patricia Langford
Director of Finance
City of Burnet
P.O. Box 1369
Burnet, TX 78611

Re: Engagement Letter for December 31, 2019 OPEB Valuation and GASB 75 Valuation Reports for fiscal years ending 2020 and 2021

Dear Ms. Langford,

You have requested a pricing quote for a GASB 75 actuarial valuation under the Shared Services arrangement provided by Gabriel, Roeder, Smith & Co (GRS) and North Central Texas Council of Governments (NCTCOG).

Based on the information you provided, the cost of services for City of Burnet is \$9,805. This price is based on receiving data in the standard GRS format and using the following assumptions:

Pricing Category	Pricing Parameters	Fee
Annual or Biennial	Biennial	
Number of Participants	100 - 199	\$9,805
Claims Analysis Required	No	\$0
Health Plans	1. City of Burnet Health Plan	\$0
Retirement Plans	1. TMRS	\$0
Implicit Subsidy Only Discount	Not Eligible	\$0
Plan Change Not Previously Valued	No	N/A
OPEB Trust or Equivalent Arrangement	No	N/A
Single Discount Rate Test	No	\$0
Plan Only Reporting Package	No	\$0
Cost Sharing Schedules for Primary Government and Component Units	No	\$0
Calculation of an Actuarially Determined Contribution	No	\$0
Total		\$9,805

Basic Services

- Actuarial valuation of employer OPEB in compliance with the requirements of GASB Statements No. 74 and No. 75. The valuation report will include, but is not limited to, the following:
 - > The updated Total OPEB Liability, based on the appropriate discount rate for the reporting period.
 - > A reconciliation of the Total OPEB Liability, which shows, among other items, the impact of benefit changes, assumption changes, and demographic gains/losses separately.
 - > The OPEB expense and supplementary information required by GASB 75.
 - > The characteristics of covered active members, retirees, and beneficiaries and other information required for the note disclosures.
 - > A statement of outflows and inflows arising from the current reporting period.
 - > A statement of outflows and inflows to be recognized in future OPEB expense.
 - > A sensitivity analysis providing the Total OPEB Liability based on a 1% higher and 1% lower discount rate.
 - > A sensitivity analysis providing the Total OPEB Liability based on a 1% higher and 1% lower health care trend assumption.

Billing Schedule

GRS pricing assumes 30% paid upon acceptance by the government of the engagement, 40% upon delivery of the draft full valuation, and 30% upon delivery in the second year of the rolled forward report.

The Master Agreement allows for automatic fee increases based on changes in the Consumer Price Index (CPI), starting in January of 2019. As a result, the 2020 fees are 4.35% higher than those in the original fee schedule that's shown in our Master Agreement. However, the fees provided in this engagement letter will not change based on the annual updates to the overall pricing schedule. Any CPI related increases will only apply to the next valuation cycle.

Basic Options Study

It is anticipated that City of Burnet may want to consider options for mitigating its OPEB liability. Basic Options studies would include alternative discount rates, alternative healthcare trend rates, benefit capitations, and changes in retiree cost sharing. The cost for a basic Options study will be \$1,360 per study.

Fees for plan redesign studies that are not considered basic will be communicated after the specifics of the proposed plan changes are discussed.

Additional Services

Fees for additional consulting services not included under Basic Services or included in the fixed fee Options studies will be priced separately upon request and will be based on the following hourly rates:


<i>GRS Resource Classification</i>	<i>Hourly Rates</i>
Lead Actuary	\$340
Actuarial Staff	\$225
Support Staff	\$195

A copy of this engagement letter will be made a part of the master agreement between City of Burnet and GRS.

CITY OF BURNET, TX

Date

GABRIEL, ROEDER, SMITH & COMPANY



Mehdi Riazi, Senior Consultant

4/1/2020

Date

Master Agreement Other Post Employment Benefits (OPEB) Actuarial Valuations

Pursuant to the award of RFP NCT-2017-02 (Other Post Employment Benefits (OPEB) Actuarial Valuations) by the North Central Texas Council of Governments (NCTCOG), this agreement confirms the terms under which

City of Burnet hereinafter referred to as 'CONTRACTING GOVERNMENT' has engaged Gabriel, Roeder, Smith & Co. hereinafter referred to as "GRS" to perform actuarial consulting services. In as much as this relationship will involve several actuarial reviews and other services that will be governed by the Request for Proposal (RFP # NCT-2017-02) issued by NCTCOG on January 4, 2017 and our contract with NCTCOG, we have agreed to establish this "master agreement" defining the general terms and conditions for all work performed for the CONTRACTING GOVERNMENT.

This agreement will not, by itself, authorize the performance of any services. Rather specific services will be authorized through a separate engagement letter that references this master agreement and details the services to be provided and the required fees. In the event of an inconsistency between this master agreement and an individual engagement letter, the master agreement will be followed.

As described in the above referenced Request for Proposal the following terms apply:

- A. **Tax Exempt Entities.** CONTRACTING GOVERNMENT is exempt from manufacturer's federal excise tax and states sales tax. Tax exemption certificates will be issued upon request.
- B. **Role of NCTCOG.** NCTCOG has served as a facilitator to the RFP and award process but the contractual relationship is between GRS and the CONTRACTING GOVERNMENT.
- C. **Aggregate Information.** GRS agrees to supply the CONTRACTING GOVERNMENT with the specified results from the valuations and to aggregate that information with that of other governments for the purpose of benchmarking.
- D. **Fees.** GRS agrees to follow the attached pricing schedule ("Attachment A") for pricing of its services. Fees are subject to inflation adjustments starting in January of 2019. The fees associated with each valuation cycle will be provided in a separate engagement letter.
- E. **Review of Charges.** CONTRACTING GOVERNMENT has the right to review the supporting documentation for any hourly charges or out of pocket expenses assessed to the CONTRACTING GOVERNMENT under the fee schedule.



- F. **Termination.** Both CONTRACTING GOVERNMENT and GRS will have the right to terminate this agreement through written notice. CONTRACTING GOVERNMENT will pay any charges or prorate fees incurred to the date the termination notice is received and actuary will cease any in progress work unless specific stopping points are provided in the letter.
- G. **Work Product.** The final work product will be the property of the CONTRACTING GOVERNMENT to be used as stated in the specific engagement letter. Ancillary use of the product is permitted, but GRS is not responsible for the reliability of those projections. It is understood that all reports are subject to the open records laws of the State of Texas and the contracting jurisdiction.
- H. **Independent Contractor.** All the services provided by GRS will be as an independent contractor. None of the terms in the engagement letter will be interpreted to create an agency or employment relationship.
- I. **Term.** The term of this master agreement will be governed by the afore referenced NCTCOG RFP and will expire on June 30, 2023.
- J. **Complete Agreement.** This agreement combined with the specific engagement letter and as clarified by the RFP and Proposal set forth the entire agreement between the CONTRACTING GOVERNMENT and GRS.
- K. **Indemnification.** GRS covenants and agrees to indemnify and hold harmless and defend and does hereby indemnify, hold harmless, and defend CONTRACTING GOVERNMENT, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to persons or property, whether real or asserted, arising out of any negligent act or omission on the part of the contractor, its officers, agents, servants, employees, or subcontractors, and the contractor does hereby assume all liability for injuries, claims or suits for damages to persons, property, or whatever kind of character, whether real or asserted, occurring during or arising out of the performance of this contract as a result of any negligent act or omission on the part of the contractor, its officers, agents, servants, employees, or subcontractors to the extent permitted by law. Please review this master agreement letter and the attached schedules and indicate your acceptance by having an official of CONTRACTING GOVERNMENT sign below.
- L. **Force Majeure.** A force majeure event shall be defined to include governmental decrees or restraints, acts of God (except that rain, wind, flood or other natural phenomena normally expected for the locality, shall not be construed as an act of God), work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war, rebellion, and sabotage. If a delay or failure of performance by either party to this contract results from the occurrence of a force majeure event, the delay shall be excused and the time fixed for completion of the work extended by a period equivalent to the time lost because of the event.

- M. **Professional Standards.** GRS will provide qualified personnel for each engagement and follow all professional standards ascribed by the American Academy of Actuaries and the Governmental Accounting Standards Board.

GABRIEL, ROEDER, SMITH & CO.

By: Mark Randall Date: August 20, 2018
Title: Chief Executive Officer

CONTRACTING GOVERNMENT

By: Dawn Vauz Date: 8/16/18
Title: City Manager

ATTACHMENT A

Pricing Schedule – Calendar Years 2017 and 2018

	Plan Basic Services		
	Governments by Total OPEB Participants (Actives and Retirees)	Annual	Biennial
P1	Less than 100	\$7,200	\$9,400
P2	Between 100 to 199	\$7,200	\$9,400
P3	Between 200 and 499	\$7,900	\$10,200
P4	Between 500 and 999	\$9,400	\$11,800
P5	Between 1,000 and 2,499	\$10,700	\$13,200
P6	Between 2,500 and 4,999	\$11,600	\$14,200
P7	Between 5,000 and 7,500	\$14,700	\$17,400
P8	Greater than 7,500	\$17,800	\$20,600
	Plan Features Resulting in Additional Cost (Discount) to Basic Services	Annual	Biennial
P9	Self-Insured Healthcare Plans	\$2,100	\$2,100
P10	Cost per additional healthcare plan option (high deductible, HMO, PPO etc.)	\$600	\$600
P11	Cost per additional retirement plan covered by the same OPEB plan	\$1,700	\$1,700
P12	Implicit subsidy only plans	-\$2,000	-\$2,000
P13	Plan change not previously valued (Basic)*	\$1,300	\$1,300
P14	Plan change not previously valued (Non-Basic)*	To be quoted	To be quoted
P15	OPEB Trust or Equivalent Arrangement	\$500	\$1,250
P16	Single Discount Rate Test	\$1,000	\$1,000
P17	Data Processing Charge**	To be quoted	To be quoted

* The impact of plan changes which are deemed significant need to be measured under GASB 74/75. A Basic or Non-Basic fee will apply anytime a plan change impact needs to be separately measured. No fee will apply if GRS has already measured the impact of the plan change.

** GRS fees are based on receiving census and claims data in the requested format. If data is provided in a different format or in multiple files, GRS will discuss an "out-side of scope" data fee charge with the Client before proceeding with the valuation.

	Optional Services	
O1	Updating actuarial valuations to the measurement date	\$1,500
O2	Upgrade roll-forward to full valuation	\$3,300
O3	Plan only reporting package for separately issued financial statements	\$800
O4	Cost Sharing schedules for primary government and component units	To be quoted
O5	Pricing valuation for OPEB plan changes (Basic)	\$1,300
O6	Pricing valuation for OPEB plan changes (Non-Basic)	To be quoted
O7	Experience Study	To be quoted
	Consulting on active health plans:	
O8	Pricing of premiums for self-insured health plans	To be quoted
O9	Cost trend analysis	To be quoted
O10	Hourly rate for additional services-responsible actuary	\$330
O11	Hourly rate for other actuarial staff	\$215
O12	Hourly rate for additional services-support staff	\$185
O13	In person meeting/presentation-per meeting*	\$1,300
O14	Calculation of an Actuarially Determined Contribution	To be quoted
O15	Money-weighted rate of return	\$500
O16	Initial GASB 75 report based on roll-forward of a previously completed GRS GASB 45 Valuation	\$2,500
O17	Initial GASB 74/75 report based on Roll-forward of a previously completed GRS GASB 45 Valuation**	\$4,000

*Fee for in-person meeting/presentation does not include travel expenses. Fees for travel outside the Dallas/Fort Worth metroplex will be the responsibility of the employer.

**Fee will be reduced by \$1,000 if a Blended Discount Rate test is not needed.

PRICING ASSUMPTIONS

- Pricing assumes that all participating entities offer basic vision and dental and life insurance to employees and retirees
- Pricing assumes for annual valuations: 50% paid upon initiation of the work and 50% upon receipt of the draft report. For biennial valuations 30% upon initiation of the work, 40% upon delivery of the draft valuation and 30% upon delivery in the second year of the rolled forward report.
- Number of OPEB participants will be determined as of the date the valuation is performed.
- Pricing will be held constant until January 2019 (approximately one and half years after contract award) and then be adjusted in relation to the Consumer Price Index-All Urban Consumers annually for each of the remaining six years. Starting in January 2019, the fees increase based on the November over November increase to the CPI-U. For example, the fees for 2019 would be increased by the change in the CPI-U from November 2017 to November 2018. Annual fee increases must be approved by the NCTCOG, and the NCTCOG has the right to limit the CPI related fee increase in any year. Once an annual or biennial valuation fee is agreed to, CPI related fee increases would not impact the valuation fee for that particular valuation cycle. CPI related fee increases would apply to the next valuation cycle.



ITEM 4.6

Economic Development

David Vaughn
City Manager
(512)-756-6093 ext. 3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date:	August 9, 2011
Agenda Item:	Discuss and consider action: Appointment of members to the Burnet Economic Development Corporation Board of Directors: D. Vaughn
Background:	Two members terms are due for re-appointment on the BEDC Board of Directors. Council Member Danny Lester's term expires June 30, 2020 and the un-expired term that Jason Lutz, Director of Development Services was appointed to by Council, will also expire June 30, 2020.
Information:	Danny Lester and Jason Lutz have expressed their desire to remain on the BEDC Board for another two year term that will expire in June 2022.
Fiscal Impact:	None
Recommendation:	To be determined by Council

BURNET ECONOMIC DEVELOPMENT CORPORATION BOARD

(As of: April 1, 2020)

<u>NAME</u>	<u>ADDRESS</u>	<u>EMAIL</u>	<u>PHONE</u>	<u>APPOINTED</u>	<u>EXPIRES</u>
Cary Johnson President	P.O. Box 10	cjohnson@fsbburnet.com	(512) 756-6999 Office	August 27, 2019	June 30, 2021
Wayne Brown Vice President	4649 CR 200	sunnymark@wildblue.net	(512) 755-5458 Home	August 27, 2019	June 30, 2021
Crista Bromley Secretary/Treasurer	P.O. Box 1369	mayor@cityofburnet.com	(512)-715-8232 Home (830) 613-6549 Cell	August 27, 2019	June 30, 2021
Brad Zehner	512 CR 140	wbzehner@gmail.com	(512)-569-7675 Cell	November 12, 2019	June 30, 2021
Jason Lutz	P.O. Box 1369	jlutz@cityofburnet.com	(512) 715-3215 Office (830) 798-3973 Cell	March 24, 2020	June 30, 2020
Danny Lester	300 Alexander Ave.	dlester@cityofburnet.com	(512) 756-6173 Office (830) 656-9957 Cell	June 13, 2018	June 30, 2020
David Vaughn	P.O. Box 1369	dvaughn@cityofburnet.com	(512) 715-3208 Office (830) 798-3974 Cell	June 13, 2019	June 30, 2021



Finance

ITEM 4.4

Patricia Langford
Director of Finance
(512)-715-3205
plangford@cityofburnet.com

Agenda Item Brief

Meeting Date: April 28,2020

Agenda Item: Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING ORDINANCE 2019-24; THE ORIGINAL BUDGET ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020 FOR THE CITY OF BURNET, TEXAS, FUNDING ACCOUNTS IN BUDGET DUE TO UNFORESEEN SITUATIONS; CONTAINING FINDINGS PROVIDING FOR SAVINGS AND SEVERABILITY: P. Langford

Background:

Information: This ordinance provides for budget amendments, many of which were previously approved by Council.

Fiscal Impact: As noted on Attachment "A".

Recommendation: Approve the first reading of Ordinance 2020-10 as presented

ORDINANCE NO. 2020-10

AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING ORDINANCE 2019-24; THE ORIGINAL BUDGET ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020, FOR THE CITY OF BURNET, TEXAS, FUNDING ACCOUNTS IN BUDGET DUE TO UNFORESEEN SITUATIONS; CONTAINING FINDINGS; PROVIDING FOR SAVINGS AND SEVERABILITY.

WHEREAS, the City of Burnet, Texas Fiscal Year 2019-2020 Budget was adopted by Ordinance 2019-24 within the time and in the manner required by State Law; and

WHEREAS, the City of Burnet, Texas has reviewed the Budget; and

WHEREAS, the City Council of the City of Burnet, Texas has considered the status of the Capital Improvement Projects for the rest of the fiscal year; and

WHEREAS, the City Council of the City of Burnet, Texas hereby finds and determines that it is prudent to amend the line items due to unforeseen situations that have occurred in the City; and

WHEREAS, the City Council of the City of Burnet, Texas further finds that these amendments will serve in the public interest; and

WHEREAS, the City Council of the City of Burnet, Texas finds and determines that the change in the Budget for the stated municipal purpose is warranted and necessary, and that the amendment of the Budget to fund these line items due to unforeseen situations and a matter of public necessity warranting action at this time;

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

Section 1. Findings

The facts and matters set out above are found to be true and correct.

Section 2. Purpose

The City of Burnet, Texas, Fiscal Year 2019-2020 Budget is hereby amended to reflect effect of unforeseen circumstances,

Section 3. Savings/Repealing Clause

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 4. Severability

It is hereby declared to be the intention of the City Council that if any of the sections, paragraphs, sentences, clauses, and phrases of the Ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of unconstitutional or invalid phrases, clauses, sentences, paragraphs, or sections..

PASSED AND APPROVED the First Reading on this the 28th day of April, 2020.

FINALLY PASSED AND APPROVED on this 12th day of May, 2020.

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary

ATTACHMENT A (COUNCIL MEETING 4/28/2020) - Page 1 of 2

1. \$800,000 increase to Electric fund expenses for an operating transfer to the General Fund to move excess reserves. The cost will be covered by fund balance.
2. \$800,000 increase to Water/Wastewater fund expenses for an operating transfer to the General fund to move excess reserves. The cost will be covered by fund balance.
3. \$50,000 increase in the use of Hotel Motel funds to fund the 2021 Bluebonnet Festival Marketing Agreement with the Burnet Chamber of Commerce. The cost will be covered by Hotel Motel fund balance. (Council approved agreement during April 14th, 2020 City Council Meeting.)
4. \$300,000 increase in BEDC fund expenses to fund the Economic Viability Grant Program for the purpose of financial assistance for businesses impacted by the COVID-19 pandemic. The cost will be covered by BEDC fund balance. (Council approved second reading of R2020-05 during March 27th, 2020 Special City Council Meeting.)
5. \$250,000 increase in General fund emergency management expenses for COVID-19 emergency purchases. The cost will be covered by fund balance. (Council approved during March 24th, 2020 City Council Meeting.)
6. \$25,000 increase to the General Government Capital Project fund expenses to purchase new bullet proof vests for the Police Department. \$3,000 will be covered by the seizure fund balance and \$22,000 will be covered by General fund balance. (Council approved purchase during March 10th, 2020 City Council Meeting.)
7. \$15,750 increase to Self-Funded fund expenses to cover budget shortage for purchase of golf course equipment. The cost will be covered by transfers from the Golf Course fund to the Self-Funded fund. (Council approved equipment purchases during March 10th, 2020 City Council Meeting.)
8. \$1,500 increase to the Municipal Court Special Revenue fund expenses to purchase a new computer for the Judge. The cost will be covered by the Court Technology fund. (Council approved purchase during February 11th, 2020 City Council Meeting.)
9. \$50,000 increase to the General Government Capital Project fund expenses for the purchase of twelve sets of bunker gear and a gear dryer for the Fire Department. The cost will be covered by General fund balance. (Council approved purchase during February 11th, 2020 City Council Meeting.)

ATTACHMENT A (COUNCIL MEETING 4/28/2020) – Page 2 of 2

10. \$330,000 increase in Water/Wastewater Capital Project Fund expenses for the award of the contract to install a new 12" water line along Oak Vista Boulevard. \$165,000 of the cost will be covered by fund balance, and the remaining \$165,000 will be covered by Big Leaf, LTD. (Council approved during January 28th, 2020 City Council Meeting.)
11. \$169,568 increase to land acquisition expense in the General Government Capital Project fund for the purchase 18.47 acres next to GHRC. The cost will be covered by fund balance. (Council approved during January 3rd, 2020 City Council Meeting.)
12. \$10,000 increase to Hotel Motel fund expenses for the purchase of bluebonnet seeds. The cost will be covered by Hotel Motel fund reserves. (Council approved purchase during December 10th, 2019 City Council Meeting.)
13. \$38,000 increase to the Self-Funded fund expenses to correct budget for the purchase of Water/Wastewater Department work truck. The cost is being covered by transfers from the Water/Wastewater operating fund to the Self-Funded fund. (Council approved purchase during November 12, 2019 City Council Meeting.)



Human Resources Department

ITEM 4.6

Kelli Sames
Director of Human Resources
(512)-715-3213
ksames@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 8.11 FAMILY AND MEDICAL LEAVE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS: K. Sames
Background:	The City of Burnet currently has in effect an Employee Personnel Policy Manual that was adopted by City Council on December 8, 2009 with an effective date of December 8, 2009. Since the original adoption, recommended revisions to the Personnel Policy have occurred from time to time.
Information:	<p>Personnel policy 8.11 Family and Medical Leave has been rewritten and revised with the intent to provide clarity to staff for the use of Family and Medical Leave (FMLA). The revised content is in keeping with the intent of the FMLA and requirements for both staff and the City.</p> <p>The current policy and proposed policy are attached as Exhibit A.</p>
Fiscal Impact:	The current FY budget includes appropriations for employee benefit accruals for the paid portion of Family and Medical Leave.
Recommendation:	City staff recommends approval of Resolution No.2020-08, updating Personnel Policy No. 8.11 Family and Medical Leave as presented.

RESOLUTION NO. 2020-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 8.11 FAMILY AND MEDICAL LEAVE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS.

Whereas, the City Council believes its personnel policies should reflect the needs of the City and meet all applicable state and federal labor laws; and

Whereas, it is necessary to update, revise, and clarify language in the City of Burnet Personnel Policies consistent with laws, regulations, and industry standard practices; and

Whereas, the City of Burnet has previously adopted Ordinance No. 2009-31, Personnel Policy Manual on December 8, 2009; and

Whereas, the Personnel Policy Manual was last revised on February 25, 2020; and

Whereas, the City Council believes it is in the best interest of the City and its employees to make additional amendments to said Personnel Policy Manual; and

Whereas, The City Council has reviewed the proposed amendments to the Personnel Policy Manual and has determined the need to update and clarify those sections.

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

Section 1. The City Council hereby accepts and adopts the amendment to the Personnel Policy to include sections 8.11 Family and Medical Leave as attached hereto as Exhibit "A" with an effective date of April 28, 2020.

Section 2. The findings and recitations set out herein above are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 3. If any provision of this resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

Section 4. That it is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 28th day of April 2020.

CITY OF BURNET, TEXAS

ATTEST:

Crista Goble Bromley, Mayor

Kelly Dix, City Secretary

Exhibit A Proposed Policy

8.11 FAMILY AND MEDICAL LEAVE (Revised 4-28-2020 Resolution 2020-09)

POLICY

In accordance with the Family and Medical Leave Act of 1993, an employee may be eligible to take up to twelve (12) weeks of unpaid family and medical leave during a rolling twelve (12) month period. An eligible employee is one who has worked for the City for twelve (12) months and has worked at least 1,250 hours during the twelve (12) months preceding the first date leave is to be taken. Leave can be taken for any of the following reasons: birth of a child; placement with the employee of a child for adoption or foster care (entitlement to family and medical leave expires twelve months after birth or placement); when the employee is needed to care for a child, spouse, or parent who has a serious health condition; or when the employee is unable to perform the essential functions of the position because of the employee's own serious health condition.

PROCEDURE

Twelve Month Period: The twelve (12) month period for counting family and medical leave is a "rolling" 12-month period measured backward from the date an employee requests or is placed on FMLA leave. Each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months, or 26 weeks provided in certain circumstances.

Employee Notification: An employee should give at least thirty (30) day's notice for the need to take foreseeable family and medical leave, unless the need is unforeseeable, in which case, as much notice as is practicable should be given. A form for requesting family and medical leave is available in the Human Resources Department. If it is determined that the need for family and medical leave was foreseeable, the leave may be delayed until at least thirty (30) days after the date that the employee provides notice to the City.

Department Notification: Each department supervisor is responsible for notifying the Human Resource Department immediately when an employee is away from work for a family and medical leave qualifying event (if family and medical leave has not been approved), even if the employee is utilizing paid vacation, sick or personal leave, or is out due to a work related injury. An employee using sick leave should be reported to the Human Resource Department if it is anticipated that the duration of the illness will be three (3) or more days, or two (2) or more shifts for Fire Department employees, or once the employee exceeds three (3) days, or two (2) or more shifts for Fire employees of sick leave use.

Human Resource Responsibility: Human Resources is responsible for central administration of all requests for family and medical leave. The Human Resource Department reserves the right to automatically place an employee on family and medical leave if it is determined that a qualifying event has occurred. The Human Resource Department may retroactively designate the beginning date of FMLA to the beginning date of the employee's absence for the qualifying event.

Approval: An employee shall submit a request for family and medical leave through proper channels to the Department Director who will then forward it to the Human Resource Department for approval. Confidential medical information that accompanies the application can be submitted directly to the Human Resource Department.

Substitution of Paid Leave: An employee utilizing this policy for the placement of a child for adoption or foster care with the employee shall be required to exhaust all accrued vacation and any other applicable paid leave prior to going on unpaid leave. An employee utilizing this policy for the serious illness of a child, spouse or parent must exhaust all accrued sick leave, personal leave, vacation leave and any other applicable paid leave prior to going on unpaid leave. If an employee gives birth to a child, sick leave can be utilized until the employee receives

a release from the doctor. After being released, the employee may use additional sick leave if permitted in accordance with the sick leave policy. Once all applicable sick leave has been used, the employee shall be required to exhaust all accrued vacation and personal leave prior to going on unpaid leave. An employee utilizing this policy for the employee's own serious health condition shall exhaust all accrued sick leave, vacation leave and personal leave prior to going on unpaid leave. If an employee is off work due to a work-related injury and the employee qualifies for family and medical leave, it will run concurrently with any paid leave. *The City reserves the right to count any paid leave that qualifies for family and medical leave toward the twelve (12) or twenty-six (26) weeks allowed under this policy.*

Maximum Time Allowed: The maximum amount of family and medical leave available is twelve (12) weeks during a twelve (12) month period even if there is more than one family and medical leave qualifying event. The only exception to the twelve (12) week maximum is the leave to provide care of an injured service member, described below, which allows for an extended FMLA leave of 26 weeks.

Medical Certification: The City may require medical certification from a health care provider to support a claim for leave to care for a seriously ill child, spouse, or parent, or for the employee's own serious health condition. Medical certifications must be returned to the Human Resource Department within fifteen (15) working days. Recertification may also be required every 30 days. For leave to care for a seriously ill child, spouse, or parent, the certification must include an estimate of the amount of time the employee is needed to provide care. For the employee's own serious health condition, the certification must include a statement that the employee is unable to perform the essential functions of the position and expected duration. The City does not seek and should not be provided genetic information. If an employee or applicant's genetic information is inadvertently received by the City; the City will return it to the health care provider and not use genetic information for any employment decision or action.

Upon returning to work after leave for the employee's own illness, an employee is required to provide certification to the supervisor that the employee is able to return to regular duties. If the validity of a certification is questioned, the City may require that a second opinion be obtained. If the first and second opinions differ, the City may require a third opinion be obtained. The employee and the City must agree upon a health care provider for the third opinion and this opinion shall be binding on both parties. The City shall bear the expense of second and third opinions.

Return to Work: When an employee returns to work after family and medical leave, the employee shall be restored to the same position or to an equivalent position involving the same or substantially similar duties and responsibilities. An employee will be restored to the same worksite or to a geographically proximate worksite. The employee is also entitled to return to the same shift or an equivalent schedule.

Effect on Married Couples: If a City employee is married to another City employee and either or both employees request family and medical leave for the birth or placement of a child with the employee for adoption or foster care, the total time allowed shall be limited to no more than twelve (12) weeks combined during any rolling twelve (12) month period. For other qualifying family and medical leave events, each employee is entitled to leave as long as the total amount of leave taken during any twelve (12) month period does not exceed twelve (12) weeks or twenty-six (26) weeks if applicable for one employee.

Continuation of Insurance Benefits: While utilizing unpaid family and medical leave, an employee's insurance benefits will continue without interruption as long as the employee pays his or her portion (not the City's portion) of the insurance premiums. Insurance premiums can be deducted from the paycheck before the leave begins, or during the leave, if the employee continues to receive pay (pre-tax), paid monthly or bi-weekly.

Intermittent Leave: When medically necessary, an employee may take family and medical leave on an intermittent basis or work a reduced schedule. Arrangements should be made with the employee's immediate supervisor so that the operations of the department are not unduly disrupted. An employee taking intermittent

leave or leave on a reduced schedule may be temporarily assigned to an alternative position with equivalent pay and benefits if it better accommodates the needs of the department.

Holidays: Holidays will be paid in accordance with the Holidays policy. City holidays will be counted as part of the twelve (12) or twenty-six (26) weeks of family and medical leave, whether the employee is on paid or unpaid leave.

Recordkeeping: Family medical leave time will be tracked on an hourly basis for payroll and compliance purposes. To determine entitlement for employees who work variable hours, the minimum hours required for eligibility is calculated on a pro rata or proportional basis by averaging the weekly hours worked during the twelve (12) weeks prior to the start of family and medical leave.

Exempt Employees: Paid leave accounts may be charged for less than one (1) full workday according to department policy and the salary of an exempt employee may be docked for absences of less than one (1) full workday. Salaried executive, administrative, professional, and other employees of the City who meet the Fair Labor Standards Act (FLSA) criteria for exemption from overtime do not lose their FLSA-exempt status by using any unpaid FMLA leave.

Military Family Leave Entitlement.

Qualifying Exigency Leave - Family Leave has been expanded to provide Family and Medical Leave due to a call to active military duty. Eligible employees with a spouse, child, or parent on covered active duty (deployed to a foreign country) or called to covered active duty status in the National Guard or Reserves (deployment to a foreign country or in support of a contingency operation) may use their 12-week leave entitlement to address certain qualifying exigencies including eligible: short-notice deployments; attendance at military events and related activities; childcare and school activities; addressing financial and legal arrangements; attending counseling sessions; attending post-deployment activities; up to 15 days of rest and recuperation; and parental care.

Military Caregiver Leave - FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave (during a single 12-month period) to care for a covered spouse, child, parent, or next of kin. The covered service member must be a current member or eligible veteran of the Armed Forces (including a member of the National Guard or Reserves) with a serious injury or illness incurred in, or aggravated by, service in the line of duty on active duty that may render him/her medically unfit to perform his/her duties for which he/she is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

DEFINITIONS

12-Month Period: A rolling 12-month period measured backward from the date leave is taken.

12-Month Service member Period: A single 12-month period measured forward from the first day Service member Family Leave is taken.

Child: A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis, who is standing in the place of a parent, who is either under age 18, or age 18 or older and requires active assistance or supervision to provide daily self-care. A biological or legal relationship is not necessary. A more detailed definition is provided in the Family and Medical Leave Act of 1993 which is available in the Human Resource or Legal Department.

Health Care Provider: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of

Labor to be capable of providing health care services. A more expansive definition is provided in the Family and Medical Leave Act of 1993 which is available in the Human Resource Department.

Next of Kin: The nearest blood relative of a Covered Service member.

Parent: A biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents-in-law.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves: (1) any period of incapacity or treatment that results in inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; (2) any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or 4) for prenatal care. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgeries after an accident or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met.

Spouse: A husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage.

8.11 FAMILY AND MEDICAL LEAVE ACT

All employees who have worked for the City for at least 12 months and for at least 1,250 hours during the year preceding the start of the FMLA leave are eligible for up to 12 weeks (26 weeks for the care for a covered service member) of FMLA leave during a 12-month period as defined by this policy.

Reasons for Leave

Eligible employees may request and/or be placed on FMLA leave for any of the following reasons:

- Birth of a son or daughter of the employee, and in order to care for the newborn child;
- or placement with the employee of a son or daughter for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- For the employee's own serious health condition which renders the employee unable to perform the essential functions of his job.
- To address certain qualifying exigencies arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty¹ (or has been notified of an impending call or order to active duty) in the National Guard or Reserves in support of a contingency operation; or,
- To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

FMLA Leave Runs Concurrently with Other Types of Leave. FMLA leave is typically unpaid unless the absence also qualifies for paid leave under another City policy.

- Sick Leave. If an employee has any available accrued sick leave, it must be used concurrently with any available FMLA leave, provided the employee's absence is covered by the City's sick leave policy and the employee satisfies that policy's procedural requirements.
- Vacation, Comp Time, Personal Leave & Holiday. If an FMLA-qualifying absence is not covered by the City's sick leave policy, the following leave time will be applied and will run concurrently with any remaining FMLA leave accrued vacation, comp time, personal leave and then holiday leave.
- Disability & Workers' Comp Leave. If the employee is approved for workers' comp or short-term or long-term disability, the employee's absence from work is automatically approved for FMLA, provided he/she has met the FMLA's eligibility requirements. This means that workers' comp and short- and long-term disability absences will run concurrently with FMLA leave. Employees being paid either workers' comp salary benefits or short- or long-term disability benefits while on leave are not required to use accrued sick, personal, holiday, comp time or vacation leave while collecting workers' comp or disability benefits.

Employee Eligibility. To be eligible for FMLA leave, an employee must meet the following criteria:

Have worked for the City for at least 12 months (although not necessarily for 12 consecutive months); Have worked for the City at least 1,250 hours during the 12 months before the start of the leave (this includes only those hours actually worked, and does not include paid or unpaid leave); and Have worked at a City worksite where fifty (50) or more employees are employed by the City within seventy five (75) miles of that worksite.

¹ "Active duty" means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code. §825.126(b)(2).

The City has posted a summary of the Family and Medical Leave Act (FMLA), on its central bulletin board for employees' information.

All documentation regarding family leave will be filed in the employee's confidential medical file, which is maintained separate from the personnel files and is accessible to a limited number of persons only on a "need-to-know" basis.

Intermittent Leave & Reduced Schedule Leave

An eligible employee may take FMLA leave on an intermittent or reduced schedule basis only if medically necessary, because of a qualifying exigency, for planned medical treatment, or as otherwise approved by the Department Director.

Notice. The employee must inform the City of the reasons why the intermittent or reduced leave schedule is necessary and of the schedule for treatment if necessary.

Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employee and the City.

Temporary Transfer. The City may temporarily transfer the employee to an alternative position (with equivalent pay and benefits, but not necessarily equivalent duties) in order to better accommodate an employee's intermittent or reduced leave schedule.

Minimum Increments. Intermittent leave will be counted in increments no greater than the shortest period of time used by the City to account for use of other types of leave, up to a maximum increment of one hour.

Exempt Employees. Exempt employees using unpaid intermittent or reduced schedule FMLA leave may be docked for absences of less than a day without jeopardizing their exempt status under the Fair Labor Standards Act (FLSA). This special exception to the "salary basis" requirement for the FLSA's exemptions extends only to an eligible employee's use of leave required by the FMLA.

Miscellaneous

Other Employment During FMLA Prohibited. Under no circumstances may an employee on FMLA leave, sick leave, disability leave, or workers' compensation leave engage in outside employment unless expressly authorized in writing in advance by the Department Director and City Manager.

Fraud. An employee who fraudulently obtains FMLA leave is not protected by the FMLA's job restoration or maintenance of health benefits provisions. Further, an employee who commits fraud will likely be terminated from City employment.

FMLA Statute and DOL Regulations. More detailed provisions and definitions of some of the terms used in this policy are set out in the Act and in the DOL's regulations. This policy is intended to explain benefits available to eligible employees under the FMLA. It is not intended to create any rights to leave beyond those created by the FMLA. If additional information is needed on the FMLA, please contact the Human Resources Department. The City will refer to the Act and the applicable DOL regulations in carrying out this policy, as well as any relevant court interpretations and decisions. This policy does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement, which provides greater family or medical leave rights. When an employee gives notice of the need for FMLA leave, the employee will

be given additional information as to his or her rights and responsibilities under the FMLA. In addition, employees may contact the nearest office of the U.S. Department of Labor's Wage & Hour Division or the Department of Labor's website for more information.

Mandatory Reporting of Improper Handling of FMLA. Employees must immediately report, in writing, to their Department Director or the Director of Human Resources, the following so that the City can investigate and respond appropriately:

- Any interference with, restraint or denial of the employee's right to take FMLA or any rights protected by the FMLA or this policy.
- Any discrimination or perceived acts of discrimination against the employee for any right protected by the FMLA or this policy.
- Any refusal by a supervisor to authorize FMLA leave or attempt to discourage an employee from taking FMLA leave.
- Any attempt to avoid the City's FMLA responsibilities.
- Discrimination or retaliation against an employee for exercising or attempting to exercise FMLA rights.
- Discrimination or retaliation against an employee for opposing or complaining about any unlawful practice under the Act or this policy

Maximum Duration

Twelve Weeks of Leave. Eligible employees may take up to 12 weeks of FMLA leave in a single 12-month period (the City uses a rolling 12-month period measured backward) for one or more of the following reasons:

- When the employee is unable to perform the functions of his/her job because of his/her own serious health condition.
- For the birth or placement of a child for adoption or foster care. FMLA leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement. In addition, if an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, or to care for a parent (but not a parent-in-law) who has a serious health condition;
- To care for a spouse, child, or parent with a serious health condition; or
- A qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

Twenty-Six Weeks of Leave. Eligible employees may take up to 26 weeks of FMLA leave in a single 12-month period to care for a **covered service member** (*i.e.*, the employee's spouse, child, parent, or next of kin) with a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces. If an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 26 work weeks of leave during a single 12-month period.

Maximum Amount of Leave. The maximum amount of FMLA leave available is 12 weeks during a 12-month period or 26 weeks in a single 12-month period to care for an injured or ill service member even if there are multiple FMLA qualifying events.

Part-time/Variable Hour Employees

Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis. Part-time employees must still meet all eligibility requirements prior to receipt of FMLA.

Notice

Employee's Notification Responsibilities. Employees must give the City sufficient information so that it can make a determination as to whether the employee's absence is FMLA-qualifying. If an employee fails to explain the reasons, leave may be denied. Employees must also indicate on their time records when an absence or tardy is or may be covered by FMLA. Any absence or illness that results in more than three days' absence must be reported to the FMLA Coordinator in the City's Human Resources Department.

At Least 30 Day's Notice Required for Foreseeable Leave. Employees must provide their Department Director or the Human Resources Department with at least 30 days' advance notice when the need for FMLA leave is foreseeable.

Notice as Soon as Practicable for Unforeseeable or Emergency Leave. If the need for FMLA leave is not foreseeable, employees must provide their Department Director or the Human Resources Department with as much advance notice as practicable, in accordance with their Department's normal call-in procedures. The employee must also provide an explanation as to why he/she was unable to provide at least 30 days' advance notice of the need for leave.

Content of Notice. Employees must provide the City with at least verbal notice and explain the reasons for the needed leave sufficient to allow the City to determine if the absence is FMLA-qualifying, and the anticipated timing and duration of the leave, if known. If the employee has previously taken FMLA leave for the same reason, he/she must specifically reference the qualifying reason for leave or the need for FMLA leave. The City may seek additional information from the employee, and the employee is obligated to respond to the City's questions so the City can determine if an absence is potentially FMLA-qualifying. The employee must notify the City as soon as practicable if the dates of his/her scheduled leave change or are extended, or where initially unknown.

Compliance with City's Call-In Procedures. Employees must comply with their Department's normal call-in procedures for reporting absences, tardies and requesting leave, *e.g.*, contacting a specific supervisor by a certain time. Notice may be given by the employee's spokesperson only if the employee is physically unable to do so personally. Where an employee does not comply with the City's and Department's normal call-in procedures and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

Consequences for Failing to Provide Required Notice. If the employee fails to timely explain the reasons for his/her need for leave, FMLA leave may be denied or delayed for up to 30 days. The employee may also be subject to disciplinary action in accordance with City policy. Likewise, if an employee fails to respond to the City's reasonable inquiries regarding a leave request, the employee may not be granted FMLA leave protection.

Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employee and the City.

Periodic Check-In While on FMLA. Employees must check in periodically with their supervisor and with the Human Resources Department regarding their status and intent to return to work. If the employee discovers that the amount of leave originally anticipated is no longer necessary, the employee must provide the City with reasonable notice (*i.e.*, within two business days) of the changed circumstances if foreseeable.

City's Responsibilities

Human Resources Department. The Human Resources Department is responsible for the verification, approval, and notification of FMLA leave. The Human Resources Department may place an employee on FMLA leave if it determines that a qualifying event has occurred.

Eligibility Notice. The Human Resources Department will notify an employee of his/her eligibility to take FMLA within five business days (absent extenuating circumstances) of its receipt of the employee's request for FMLA leave (or from when the City otherwise determines that an employee's absence may be FMLA-qualifying). Employee eligibility is determined (and notice will be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. Notification may be oral or in writing, but the City will normally use FMLA Form #1 to provide the employee with Eligibility Notice. If an employee's eligibility status changes, the Human Resources Department will so notify the employee within five business days, absent extenuating circumstances.

Rights & Responsibilities Notice. The Human Resources Department will provide employees with a notice (FMLA Form #1) detailing the City's specific expectations, the employee's obligations, and consequences to the employee of not meeting his/her obligations. The Human Resources Department will provide this notice each time it provides the Eligibility Notice described above. The required certification form will accompany this notice. If any of the specific information in the Rights & Responsibilities Notice changes, the Human Resources Department will notify the employee within five business days of its receipt of the employee's first notice of need for leave subsequent to any change.

Designation Notice. When the Human Resources Department has enough information to determine if an absence is FMLA-qualifying (*e.g.*, after receiving the employee's fully completed Certification), the Human Resources Department will notify the employee in writing (FMLA Form #2) as to whether the leave will or will not be designated as FMLA. This Designation Notice will be given to the employee within five business days, absent extenuating circumstances. If the information in the Designation Notice changes, the Human Resources Department will notify the employee within five business days of the City's receipt of the employee's first notice of need for leave subsequent to any change.

Certification Forms & Other Required Documentation. The Human Resources Department is responsible for determining the completeness and authenticity of certification forms, fitness-for-duty/return to work certifications, and for review and coordination of all other FMLA documentation required by this policy.

Supervisors & Department Directors. So that the Human Resources Department can meet the notice deadlines required by the FMLA, supervisors must immediately notify both their Department Director and the Human Resources Department if they have reason to believe an employee's absence is due to an FMLA-covered reason. Supervisors must make this report even if the employee is using paid time off to cover the absence, *e.g.*, sick leave, comp time, vacation, holiday, workers' comp, short- or long-term disability, or a trade with another employee. Supervisors and Department Directors must report to Human Resources any time an employee misses work for more than three days because of his/her own illness or injury or that of a spouse, child, or parent.

Supervisors, it is important to remember that under the FMLA, an employee requesting paid or unpaid leave for an absence covered by the FMLA is not required to expressly mention FMLA. If the employee states a reason that qualifies for FMLA leave, the employee will likely have met the FMLA's notice requirements. When an employee submits a leave/absence form indicating an FMLA absence, the form must be sent to the Human Resources Department immediately.

Certification of Condition

Medical Certifications and Other Required Documentation. In all instances in which the City requests a certification from an employee, it is the employee's responsibility to provide the Human Resources Department with a complete and sufficient certification; failure to do so may result in the denial or delay of FMLA leave.

Certification. An employee must provide the Human Resources Department with a complete and sufficient medical certification supporting the need for FMLA leave due to a serious health condition affecting the employee (FMLA Form #3), his/her spouse, child or parent (FMLA Form #4), or due to the serious injury or illness of a covered service member (FMLA Form #5). The required medical certification forms are available from the Human Resources Department. The certification must set forth the beginning and expected ending dates of the leave. In the case of intermittent leave, the certification must also provide the dates and duration of the treatments necessitating the intermittent leave. The employee is responsible for any expenses associated with providing the City with a required certification. The employee must turn in the required certification to the Human Resources Department within 15 days after it is requested, unless not practicable under the circumstances.

Second & Third Opinions. In some cases, the City may require a second or third medical opinion (at the City's expense). The City will not require second or third opinions in the case of leave to care for a covered service member.

Recertifications. Employees may be asked to periodically recertify the need for FMLA. The City will not, however, require second or third opinions in the case of leave to care for a covered service member. The recertification must be provided within 15 days or as soon as practicable under the particular facts and circumstances. The employee is responsible for any expenses associated with providing the City with any required recertifications.

- 30-day rule. The City will request recertification no more than every 30 days and only in connection with an absence by the employee unless paragraphs (b) or (c) below applies.
- More than 30 days. If the certification indicates that the minimum duration of the condition is more than 30 days, the City will wait until that minimum duration expires before requiring a recertification, unless paragraph (c) below applies. If the minimum duration of a serious health condition extends beyond six months, the City may nevertheless request a recertification every six months in connection with an employee's absence.
- Less than 30 days. The City may request recertification in less than 30 days if the employee requests an extension of leave, circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications, a pattern of unscheduled absences), or the City receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.
- Annual Medical Certifications. If a serious health condition lasts beyond a single leave year, the City may require the employee to provide a new medical certification in each subsequent leave year.

Fitness-for-Duty/Return to Work Certification. Employees must submit a "fitness-for-duty" certification before they can return to work if FMLA leave is a result of the employee's own serious health condition. (The

City may provide an FMLA form for this purpose.) The fitness for duty/return to work certification must specifically address the employee's ability to perform his/her essential job functions set out in the City's Designation Notice but is limited to the particular health condition that caused the employee's need for FMLA leave. The employee is responsible for any expenses associated with providing the City with a required fitness for duty/return to work certification and is not entitled to be paid for the time or travel costs spent in acquiring the certification. The Human Resources Department (or other DOL authorized person) may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty/return to work certification; the City will not delay the employee's return to work while such contact with the health care provider is being made. The City will not require second or third opinions of FMLA fitness-for-duty certifications. An employee who fails to timely provide the City with this certification will not be allowed to return to work; an employee who does not provide the required fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement and may be terminated.

While the City will not require a fitness-for-duty certification to return to duty for each absence taken on intermittent or reduced leave schedule, it will require such a certification up to once every 30 days if reasonable safety concerns (*i.e.*, a reasonable belief of significant risk of harm to the employee or others) exist as to the employee's ability to perform his/her duties, based on the serious health condition for which the employee took leave.

Failure to Provide Certifications & Deficient Certifications. If an employee fails to provide a required certification within 15 days after the City requests it, the City may deny leave until the certification is provided. If the employee never produces the certification or recertification, the employee is not eligible for FMLA protections. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If the deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave. The Human Resources Department (or other DOL authorized person) may contact the health care provider for purposes of clarification and authentication after giving the employee the opportunity to cure any deficiencies.

Documenting Family Relationships. If an employee elects to take FMLA leave in order to care for a qualifying family member or to care for a covered service member, the employee may be required to provide reasonable documentation confirming the family relationship.

Certifications for Qualified Exigency Leave.

Active Duty Orders. The first time an employee requests leave because of a qualifying exigency arising out of the **active duty**² or call to active duty status of a covered military member, the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service.

Certification Form. The employee must complete and submit to the Human Resources Department the appropriate certification form (FMLA Form #6) in support of his/her need for leave. This form must usually be turned in within 15 days after the City requests it.

Verification. If the qualifying exigency involves meeting with a third party, the Human Resources Department (or other DOL authorized person) may contact the individual or entity with whom the employee is meeting for

² "Active duty" means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code. §825.126(b)(2).

purposes of verifying a meeting or appointment, and the nature of the meeting. The City may also contact an appropriate unit of the Department of Defense to request verification of active duty or call to active duty status.

Denial or Delay of Leave. Exigency leave may be delayed or denied if the employee fails to turn in the required certification within 15 days. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave.

Job Restoration After FMLA Leave. Upon return from FMLA leave, an employee will normally be restored to his/her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions. An employee, however, has no greater right to reinstatement than if he/she had been continuously employed during the period of FMLA leave. Further, the City may delay restoration to employees who fail to timely provide a fitness-for-duty certification to return to work.

Key Employees. Under certain circumstances the City is not required to reinstate "key" employees. Certain highly compensated key employees may be denied reinstatement when necessary to prevent "substantial and grievous economic injury" to the City's operations. A "key" employee is a salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the worksite. An employee will be notified of his/her status as a key employee, when applicable, after requesting FMLA leave.

Benefits During FMLA Leave.

Group Health Insurance. During any period of FMLA leave, the City will continue to pay its portion, if any, of any group health insurance coverage for the employee on the same terms as if the employee had continued to work. Where applicable, the employee must timely pay his or her share of health insurance premiums while on FMLA leave. The City will advise the employee of the terms and conditions for making such payments. Failure to pay premiums in a timely manner will result in cancellation of group health coverage. The City may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave, unless the employee is unable to return due to a serious health condition, the serious injury or illness of a covered service member, or another reason beyond the employee's control. Medical certification is required under such circumstances.

Other Benefits. The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave, and seniority will not be affected. However, benefit accruals, such as vacation and sick leave, will be suspended during any unpaid leave.

Holidays. When an employee takes a full work week of FMLA leave and a holiday occurs within the week, the week is counted as a full week of FMLA leave. If, however, an employee uses FMLA in increments of less than a week, the intervening holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work on the holiday. Employees on FMLA leave are not normally paid for holidays.

TMRS. Employee contributions to TMRS may be made on a voluntary basis through a special arrangement with the City while an employee is in a leave without pay status. It is the employee's responsibility to initiate such an arrangement by timely contacting the City's Human Resources Department and completing the necessary paperwork.

An employee on family leave does not lose any previously accrued seniority or employment benefits but does not earn any leave credits or other benefits during the unpaid portion of the leave.

Request for Extension of Family and Medical Leave

If an employee requests additional unpaid leave beyond the 12-week maximum allowable under the family and medical leave provisions of these policies, any extension granted will be under the terms set out in the section of these policies headed "Other Leaves of Absence Without Pay." Employees should read the referenced section carefully and understand the differences between these two types of leaves before requesting an extension.

Definitions.

More detailed definitions of some of the terms used in this policy are set out in the Act and in the DOL's regulations.

12-Month Period for Covered Service Members - The 12-month leave period for calculating leave to care for a covered service member with a serious injury or illness is the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered service member begins. During this 12-month period, the maximum FMLA leave an employee may take – for any qualifying reason – is limited to a combined total of 26 weeks.

12-Month Period for All Other FMLA Leave - To determine eligibility for all other leave, the City uses a rolling 12-month period measured backward from the date of any FMLA leave.

Health Care Provider (HCP) – Means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services.

Next of Kin of a Covered Service Member – Means the nearest blood relative other than the covered service member's spouse, parent, or child in the priority established by the DOL.

Incapacity – Means the inability to work, attend school or perform other regular daily activities.

Serious Health Condition - For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

Inpatient care – an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

Continuing treatment by a health care provider (HCP) - includes one or more of the following:

- Incapacity & Treatment - a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment: (i) two or more times (within 30 days of the first day of incapacity, unless extenuating circumstances exist), by a HCP or under direct supervision of, under orders of, or on referral by, a HCP, or (ii) by a HCP on at least one occasion which results in a regimen of continuing treatment under supervision of the HCP. The first (or only) in-person treatment visit must take place within 7 days of the first day of incapacity.
- Pregnancy & Prenatal care - any period of incapacity due to pregnancy, or for prenatal care.
- Chronic Conditions - any period of incapacity or treatment for such incapacity due to a chronic serious health condition which (i) requires periodic visits (at least twice a year) for treatment by, or under the direct supervision of a HCP, or (ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and (iii) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);

- Permanent or Long-Term Conditions - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease).
- Conditions Requiring Multiple Treatments - any period of absence to receive multiple treatments (including any period of recovery therefrom) by, or under the supervision of, under orders of, or on referral by, a HCP either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (e.g., chemo or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. In addition, routine physicals, eye examinations, and dental examinations are not considered treatment.

Qualifying Exigency – this term includes issues arising from short-term deployments of seven or less calendar days prior to the date of the deployment; military events and related activities such as official ceremonies and programs sponsored by the military and to attend family support or assistance programs and informational briefings; childcare and school activities; financial and legal arrangements; counseling; rest and recuperations; post-deployment activities; and additional activities arising out of the covered military member's active duty or call to active duty status if the employee and the City agree that such leave qualifies as an exigency, and agree to both the timing and duration of the leave.



Finance Department

ITEM 4.5

Patricia Langford
Director of Finance
(512) 715-3205
plangford@cityofburnet.com

Agenda Item Brief

Meeting Date:

April 28, 2020

Agenda Item:

Discuss and consider action: A RESOLUTION AUTHORIZING THE ACCEPTANCE OF PAYMENT OF FUNDS APPROPRIATED IN THE PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE: P. Langford

Background:

The federal CARES Act is providing \$100billion in relief funds to hospitals and other healthcare providers (including ambulance providers) on the front lines of the coronavirus response. The funding will be used to support healthcare-related expenses or lost revenue attributable to COVID-19. They are payments, not loans, to healthcare providers. All facilities and providers that received Medicare fee-for-service reimbursements in 2019 are eligible for this initial rapid distribution. Cities that receive the money must accept the terms and conditions in attachment "A". Non-compliance with any term or condition is grounds for the Secretary to recoup some or all of the payment made from the relief fund.

Information:

Staff has reviewed the terms and conditions and determined that there is nothing which would prohibit the city from accepting the funds. However, the terms and conditions do require accountability on how the funds are spent and future grants the City may receive in response to the COVID-19 pandemic.

Fiscal Impact:

General fund deposit of \$58,074.38 to offset lost revenues that are attributable to coronavirus.

Recommendation:

Staff recommends approval of resolution number R2020-09 to accept the payment of relief funds for the City of Burnet as presented.

RESOLUTION NO. R2020-09

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF PAYMENT OF FUNDS APPROPRIATED IN THE PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE

Whereas, in response to the COVID-19 the United States Congress approved the Families First Coronavirus Response Act (the “Act”); and

Whereas, pursuant to Division B of the Act, the Department of Health and Human Services has made payment of funds to the City (the “funds”); and

Whereas, in accordance to the terms of the payment of funds, recipients must comply with certain Terms and Conditions; and

Whereas, City Council desires to adopt this Resolution to memorialize its acceptance of the grant and its commitment to compliance with applicable terms and conditions.

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

Section one. That the recitals to this Resolution are incorporated herein for all purposes.

Section two. The payment offered to the City from funds appropriated in the Public Health and Social Services Emergency Funds is hereby accepted.

Section three. The Terms and Conditions associated with the payment are hereby accepted and the City Council is committed to full compliance with such Terms and Conditions.

Section four. The City Manager is hereby authorized to execute such documents and take such actions reasonably necessary to facilitate the purpose of this Resolution.

Section five. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THIS 28th DAY OF APRIL 2020.

CITY OF BURNET, TEXAS

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



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Acceptance of Terms and Conditions

If you receive a payment from funds appropriated in the Public Health and Social Services Emergency Fund for provider relief (“Relief Fund”) under Division B of Public Law 116-127 and retain that payment for at least 30 days without contacting HHS regarding remittance of those funds, you are deemed to have accepted the following Terms and Conditions. Please also indicate your acceptance below. This is not an exhaustive list and you must comply with any other relevant statutes and regulations, as applicable.

Your commitment to full compliance with all Terms and Conditions is material to the Secretary’s decision to disburse these funds to you. Non-compliance with any Term or Condition is grounds for the Secretary to recoup some or all of the payment made from the Relief Fund.

These Terms and Conditions apply directly to the recipient of payment from the Relief Fund. In general, the requirements that apply to the recipient, also apply to subrecipients and contractors under grants, unless an exception is specified.

Relief Fund Payment Terms and Conditions

- The Payment means the funds received from the Public Health and Social Services Emergency Fund (“Relief Fund”). The Recipient means the healthcare provider, whether an individual or an entity, receiving the Payment.
- The Recipient certifies that it billed Medicare in 2019; provides or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare; is not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs; and does not currently have Medicare billing privileges revoked.
- The Recipient certifies that the Payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.
- The Recipient certifies that it will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- The Recipient shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on this Payment, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all Recipients.
- Not later than 10 days after the end of each calendar quarter, any Recipient that is an entity receiving more than \$150,000 total in funds under the Coronavirus Aid, Relief, and



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Economics Security Act (P.L. 116-136), the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127), or any other Act primarily making appropriations for the coronavirus response and related activities, shall submit to the Secretary and the Pandemic Response Accountability Committee a report. This report shall contain: the total amount of funds received from HHS under one of the foregoing enumerated Acts; the amount of funds received that were expended or obligated for each project or activity; a detailed list of all projects or activities for which large covered funds were expended or obligated, including: the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity, where applicable; and detailed information on any level of sub-contracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

- The Recipient shall maintain appropriate records and cost documentation including, as applicable, documentation required by 45 CFR § 75.302 – Financial management and 45 CFR § 75.361 through 75.365 – Record Retention and Access, and other information required by future program instructions to substantiate the reimbursement of costs under this award. The Recipient shall promptly submit copies of such records and cost documentation upon the request of the Secretary, and Recipient agrees to fully cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with these Terms and Conditions.
- The Secretary has concluded that the COVID-19 public health emergency has caused many healthcare providers to have capacity constraints. As a result, patients that would ordinarily be able to choose to receive all care from in-network healthcare providers may no longer be able to receive such care in-network. Accordingly, for all care for a presumptive or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.

The following statutory provisions also apply:

General Provisions in FY 2020 Consolidated Appropriation

SEC. 202. Executive Pay. None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II:

SEC. 210. Funding Prohibition for Gun Control Advocacy. None of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control.

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SEC. 503. Lobbying

(a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

SEC. 506. Prohibits Use of Federal Funds for Abortions.

(a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term “health benefits coverage” means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 507 Limitations on Abortion Funding Prohibition



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(a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

Prohibits Use of Funds for Embryo Research

SEC. 508. Prohibits Use of Funds for Embryo Research

(a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act,



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that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

SEC. 509. Prohibits Promotion of Legalization of Controlled Substances

(a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act except for normal and recognized executive-congressional communications.

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

SEC. 515. (b) Prohibits Asking Candidates for Federal Scientific Advisory Committees Their Political Affiliations; Prohibits Distribution of Intentionally False Information

(b) None of the funds made available in this Act may be used to disseminate information that is deliberately false or misleading.

SEC. 520. Pornography.

(a) None of the funds made available in this Act may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

(b) Nothing in subsection (a) shall limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

SEC. 521. Prohibits Funding ACORN or Its Affiliates or Subsidiaries. None of the funds made available under this or any other Act, or any prior Appropriations Act, may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.

SEC. 527. Prohibits Federal Funding for Needle Exchange Except in Limited

Circumstances. Notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug: *Provided*, That such limitation does not apply to the use of funds for elements of a program other than making such purchases if the relevant State or local health department, in consultation with the Centers for Disease Control and Prevention, determines that the State or local jurisdiction, as applicable, is experiencing, or is at risk for, a significant increase in



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hepatitis infections or an HIV outbreak due to injection drug use, and such program is operating in accordance with State and local law.

Government-wide General Provisions

SEC. 718. Propaganda. No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

SEC. 732. Privacy Act. None of the funds made available in this Act may be used in contravention of section 552a of title 5, United States Code (popularly known as the Privacy Act), and regulations implementing that section.

SEC. 742. Confidentiality Agreements.

(a) None of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The limitation in subsection (a) shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

SEC. 743. Nondisclosure Agreements

(a) No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this SEC. 743. (a) No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such



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policy, form, or agreement does not contain the following provisions: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”: *Provided*, That notwithstanding the preceding provision of this section, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

(b) A nondisclosure agreement may continue to be implemented and enforced notwithstanding subsection (a) if it complies with the requirements for such agreement that were in effect when the agreement was entered into.

(c) No funds appropriated in this or any other Act may be used to implement or enforce any agreement entered into during fiscal year 2014 which does not contain substantially similar language to that required in subsection (a).

SEC. 744. Unpaid Federal Tax Liability. None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

SEC. 745. Criminal Felony Limitation. None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was



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convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Other Appropriations Provisions

42 U.S.C. 289d note No funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used by the National Institutes of Health, or any other Federal agency, or recipient of Federal funds on any project that entails the capture or procurement of chimpanzees obtained from the wild. For purposes of this section, the term 'recipient of Federal funds' includes private citizens, corporations, or other research institutions located outside of the United States that are recipients of Federal funds.

Other Statutory Provisions

Trafficking in Persons

This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104)

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either-
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 376.

b. Provision applicable to a recipient other than a private entity.

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

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2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either

- i. Associated with performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 376

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended

(22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make

to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102)

Whistleblower Protections

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

You are hereby given notice that the 48 CFR section 3.908, implementing section 828, entitled “Pilot Program for Enhancement of Contractor Employee Whistleblower protections,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) applies to this award.

Human Subjects Protections

If any activities under this project will involve human subjects in any research activities, you must provide satisfactory assurance of compliance with the participant protection requirement of the HHS/OASH Office of Human Research Protection (OHRP) prior to implementation of those research components. This assurance should be submitted to the OHRP in accordance with the appropriate regulations.

Fraud, Abuse and Waste:

The HHS Inspector General accepts tips and complaints from all sources about potential fraud, waste, abuse, and mismanagement in Department of Health and Human Services' programs. Your information will be reviewed promptly by a professional staff member. Due to the high volume of information that they receive, they are unable to reply to submissions. You may reach the OIG through various channels.

Internet: <https://forms.oig.hhs.gov/hotlineoperations/index.aspx>

Phone: 1-800-HHS-TIPS (1-800-447-8477)

Mail: US Department of Health and Human Services

Office of Inspector General

ATTN: OIG HOTLINE OPERATIONS

PO Box 23489

Washington, DC 20026

For additional information visit <https://oig.hhs.gov/fraud/report-fraud/index.asp>



Administration

ITEM 4.7

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: Engineering Services Contract with Jones and Carter: D. Vaughn
Background:	Staff is requesting to terminate the existing contract with Jones and Carter for City Engineering services, in order to be able to enter into an agreement with Cuatro Consultants. Staff still intends to use Jones and Carter for GIS services.
Information:	
Fiscal Impact:	The intent of this change is to reduce the turn-around time for plan review and reduce the review costs, which ultimately reduces the cost to the developer or builder.
Recommendation:	Staff recommends a motion to terminate the contract with Jones and Carter.

CITY ENGINEER SERVICES AGREEMENT
CITY OF BURNET, TEXAS

STATE OF TEXAS §
 §
COUNTY OF BURNET §

This Agreement is entered into by the City of Burnet, hereinafter called "City" and Jones & Carter, Inc., hereinafter called "Engineer", for the purpose of providing City Engineering Services to the City.

I. SCOPE OF SERVICES:

- a. Ongoing Services: The Engineer shall act in the capacity of City Engineer for the City. These services, hereinafter called "Ongoing Services" will consist of tasks such as conferences with City officials, response to City official's concerns, review of development plans, review of construction drawings, public presentations, formulation of policies and procedures, GIS services and various other tasks as requested by the City.
- b. Project Engineering Design and Specific Task Services: Project Engineering Design and Specific Task Services, hereinafter called "Project Services" will consist of providing engineering services to produce plans, specifications, bid documents, engineering reports, planning studies, and others as defined by the City. These services would generally require preparing and providing documents sealed by a licensed professional engineer for a specific design project or study.

Such "Project Services" will be requested by the City in writing, at which time the Engineer will meet with the appropriate City representative(s) to discuss the project or task and develop a scope of services and fee and furnish these to the City for approval prior to start of work. Each project or task authorized by the City will be identified by a unique job number and all fees associated therewith will be separately accounted for. Fees will be based upon the fee rate cited hereinafter or a lump sum fee depending upon the nature of the project or task. This Agreement shall pertain to said Project Services unless the nature of any particular project should prompt the City and the Engineer to agree that a separate contract should be executed to cover that specific project.

The Ongoing Services and the Project Services shall be known herein collectively as "Services"

II. COMPENSATION:

- a. A fee for the Ongoing Services shall be based upon hours spent times the actual hourly billing rate. The hourly rate for employees of the Engineer shall be determined in accordance with Attachment "A". The City shall be billed on a monthly basis for Ongoing Services performed in the previous month.

Project Services shall be billed on a monthly basis. Lump sum tasks shall be billed on the percentage completion of the task; hourly tasks shall be billed based on the hours expended times the hourly rate.

Billing Period: The Engineer may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Engineer's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

- b. Where the City desires to contract with specialized consultants directly, services of specialized consultants, such as geotechnical services, surveying services and others, said services shall be billed to and paid by the City directly. In the event the City desires for such services to be performed as a subcontract to the Engineer, those fees for such services would be the sub-consultant's cost plus 10%.

III. TERMS AND CONDITIONS OF AGREEMENT: The Terms and Conditions of this Agreement shall be generally as set forth herein.

- a. **No Rights Conferred:** Nothing in this Agreement shall be construed or applied to give or confer any rights or benefits under this Agreement to anyone other than City and Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and Engineer and not for the benefit of any other party.
- b. **Entire Agreement:** This Agreement constitutes the entire Agreement between City and Engineer and supersedes all prior written or oral understandings, representations or Agreements by or between the parties concerning the matters which are the subject of this Agreement. This Agreement may be amended only in writing duly executed by both parties.
- c. **Severability:** If any part or provision of this Agreement is found to be unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be given effect to the extent practicable.
- d. **Termination:** The obligation to provide Services under this Agreement may be terminated by either party upon thirty (30) days' written notice. In the event of termination, Engineer shall be paid for all services rendered, up to, but not after, the date notice of termination is received, in accordance with the terms and conditions herein.
- e. **Insurance.** Before commencing work under this Agreement, Engineer shall obtain and furnish to the City evidence of the following insurance during the term of this Agreement and thereafter as required herein:
 - i. **Professional Liability Insurance:** professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering

all work performed by the Engineer, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Engineer continuing to furnish the City certificates of insurance.

- ii. **Workers Compensation Insurance:** The Engineer shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Engineer's employees carrying out the work involved in this contract.
 - iii. **General Liability Insurance:** The Engineer shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Engineer or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.
 - iv. **Automobile Liability Insurance:** Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Engineer or its employees.
 - v. **Subcontractor:** In the case of any work sublet, the Engineer shall require subcontractor and independent contractors working under the direction of either the Engineer or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Engineer.
 - vi. **Qualifying Insurance:** The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.
- f. **Limitation of Liability:** In no event shall either party be liable to the other in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems, or for any punitive or exemplary damages.
- g. **Subcontracts:** If, for any reason, at any time during the provision by the Engineer of the Services, City determines that any subcontractor of the Engineer is incompetent or otherwise unacceptable, City will notify the Engineer accordingly and the Engineer shall take immediate steps for cancellation of such subcontract and replacement, as appropriate, of the said subcontractor. Subcontractors' contracts with their subcontractors shall contain the same provisions regarding City's rights to determine subcontractor suitability, and Engineer's contracts with its subcontractors shall expressly so

provide, as shall subcontractors' contracts with their subcontractors. Nothing contained in the Agreement, however, shall create any contractual relationship between any subcontractor of Engineer's Subcontractor and Engineer. Notwithstanding the preceding sentence, Engineer shall be liable to City for injury or damage caused to City by any negligence, errors or omissions of any Engineer's Subcontractor or subcontractors of Engineer as if such negligence, errors or omissions was caused by the Engineer.

h. **Ownership of Work Product:** All drawings, reports, data and other project documentation and information developed in the execution of the services provided under this Agreement ("Work Product"), whether developed or refined by Engineer, its representatives, or any subcontractor's representatives, shall be the property of the City upon payment of Engineer's fees for the Services, provided, that if a good faith dispute exists between City and Engineer concerning such fees, Engineer may not withhold Work Product from City pending resolution of the dispute. Engineer may retain copies of Work Product for record purposes only. City agrees such documents are not intended or represented by Engineer to be suitable for reuse by City or others. Any reuse by City (or by those to whom the City has made the documents available for use) without written verification of suitability or adaptation by Engineer will be at user's sole risk (or that of such other person) and without liability or legal exposure to Engineer, or to Engineer's independent associates or consultants. Upon request by City, Engineer agrees to execute a release for said Work Product.

i. **Successors and Assigns:** City and Engineer each are hereby bound and the partners, successors, executors, administrators and legal representatives of City and Engineer are hereby bound to the other party of this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither City nor Engineer shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Engineer from employing such independent associates and consultants as Engineer may deem appropriate to assist in the performance of services hereunder.

j. **Venue, Choice of Laws, Attorney's Fees:** Venue for any disputes, claims or proceedings arising from or related to this Agreement shall be and lie exclusively in the state and county courts of Burnet County, Texas, or the federal district courts of the Western District of Texas, Austin Division. This Agreement shall be construed, applied and enforced according to the laws of the State of Texas, its choice of laws provisions excepted. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

k. **Professional's Seal.** The Engineer's Professional Seal shall be placed on all final conformed construction drawings, specifications and final engineering reports furnished

by the Engineer to the City in accordance with state requirements. Preliminary construction drawings and specifications along with draft engineering reports will be noted and stamped as such in accordance with state requirements. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Civil Engineering industry. The plans, specifications and data provided by the Engineer shall be adequate and sufficient to enable those performing the actual work to perform any work as and within the time contemplated by the City and Engineer.

- l. Compliance with Laws. The Engineer shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Engineer shall furnish the City with satisfactory proof of compliance.
- m. Independent Contractor. The Engineer acknowledges that it is an independent contractor of the City and is not an employee of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Engineer.
- n. Non-Collusion. The represents and warrants that it has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. The Engineer further agrees that it shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to the Engineer, it shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.
- o. Non-Exclusive Agreement. The Engineer and City agree that nothing contained in this Agreement binds the City to exclusively look to the Engineer to provide services contemplated by this Agreement and that City may, at its sole discretion contract with other professionals to provide such services, when doing so is deemed by the City Manager and/or City Council to be in the best interest of the City.

This contract is executed in two counterparts.

[Signatures on next page]

IN TESTIMONY HEREOF, Engineer and City have executed this Agreement, this

14th day of October, 2014.

Jones & Carter, Inc. (Engineer)
1701 Directors Blvd.
Austin, TX 78744

James M. Schussler
Vice President
Title

City of Burnet (City)
P.O. Box 1369
Burnet, TX 78611

David Vaughn
David Vaughn, City Manager

SCHEDULE OF HOURLY RATES

Effective January 2014 - Subject to Annual Revision in January 2015

ENGINEERING PERSONNEL

Engineer I	\$84
Engineer II	\$89
Engineer III	\$100
Engineer IV	\$110
Engineer V	\$120
Engineer VI	\$135
Engineer VII	\$155
Sr. Project Engineer	\$170
Sr. Project Manager	\$190
Division Manager	\$200
Regional Manager	\$225
Corporate Manager	\$250

ELECTRICAL ENGINEERING PERSONNEL

Electrical Engineer I	\$90
Electrical Engineer II	\$100
Electrical Engineer III	\$110
Electrical Engineering IV	\$120
Electrical Engineer V	\$130
Electrical Engineer VI	\$135
Electrical Engineer VII	\$155
Sr. Electrical Project Engineer	\$170
Sr. Electrical Project Manager	\$190

CONSTRUCTION PERSONNEL (Includes Mileage)

Project Representative I	\$53
Project Representative II	\$60
Project Representative III	\$70
Project Representative IV	\$80
Project Representative Coordinator	\$85
Construction Engineer I	\$84
Construction Engineer II	\$89
Construction Engineer III	\$100
Construction Engineer IV	\$110
Construction Engineer V	\$120
Construction Engineer VI	\$135
Construction Manager	\$170

OFFICE PERSONNEL

Office Assistant	\$35
Engineer's Assistant I	\$45
Engineer's Assistant II	\$60
Admin I	\$40
Admin II	\$50
Admin III	\$60
Contract Coordinator	\$60
Bookkeeper	\$75
Staff Assistant	\$75
Chief Accountant	\$100

SURVEYING PERSONNEL

4-Man Field Crew	\$155
3-Man Field Crew	\$145
2-Man Field Crew	\$125
4-Man Field Crew w/Robotic Survey System	\$180
3-Man Field Crew w/Robotic Survey System	\$170
2-Man Field Crew w/Robotic Survey System	\$150
1-Man Field Crew w/Robotic Survey System	\$125
4-Man Field Crew w/GPS System	\$210
3-Man Field Crew w/GPS System	\$200
2-Man Field Crew w/GPS System	\$170
1-Man Field Crew w/GPS System	\$150
Survey Technician I	\$55
Survey Technician II	\$70
Survey Technician III	\$90
Project Surveyor I	\$67
Project Surveyor II	\$80
Project Surveyor III	\$92
Project Surveyor IV	\$108
Chief of Survey Crews	\$98
Registered Prof. Land Surveyor	\$135
Survey Manager	\$150

DESIGNERS/DRAFTING PERSONNEL

CAD Operator I	\$43
CAD Operator II	\$50
CAD Operator III	\$60
CAD Operator IV	\$70
CAD Operator V	\$84
CAD Manager	\$92
Designer I	\$84
Designer II	\$94
Designer III	\$100
Designer IV	\$108
Designer V	\$115
GIS Operator I	\$55
GIS Operator II	\$75
GIS Operator III	\$90
GIS Operator IV	\$100
Computer Tech	\$60
Computer Manager	\$100

PLANNING PERSONNEL

Planner I	\$70
Planner II	\$85
Planner III	\$100
Planner IV	\$120



Administration

ITEM 4.8

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: Authorize the City Manager to execute a contract with Cuatro Consultants for services as the City Engineer for the City of Burnet: D. Vaughn
Background:	The City has had a working relationship with Cuatro Consultants for approximately 15 years and has recently utilized them on a number of city and EDC projects. Cuatro Consultants has done an excellent job, has a very common sense approach to resolving engineering issues and has provided services at a much lower cost than our current city engineer.
Information:	
Fiscal Impact:	The intent of this change is to reduce the turn-around time for plan review and reduce the review costs, which ultimately reduces the cost to the developer or builder.
Recommendation:	Staff recommends approval of the agreement for City Engineering services with Cuatro Consultants.

CITY OF BURNET
STANDARD PROFESSIONAL SERVICES AGREEMENT
Engineering Services

THE STATE OF TEXAS §
 §
BURNET COUNTY §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Burnet, Texas, (the “City”) a Texas municipality, and Cuatro Consultants, LTD., (“Professional”).

Section 1. Duration.

This Agreement shall become effective upon execution by the City and shall remain in effect until terminated as provided for in this Agreement.

Section 2. Scope of Work.

- (A) Professional shall serve as the City Engineer (“Ongoing Services”) and may be tasked to provide Project Engineering Services and Specific Tasks Services:
- (1) Ongoing Services: As more specifically described in **Exhibit “A”**, Professional’s City Engineer services will consist of tasks such as conferences with City officials, response to City official's concerns, review of development plans, review of construction drawings, public presentations, formulation of policies and procedures, and various other tasks as requested by the City. Ongoing Services shall be undertaken upon the request and direction of the City Manager or the Directors of Public Works or Development Services.
 - (2) Project Engineering Design and Specific Task Services, (“Project Services”) will consist of providing engineering services to produce plans, specifications, bid documents, engineering reports, planning studies, and others as defined by the City. Project Services shall be provided on written request of the City and shall proceed only upon the City’s issuance of a Scope of Work for any specific Project Service.
- (B) The Quality of Services provided under this Agreement shall be of the level of professional quality performed by Professionals regularly rendering this type of service.
- (C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) The Professional shall be paid for Ongoing Services in the manner set forth in the **Exhibit “B”** (“Fee Schedule”) and as provided herein.
- (B) The Professional shall be paid for each Project Service in accordance with a Fee Schedule issued for the specific Project Service.
- (C) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on Ongoing Services tasks requested by the City Manager or the Directors of Public Works or Development Services and satisfactorily performed during the Billing Period. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Professional’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

Section 4. Intentionally deleted.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in **Exhibit “C,”** Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a “claims made” basis, the certificate of insurance must clearly state coverage is on a “claims made” basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional’s employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as **Exhibit "D"**.

Section 7. Miscellaneous Provisions.

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* All documents prepared by the Professional or furnished to the Professional by the City are the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of

such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(G) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees other than the fees then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the

value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination.

- (C) Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to the City.

Section 9. Indemnification. Professional agrees to indemnify and hold the City of Burnet, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – **BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.**

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Burnet County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Burnet County, Texas.

Section 15. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings,

statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. Professional shall not be an employee of the City of Burnet for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act and the Texas Unemployment Compensation Act.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.

Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Executed to be effective on the _____ day of _____ 2020.

CITY:

PROFESSIONAL: Cuatro Consultants,
LTD

By: _____

David Vaughn, City Manager

By: _____

Hugo Elizondo, Manager

Attest

Kelly Dix, City Secretary

ADDRESS FOR NOTICE:

CITY:

City of Burnet
Attention: David Vaughn
P. O. Box 1369
Burnet, TX 78611

PROFESSIONAL:

Cuatro Consultants, LTD
Attention: Hugo Elizondo
3601 Kyle Crossing, Suite A
Kyle, TX 78640

Exhibit "A"

SCOPE OF WORK

Ongoing services shall be performed on request, and the direction, of the City Manager or the Directors of Public Works or Development Services and shall include the following:

- A. Plan Review Services: Provide technical review of, and answer inquiries relating to, site plans, subdivision plans, improvement plans, land disturbance plans, and construction plans relating to projects proposed by applicants to be developed in the City to ensure conformance to codes adopted by the City, as well as state and federal laws.
- B. Environmental Services and Regulatory Agency Interactions: Be well-versed in regulatory compliance and permitting and be familiar with approval procedures of regulatory agencies including but not limited to the following: Texas Department of Transportation, Texas Department of Agriculture, Texas Water Development Board, Texas Commission on Environmental Quality, U.S. Army Corps of Engineers, Federal Emergency Management Agency, Federal Highway Administration, United States Environmental Protection Agency.
- C. Floodplain administration. Upon written request serve as the city floodplain administrator and prepare the Municipal Separate Storm System (MS4) permit as well as ensure all other timely submittals are made as mandated by the agencies listed above.
- D. Grant Assistance: As requested, complete or assist in the completion of grant applications for City projects.
- G. Meeting Attendance and Participation: As requested, attend a variety of City meetings, including, but not limited to, planning and zoning meetings, council meetings, meetings of affected property owners, and meetings with city staff, city officials and developers.

Exhibit "B"

COMPENSATION

EXHIBIT B

STANDARD RATE SCHEDULE

The following are Cuatro Consultants, Ltd. rates for work performed on an hourly-charge basis. Rates include company overhead and profit for services accomplished during regular working hours.

DIRECT LABOR

OFFICE PERSONNEL SERVICES

<u>Classification</u>	<u>Rates</u>
Principal, P.E.	\$ 198.00 per hour
Project Engineer, P.E.	\$ 153.00 per hour
Engineer in Training, E.I.T.	\$ 135.00 per hour
Senior Designer / Lead.....	\$ 117.00 per hour
Construction Coordinator/Inspector.....	\$ 117.00 per hour
CADD / Technician	\$ 99.00 per hour
CADD Draftsman	\$ 90.00 per hour
Administrative Assistant.....	\$ 81.00 per hour
Secretarial / Clerical	\$ 63.00 per hour

FIELD PARTY SERVICES

	<u>Rates</u>
1-Man Field Party	\$ 99.00 per hour
2-Man Field Party	\$ 135.00 per hour

DIRECT EXPENSES

Transportation	
By Firm's Passenger Vehicles (Note 1).....	\$ 0.58 per mile
Subsistence of out-of-city work.....	\$ Direct Expenses

Notes:

1. A mileage charge will be billed from and to the meeting site from our Kyle office location.

Exhibit "C"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of Burnet accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of Burnet shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Burnet shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Burnet will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Burnet as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Burnet of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Professional may maintain reasonable and customary deductibles, subject to approval by The City of Burnet.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professionals obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Professional shall furnish The City of Burnet with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Burnet within ten (10) business days after contract award and prior to starting any work by the successful Professional's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Burnet, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Burnet. The certificate of insurance and endorsements shall be sent to:

City of Burnet
Attn: City Secretary
P. O. Box P.O. Box 1369
Burnet, Texas 78611

emailed to: kdix@cityofburnet.com
Faxed to: 512-756-8586

ACORD® **CERTIFICATE OF LIABILITY INSURANCE** **A** **DATE (MM/DD/YYYY)**
01/01/1000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
ABC Insurance Agency
655 Main Street
Tampa, FL 33333-0000 **B**

INSURED
C XYZ Company
123 Apple Street
Tampa, FL 22222-0000

CONTACT
NAME: _____
FAX No. Ext: _____ FAX, Note: _____
E-MAIL: _____
ADDRESS: _____

INSURER(S) AFFORDING COVERAGE

INSURER	NAIC #
INSURER A: Insurance Carrier	00000
INSURER B: Insurance Carrier	00000
INSURER C: Insurance Carrier	00000
INSURER D: Insurance Carrier	00000
INSURER E: Insurance Carrier	00000
INSURER F: Insurance Carrier	00000

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOCATION A	G X123456 H	N 01/01/1000	01/01/1000	O EACH OCCURRENCE (DAMAGE TO RENTED PREMISES (E & S occs)) \$ 1,000,000 MED EXP (Any one person) \$ 100,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMOD AGG \$ 1,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWN AUTOS INSURED AUTOS B	123456789 I	01/01/1000	01/01/1000	J COMBINED SINGLE LIMIT (E & S occs) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
UMBRELLA LIAB EXCESS LIAB DEO RETENTION \$ C	K			L EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Handwritten in HR) Years, describe under DESCRIPTION OF OPERATIONS below D	01234 N	01/01/1000	01/01/1000	E <input checked="" type="checkbox"/> NO STATUS E & L EACH ACCIDENT \$ 500,000 E & L DISEASE - EA EMPLOYEE \$ 500,000 E & L DISEASE - POLICY LIMIT \$ 500,000
Builder's Risk E	123456 L	01/01/1000	01/01/1000	100% Insurable Value, replacement cost basis \$1,000,000 each claim / \$1,000,000 aggregate
Professional Services				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Effective January 1, 2012 must be compliant with Chapter 1011, Tex. Ins. Code (SB 425 enacted by Texas Legislature 82(R) session in 2011).

CERTIFICATE HOLDER **CANCELLATION**

Q **R**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE **S**

AUTHORIZED SIGNATURE REQUIRED HERE

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ACORD 26 (2010/05)

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(Instructions for completing and submitting a certificate to the City of Burnet)

Complete the certificate of insurance with the information listed below:

A) Certificate of Insurance date

B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.

- C) Insured's (Insurance Policy Holder) Information – complete name & address information
- D) Insurer (name/names of insurance company) *(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
- E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
- F) Insurer letter represents which insurance company provides which type of coverage from D
- G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
- H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Professional Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
- I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
- J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
- K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
- L) Builder's Risk Policy – for construction projects as designated by the City of Burnet.
Professional Liability Coverage – for professional services if required by the City of Burnet.
- M) Insurance Policy #'s
- N) Insurance policy effective dates (always check for current dates)
- O) Insurance Policy limits (See Insurance Requirements Checklist)
- P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy (ies) must be provided separately and not in this section. The following endorsements are required by the City of Burnet.
 - (1) Adding the City of Burnet as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
 - (2) Waiver of Subrogation
 - (3) Primary and Non-Contributory
 - (4) Cancellation Notice
- Q) City of Burnet's name and address information must be listed in this section
- R) Notice of cancellation, non-renewal, or material change to the insurance policy (ies) must be provided to the City of Burnet in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
- S) The certificate must be signed by the Authorized Agent in this section of the certificate form.



Administration

ITEM 4.9

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: April 28, 2020

Agenda Item: Discuss and consider action: A RESOLUTION AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF THE PAYMENT OF FUNDS THE GOVERNOR'S PUBLIC SAFETY OFFICE HAS MADE AVAILABLE FROM THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation:

RESOLUTION NO. R2020-10

A RESOLUTION AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF THE PAYMENT OF FUNDS THE GOVERNOR'S PUBLIC SAFETY OFFICE HAS MADE AVAILABLE FROM THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND TAKE ACTIONS TO FACILITATE SUCH ACCEPTANCE

Whereas, on April 15, 2020, Governor Gregg Abbott announced that Thirty-eight-million dollars in Federal COVID-19 Emergency Funding was made available to local governments prevent, prepare for, and respond to the coronavirus; and

Whereas, the funding is made available to municipalities provided recipient municipalities commit to compliance with funding requirements; and

Whereas, City Council finds it in the best interest of City residents that the 2020 COVID-19 Pandemic (project or program) be operated for the 2019-2020 fiscal year; and

Whereas, City Council finds it in the best interest of City residents that the City make application for available COVID-19 Emergency Funding to pay for the aforementioned project

Whereas, City Council desires this Resolution memorialize its commitment to comply with all COVID-19 Emergency Funding requirements associated with any grant of funding.

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

Section one. That the recitals to this Resolution are incorporated herein for all purposes.

Section two. The submission of a grant application to the Public Safety Office for the COVID-19 Pandemic Response Project (hereinafter "project") is hereby authorized.

Section three. The City Manager is hereby designated as the City's authorized official and is delegated the authority to apply for, accept, reject, alter or terminate the grant on behalf of the City. The City Manager is further authorized to execute such documents and take such other actions reasonably necessary to facilitate the purpose of this Resolution.

Section four. The City Manager is hereby authorized and directed to implement safeguards against loss or misuse the Office of the Governor's funds and City Council pledges that in the event of any loss or misuse such funds shall be returned to the Office of the Governor in full.

Section five. The City Manager is hereby authorized and directed to assure the provision of matching funds for the project as, and to the extent, required by the grant application.

Section six. This resolution shall take effect immediately upon its passage, and approval as prescribed by law.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS,
THIS 28th DAY OF APRIL 2020.**

CITY OF BURNET, TEXAS

Crista Goble Bromley, Mayor

ATTEST:

Kelly Dix, City Secretary



Office of the Governor, Public Safety Office Criminal Justice Division Funding Announcement: ***Coronavirus Emergency Supplemental Funding (CESF) Program, FY2020***

Purpose

The purpose of this announcement is to solicit applications for projects that seek to prevent, prepare for, and respond to the coronavirus.

Available Funding

Federal Funds are authorized under Division B of H.R. 748, Pub. L. No. 116136 (Emergency Appropriations for Coronavirus Health Response and Agency Operations); 28 U.S.C. 530C. CESF funds are made available through a Congressional appropriation to the U.S. Department of Justice, Bureau of Justice Assistance. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Texas expects to make approximately \$37.8 million available to local units of government through regionally based allocations using the Regional Councils of Governments boundaries. Please see the Appendix 1 - Regionally Based Allocations at the end of this announcement for more information.

Eligible Organizations

Applications may be submitted by Native American tribes and units of local government, which are defined as a non-statewide governmental body with the authority to establish a budget and impose taxes.

Note: Units of local government eligible for a direct award from the U.S. Department of Justice, Bureau of Justice Assistance (BJA) should first seek funds directly through BJA. The list of local allocations for direct BJA awards to Texas jurisdictions can be found [here](#), and the federal solicitation is available [here](#). Applications are due to BJA by May 29, 2020.

Application Process

Applicants must access the PSO's eGrants grant management website at <https://eGrants.gov.texas.gov> to register and apply for funding. For more instructions and information, see *Developing a Good Project Narrative Guide*, available [here](#).

Key Dates

Action	Date
Funding Announcement Release	04/15/2020
Online System Opening Date	04/15/2020
Final Date to Submit and Certify an Application	06/15/2020 at 5:00pm CST
Earliest Project Start Date	02/01/2020

***Applications will be reviewed and processed as they are received. PSO intends to issue awards in an expeditious manner and encourages applicants to submit prior to the deadline in order to receive notification of an award as soon as reasonable. ***

Project Period

Projects must begin on or after 02/01/2020 and may not exceed a 12-month project period.

Funding Levels

Minimum: \$10,000

Maximum: None

Match Requirement: None

Standards

Grantees must comply with standards applicable to this fund source cited in the State Uniform Grant Management Standards ([UGMS](#)), [Federal Uniform Grant Guidance](#), and all statutes, requirements, and guidelines applicable to this funding.

Eligible Activities and Costs

Funds must be utilized to prevent, prepare for, and respond to the coronavirus. Allowable projects and purchases include, but are not limited to, overtime, equipment (including law enforcement and medical personal protective equipment), hiring, supplies (such as gloves, masks, sanitizer), training, travel expenses (particularly related to the distribution of resources to the most impacted areas), and addressing the medical needs of inmates in local and tribal jails and detention centers.

Examples of allowable costs include:

- Personnel Overtime (Peace Officer, Jailer, Correctional Officer, Medical, and other Essential Staff)
- Personnel Protective Equipment (PPE)
- Supplies (i.e. gloves, masks, sanitizer, disinfectant)
- Temporary Staff
- Medical care for inmates that have tested positive for COVID-19
- Any other costs associated with the implementation of the Centers for Disease Control and Prevention (CDC) [COVID-19 Guidance documents](#), specifically:

- [Interim Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities](#)
- [What Law Enforcement Personnel Need to Know about Coronavirus Disease 2019 \(COVID-19\)](#)
- [Interim Guidance for Emergency Medical Services \(EMS\) Systems and 911 Public Safety Answering Points \(PSAPs\) for COVID-19 in the United States](#)
- [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#)

Eligibility Requirements

1. Entities receiving funds from PSO must be located in a county that has an average of 90% or above on both adult and juvenile dispositions entered into the computerized criminal history database maintained by the Texas Department of Public Safety (DPS) as directed in the Texas Code of Criminal Procedure, Chapter 66. The disposition completeness percentage is defined as the percentage of arrest charges a county reports to DPS for which a disposition has been subsequently reported and entered into the computerized criminal history system.

Beginning January 1, 2020, counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90 percent of convictions within seven business days to the Criminal Justice Information System at the Department of Public Safety. By January 1, 2021, such reporting must take place within five business days.

2. Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety (DPS) for inclusion in the annual Uniform Crime Report (UCR). To be considered eligible for funding, applicants must have submitted a full twelve months of accurate data to DPS for the most recent calendar year.
3. The Texas Department of Public Safety (DPS) has established a goal set by the Texas Legislature for all local law enforcement agencies to implement and report crime statistics data by using the requirements of the National Incident-Based Reporting System (NIBRS) no later than September 1, 2019. Additionally, the Federal Bureau of Investigations (FBI) will collect required crime statistics solely through the NIBRS starting January 1, 2021. Due to these upcoming state and federal deadlines, grantees are advised that eligibility for future grant funding may be tied to compliance with NIBRS. Financial grant assistance for transitioning to NIBRS may be available for your jurisdiction from the Criminal Justice Division (CJD).
4. Local units of government, including cities, counties and other general purpose political subdivisions, as appropriate, and institutions of higher education that operate a law enforcement agency, must comply with all aspects of the programs and procedures utilized by the U.S. Department of Homeland Security ("DHS") to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS. Additionally, counties and municipalities may NOT have in effect, purport to have in effect, or make themselves subject to or bound by, any law, rule, policy, or practice (written or unwritten) that would: (1) require or authorize the public disclosure of federal law enforcement information in order to conceal, harbor, or shield from detection fugitives from justice or aliens illegally in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3). Lastly, eligible applicants must comply with all

provisions, policies, and penalties found in Chapter 752, Subchapter C of the Texas Government Code.

Each local unit of government, and institution of higher education that operates a law enforcement agency, must download, complete and then upload into eGrants the [CEO/Law Enforcement Certifications and Assurances Form](#) certifying compliance with federal and state immigration enforcement requirements. This Form is required for each application submitted to OOG and is active until August 31, 2021 or the end of the grant period, whichever is later.

5. Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <https://fedgov.dnb.com/webform>).
6. Eligible applicants must be registered in the federal System for Award Management (SAM) database located at <https://sam.gov/>.

Failure to comply with program eligibility requirements may cause funds to be withheld and/or suspension or termination of grant funds.

Prohibitions

Grant funds may not be used to support the unallowable costs listed in the [Guide to Grants](#) or any of the following unallowable costs:

1. Law enforcement equipment that is standard department issue; and
2. Any other prohibition imposed by federal, state or local law or regulation.

Selection Process

Application Screening: PSO will screen all applications to ensure that they meet the requirements included in the funding announcement, to understand the overall demand for the program and to identify significant variations in costs per item. After this review, the Office of the Governor will determine if eligible applications can be funded based on funds available, if there are cost-effectiveness benefits to normalizing or setting limits on the range of costs, and if other fair-share cuts may allow for broader distribution and a higher number of projects while still remaining effective.

Final Decisions: The PSO executive director will consider staff recommendations along with other factors and make all final funding decisions. Other factors may include cost effectiveness, overall funds availability, state government priorities and strategies, legislative directives, need, geographic distribution, balance of focuses and approaches, or other relevant factors.

PSO may not fund all applications or may only award part of the amount requested. In the event that funding requests exceed available funds, PSO may revise projects to address a more limited focus.

Contact Information

For more information, contact the eGrants help desk at eGrants@gov.texas.gov or (512) 463-1919.

Appendix 1 – Regionally Based Allocations

Texas is divided into 24 regions, each served by a voluntary organization of local governmental entities that coordinate programs and services to address needs that cross jurisdictional boundaries. PSO will use the allocations below as a guide when making funding decisions for applications within each region. Funds remaining within a regionally based allocation after all eligible applications have been selected for award from that region may be reallocated to other regions.

Please visit <https://txregionalcouncil.org/regional-councils/> to determine which Council of Governments region your jurisdiction belongs to.

Region ID	Council of Governments Region	Allocation
100	Panhandle Regional Planning Commission	\$667,179
200	South Plains Association of Governments	\$808,781
300	Nortex Regional Planning Commission	\$303,721
400	North Central Texas Council of Governments	\$9,621,787
500	Ark-Tex Council of Governments	\$425,973
600	East Texas Council of Governments	\$1,208,554
700	West Central Texas Council of Governments	\$568,229
800	Rio Grande Council of Governments	\$1,081,360
900	Permian Basin Regional Planning Commission	\$560,201
1000	Concho Valley Council of Governments	\$208,130
1100	Heart of Texas Council of Governments	\$547,493
1200	Capital Area Council of Governments	\$2,787,712
1300	Brazos Valley Council of Governments	\$546,364
1400	Deep East Texas Council of Governments	\$520,349
1500	South East Texas Regional Planning Commission	\$683,216
1600	Houston-Galveston Area Council	\$10,128,457
1700	Golden Crescent Regional Planning Commission	\$346,150
1800	Alamo Area Council of Governments	\$3,053,904
1900	South Texas Development Council	\$497,798
2000	Coastal Bend Council of Governments	\$721,989
2100	Lower Rio Grande Valley Development Council	\$1,351,751
2200	Texoma Council of Governments	\$274,438
2300	Central Texas Council of Governments	\$555,328
2400	Middle Rio Grande Development Council	\$309,421
Total		\$37,778,284

Appendix 2 – Frequently Asked Questions (FAQs)

Application Questions

1. Do all fields within the eGrants application need to be completed by applicants?

Answer: Applicants need to do their due diligence in completing the application to the best of their ability. With that said, there are sections on the Narrative that would require minimal information.

2. Is the compliance date for the 90% CCH and UCR requirements for the CESF last August?

Answer: Yes.

3. The following requirement may be difficult to meet: “Beginning January 1, 2020, counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90 percent of convictions within seven business days to the Criminal Justice Information System at the Department of Public Safety. By January 1, 2021, such reporting must take place within five business days.” Have any permits or waivers been made available for this requirement?

Answer: CJIS reporting is an important tool for maintaining public safety especially as it relates to information sharing and awareness regarding violent offenders. While the requirement to report data to DPS is not being waived, as far as grant funding decisions are concerned, PSO has broad discretion in implementing this eligibility requirement and would certainly take into consideration the burden COVID19 has placed on all Texas communities when it comes time to make funding decisions.

4. Will SAMs extension apply to this program? SAM registration: 60-day extensions to SAM.gov registrations with expiration dates between 3/19/2020 and 5/17/2020 will automatically be initiated in the federal SAM system by the federal government. This effort is expected to be completed by 3/28/2020.

Answer: Yes, however applicants must still provide within the eGrants application the expiration date noted in SAM.gov.

5. If a jurisdiction were to submit an application that the OOG deems ineligible, will that jurisdiction be allowed to submit another application?

Answer: Agencies should submit applications based on the parameters listed in the RFA. PSO will communicate directly with agencies to identify and fix any discrepancies found in their application.

6. Can the grant application be submitted by the County Judge’s office or does it have to come from the Sheriff’s office?

Answer: The application must be submitted by the city or county. The department/division that submits the application is at the discretion of the unit of local government.

Funding Distribution Questions

7. What role will COGs play in ensuring all jurisdictions within their regions have a fair shot at equitable distribution of the funds?

Answer: PSO will be coordinating closely with COGs prior to issuing awards to ensure a fair distribution of funds between all jurisdictions with their regions.

8. What factors will be used to distribute the funding fairly across a region?

Answer: PSO will be coordinating with the COGS to ensure funds are distributed evenly. PSO asks agencies to submit requests that are reasonable and are an accurate representation of true emergency needs.

9. Since the money was divided by region, will there be another “supplemental allocation” if money is leftover for a region?

Answer: PSO intends to re-allocate any remaining available balance until entirety of funds is expended. PSO is looking at multiple possibilities so cannot guarantee supplemental awards at this time.

Eligible Entity Questions

10. Are only local entities that are a taxing authority who also report UCR and NIBRS eligible to apply or are drainage districts, water districts, municipal utility districts, etc allowed to apply also?

Answer: Only cities and counties are eligible to apply.

11. Are university police departments eligible to apply for the CESF program?

Answer: No, only cities and counties are eligible to apply.

12. Can jurisdictions eligible for direct allocations from BJA’s CESF program funding also apply for funding from the state CESF program?

Answer: Yes. Per RFA, they must seek funds directly from BJA first and may be required to submit additional information related to their BJA application to mitigate any duplication of funds.

13. Are non-criminal justice entities allowed to apply for CESF monies administered by the PSO from the BJA to help “Public Safety Agencies”?

Answer: Only cities and counties are eligible to apply.

14. Are non-profits eligible to apply for this funding?

Answer: No, only cities and counties are eligible to apply.

- 15. The definition of eligible organizations in the RFA would include school districts, community college districts, and various other local governmental entities that levy taxes. Can PSO clarify which entities are eligible to apply for these funds?**

Answer: Only cities and counties are eligible to apply.

- 16. Since the Minimum threshold is set at \$10K, can all the eligible agencies within one county apply under a single application if the County is willing to take the lead?**

Answer: Yes.

- 17. Do the jurisdictions eligible for direct allocations from BJA apply through BJA? Are the only cities and counties eligible the ones listed on the BJA solicitation?**

Answer: Agencies eligible for a direct allocation must apply directly to BJA to receive those funds. Cities and counties not on the direct allocation list may apply through PSOs RFA.

Eligible Expense Questions

- 18. Does the 2/1/20 start date mean expenses incurred for overtime, purchase of PPE, etc. on or after 2/1/20 in response to COVID-19 are eligible under this program?**

Answer: Yes, retroactive expenses dating back to 2/1/20 are eligible.

- 19. Are subscriber units an eligible expenditure for equipment with this funding at the state level through PSO? BJA has determined subscriber units for equipment was an eligible expense for jurisdictions eligible to receive a direct allocation.**

Answer: No. PSO has multiple avenues that agencies can apply for radio interoperability funding. The priority of these funds is to help first responders cope with the immediate impact of the COVID19 pandemic. While BJA may have determined radios as eligible, PSO is targeting CESF funds towards emergency needs i.e. overtime, PPE, jail operations, medical supplies.

- 20. Are sheriff and jail staff salary increases and hazard pay in response to COVID-19 allowable costs under the CESF program? Is hazard pay an eligible expense for police departments?**

Answer: Yes. Prior to seeking reimbursement, the agency will need to develop/establish a policy outlining hazard/differential pay.

- 21. If funds are being requested to assist with personnel hazard pay and the jurisdiction's policies classify all hours worked during this time as hazard pay, can funds be used to cover all hours worked?**

Answer: Yes, but the agency will still be required to draw the connection between the hazard pay and the agency's response to COVID19.

22. Do public works personnel qualify as "other essential staff" under personnel overtime as an allowable cost?

Answer: Priority will go to first responders and jail operations. PSO will revisit that decision if funds are remaining at a later date.

23. The examples provided of what is eligible is all reimbursable by FEMA. What types of projects does the OOG envision funding?

Answer: PSO recognizes that there are multiple sources of federal funds available. Applicants will have to determine their agency needs and apply accordingly. Examples of allowable costs/activities are listed in the RFA.

24. Can this funding be used to upgrade vehicle fleets or purchase command centers? Will PSO stick to the definition of equipment as "including law enforcement and medical personal protective equipment?"

Answer: PSO has other avenues that agencies can apply for patrol vehicles and command centers. The priority of these funds is to help first responders cope with the immediate impact of the COVID19 pandemic. PSO is targeting CESF funds towards emergency needs i.e. overtime, PPE, jail operations, medical supplies.

25. The RFA states that "Equipment (including law enforcement and medical personal protective equipment)" is eligible. Does that mean the LE agency can procure PPE for the EMS and hospital staff within their jurisdiction?

Answer: Yes, this is eligible.

26. When purchasing PPE, will the grant application be scrutinized over the reasonability of costs. For example, N95 masks normally cost about \$1/mask but are currently going for as much as \$10/mask. If a jurisdiction finds masks for \$7/mask, will that cost be eligible for reimbursement?

Answer: PSO utilizes the 2 CFR 200 Cost Principles when reviewing grant applications which include reasonability of cost as a component. PSO will consider the increased current market value of items when applying this standard.



Administration

ITEM 4.10

David Vaughn
City Manager
(512)-756-6093 ext. 3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: Authorization to purchase a 2020 Ford Type 1 Ambulance manufactured by Frazier: M. Ingram
Background:	The current 911 Ambulance is a 2013 model with approximately 200,000 miles on it
Information:	The request for authorization is due to the age and mileage of the current ambulance and the pro-longed delivery time.
Fiscal Impact	Approximate cost is \$185,00 and this is a budgeted item in the 2019/2020 Fiscal Year Budget.
Recommendation:	To be determined by Council



Administration

ITEM 4.12

David Vaughn
City Manager
(512)-756-6093 ext. 3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date:	April 28, 2020
Agenda Item:	Discuss and consider action: Authorization to purchase a 2020 Ford Type 3 Transport Ambulance: M. Ingram
Background:	The current transport ambulance is a 2013 model with approximately 150,000 miles on it
Information:	The request for authorization is due to the age and mileage of the current ambulance and the pro-longed delivery time.
Fiscal Impact	Approximate cost is \$95,000 and this is a budgeted item in the 2019/2020 Fiscal Year Budget.
Recommendation:	To be determined by Council



Administration

ITEM 4.12

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: April 28, 2020

Agenda Item: Discuss and consider action: Direction to staff and authorization for the City Manager to execute processes/plans due to the COVID-19 response: D. Vaughn

Background:

Information: Any and all updates will be presented by staff pertaining to the COVID-19 Pandemic as needed.

Fiscal Impact:

Recommendation: To be determined by Council



Administration

ITEM 4.13

David Vaughn
City Manager
(512)-715-3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: April 28, 2020

Agenda Item: Discuss and consider action: Authorization to proceed with possible budget amendments due to COVID-19 response: D. Vaughn

Background:

Information: Any and all updates will be presented by staff pertaining to the COVID-19 Pandemic as needed.

Fiscal Impact:

Recommendation: To be determined by Council