CITY OF SAN MARCOS

Proposition U

(This proposition will appear on the ballot in the following form.)

PROP U Shall the City's Charter be amended to provide that the City shall not own or operate a natural gas and electricity distribution system within the City's boundaries for ten years, without a public vote, an independent audit, a guarantee that energy distribution rates will be equal to or lower than existing utility's, and certification that the City will not incur debt or use the general fund?

This proposition requires approval by a majority (over 50%) of the voters.

Full text of this proposition follows the argument.

CITY ATTORNEY IMPARTIAL ANALYSIS

You are asked to vote on whether Section 202 of the San Marcos City Charter should be amended to add six (6) new provisions relating to utility franchises that have been agreed upon by the City Council and by San Diego Gas & Electric, the City's franchisee for gas and electric services.

This measure proposes a Charter amendment that would supplement Section 202 to provide that the City, its utility, commissions, agencies or units (referenced collectively as "City") would not own or operate a natural gas and electricity distribution system within the City's jurisdictional boundaries for a ten (10) year period through November 2, 2014, unless certain requirements are first met. For purposes of this proposed amendment, "distribution system" means ownership and/or operation of pipes, wires and electric and gas utility plant and related services for the delivery of electricity or natural gas to consumers within the City's jurisdictional boundaries.

The proposed Charter amendment sets forth the following prerequisites should the City wish to own or operate a distribution system within its jurisdictional boundaries within the proscribed ten (10) year period: (1) the City must charge the same or a lower cumulative rate as that charged by the City's franchisee; (2) the City must have the financial ability and provide the distribution services without incurring debt or encumbering the City's general fund; and (3) the proposed distribution services must first be approved by a majority of the qualified voters of San Marcos.

A "yes" vote is in favor of the proposed Charter amendment and in favor of requiring that the City comply with the above requirements before providing distribution services within the City limits prior to November 2, 2014. Passage of this measure would also permit implementation of the above-referenced agreement with SDG&E, which provides certain utility-related benefits to the citizens of San Marcos.

A "no" vote is a vote against the proposed Charter amendment and against imposing any limitations to the City's ability to provide distribution services within the City limits.

Proposition U is being submitted to the voters with Proposition X, another proposed Charter amendment relating to natural gas and electric utility services. If approved by a greater number of affirmative votes, this amendment would render the Charter amendment proposed under Proposition X null and void. If any provision of this proposed Charter amendment is successfully challenged prior to the election, the remaining provisions are to be severed and presented to the voters.

ARGUMENT IN FAVOR OF PROPOSITION U

PROP. U – THE RATEPAYER PROTECTION ACT ends a 4-year dispute between the City of San Marcos and SDG&E and helps forge a long-term partnership. Under Prop U, the City and SDG&E will work together to develop clean, renewable energy and help lower energy costs in San Marcos.

- ➢ The City and SDG&E have agreed to be partners in energy efficiency and conservation programs that will help reduce energy bills for residents and businesses in San Marcos.
- ➢ The City will pursue the development of a low cost, clean, renewable energy power plant being built in the California desert and SDG&E will deliver that power to San Marcos residents and businesses.
- ➢ SDG&E and the City will work to integrate high tech energy generation technologies (solar and fuel cells) into city buildings and other development projects that will help the environment and save the City money on energy bills.
- ➢ The City and SDG&E will develop a program to use local grass and tree trimmings as fuel for a renewable energy power plant located outside San Marcos' city limits.

PROP. U – THE RATEPAYER PROTECTION ACT guarantees San Marcos voters have the **final say** on any plan for the City to enter the power distribution business.

- ➢ San Marcos voters will have the **Right to Vote** on any proposal or contract.
- ➢ No City general fund monies may be put at risk.
- ➢ Rates must be guaranteed to be the same or lower than SDG&E's.
- ➢ An **Independent Public Audit** and **full public hearings** will be conducted to certify all requirements have been met.

Prop. U -- The Ratepayer Protection Act *protects City funds for essential City services (especially police and fire), guarantees San Marcos residents the* ***Right to Vote****, and creates innovative programs to help reduce energy use and lower costs.*

F. H. "CORKY" SMITH, Mayor
City of San Marcos

PIA HARRIS-EBERT, Councilwoman
City of San Marcos

JOHN FORST, Past Chair
San Marcos Chamber of Commerce

JO MACKENZIE, Chair
San Marcos Budget Review Committee

ROBERT D. BOWEN, President
San Marcos Mobilehome Residents Association

ARGUMENT AGAINST PROPOSITION U

No argument against the proposition was filed
in the office of the City Clerk.

PROPOSED CHARTER AMENDMENT

SAN MARCOS RATEPAYER PROTECTION ACT

Section I. CHARTER AMENDMENTS.

Section 202 of the Charter of the City of San Marcos is amended and restated as follows:

Section 202. Utility Franchises

202.1. The City shall have the power to adopt any ordinance providing for the acquisition, development, or operation by the City of any public utility, or any ordinance providing for the granting of a franchise to any public utility not owned by the City which proposes to use or is using City streets, highways or other rights-of-way.

202.2 Notwithstanding the terms of §202.1, after the effective date of this amendment, the City, a utility established by the City, or any commission, agency or unit of the City government (individually or collectively hereinafter "City") shall not, prior to November 2, 2014, itself or through a third party, provide Distribution Services within the boundaries of the City unless each of the following conditions shall have first been met:

202.2.1 The City shall charge the same or a lower cumulative rate (taking into account all cost factors) for Distribution Services for each consumer classification as that which is charged by the City's incumbent franchisee.

202.2.2 The City shall have the financial ability and provide the Distribution Services without incurring debt or encumbering the general fund of the City.

202.2.3 Prior to any election required by the terms hereof, a qualified, independent auditor shall certify that the Distribution Services proposed will satisfy subsections 202.2.1 and 202.2.2 above.

202.2.4 At an election to be scheduled by the City, the voters of San Marcos shall approve proposed Distribution Services.

202.2.5 Distribution Services shall mean ownership and/or operation of any pipes, wires, and electric and gas utility plant and related services for the delivery of electricity or natural gas to consumers but only within the boundaries of the City of San Marcos.

Section II. Conflicting Charter Amendments.

This Charter amendment is intended to provide for a comprehensive regulatory scheme with regard to the matters set forth in sections 202.2, 202.2.1, 202.2.2, 202.2.3, 202.2.4 and 202.2.5. In the event that this Charter amendment and another Charter amendment or Charter amendments relating to city contracts for the development, ownership and/or operation, either directly, indirectly, or jointly, by the City of natural gas and electric utility services shall appear on the same election ballot as this Charter amendment, the provisions of such other Charter amendments shall be deemed to be in conflict with this Charter amendment. In the event that more than one such Charter amendment passes and this Charter amendment receives a greater number of affirmative votes, the provisions of this Charter amendment shall prevail in their entirety, and the provisions of the other Charter amendment or Charter amendments shall be null and void in their entirety.

Section III. Construction.

This Charter amendment is not intended to conflict with preemptive state or federal law or regulation, including, without limitation, the power of eminent domain, and shall be so construed and applied.

This Charter amendment and all its provisions shall control and prevail over all other conflicting provisions of San Marcos ordinances or regulations now existing or adopted by the City or its electorate prior to or after the effective date hereof.

The provisions of this Charter amendment shall be liberally interpreted in order to give effect to its purposes.

Section IV. Severability.

If any provision, part or clause of this Charter amendment or the application thereof to any person, entity or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision, part or clause or the application thereof, which can be given effect. To this end the provisions of this Charter amendment are

severable to the greatest extent permitted by law. The people of the City of San Marcos expressly declare that even if one or more provision, part or clause of this Charter amendment or the application thereof to any person or circumstances is held invalid or unconstitutional in any such judicial challenge, or otherwise, the remaining provisions of this Charter amendment would have been enacted without change.

In the event a pre-election challenge is successfully made to any part or provision of this Charter amendment, such invalid or unconstitutional provision shall be severed and the remaining provisions of the Charter amendment shall be submitted to the voters of the City of San Marcos with only any invalid parts or provisions excised.

CITY OF SAN MARCOS

Proposition V

(This proposition will appear on the ballot in the following form.)

PROP V Shall an ordinance be adopted to require an affirmative vote of a majority of the electorate to amend Section 2.08.030(b) of the San Marcos Municipal Code to exceed the maximum annual upward adjustment of five percent (5%) for meeting stipends paid to members of the City Council?

This proposition requires approval by a majority (over 50%) of the voters.

Full text of this proposition follows the argument.

CITY ATTORNEY IMPARTIAL ANALYSIS

You are asked to vote on whether an existing five percent (5%) per year maximum annual increase in stipends paid to the Mayor and City Council members for attending meetings should be exceeded only by a majority vote of the qualified electorate.

Section 2.08.030(b) of the San Marcos Municipal Code currently provides that the Mayor and City Council members each receive a stipend in the amount of $50.00 per meeting when they attend meetings in their capacities as members of the governing bodies of various City agencies, authorities, districts and boards. These stipends are paid only when: (i) the agencies, authorities, districts and boards have an item of business on the agenda for the meeting in question; and (ii) they attend the meeting in question. The stipends are in addition to the salaries that the Mayor and City Council members receive, and in addition to any reimbursement for actual necessary expenses they may incur in their performance of official duties for the City. This measure also adds the meetings of the governing body of the Cal-CLERA Joint Powers Authority, a relatively new City-related entity, to the list of meetings for which the Mayor and Council members may receive stipends if they meet the requirements set forth in (i) and (ii), above.

A “yes” vote is a vote in favor of limiting current and future City Councils so they cannot amend Section 2.08.030(b) of the San Marcos Municipal Code to increase the maximum annual upward adjustment beyond five percent (5%) per year without a majority vote of the qualified electorate.

A “no” vote is a vote against limiting the action of current and future City Councils on setting meeting stipend amounts, and they will retain the ability to approve an ordinance to amend Section 2.08.030(b) to increase the maximum annual upward adjustment beyond five percent (5%) per year.

ARGUMENT IN FAVOR OF PROPOSITION V

Support the Stipend Limits VOTE YES on Proposition V.

A few years ago, a former City Council found a way around the State mandated pay limit, they voted to give themselves car allowances and per diems and stipends for meetings they never attended!

The current Council put a stop to these practices, but it can be undone quite easily if a different majority takes over.

That's why we need a YES vote on Proposition V.

Council members currently receive $50 per meeting (Stipend) when representing you on governing bodies of the various City agencies, authorities, districts and boards. That's fair if they attend the meetings and spend extra time to represent the City.

Unless inflation goes through the roof a five percent per year increase in the Council Stipend will be adequate.

Proposition V puts the spending power back in the hands of the taxpayers and reminds the politicians that tax dollars must be held in sacred trust. If they want an increase let them go to their boss and ask. . . you're the boss, let the people vote to increase City Council pay or stipend.

Please VOTE YES on Proposition V to prevent future "abuses"!

F. H. "CORKY" SMITH, Mayor
City of San Marcos

MIKE PRESTON, Vice Mayor
City of San Marcos

LEE B. THIBADEAU, Councilman
City of San Marcos

ARGUMENT AGAINST PROPOSITION V

No argument against the proposition was filed
in the office of the City Clerk.

PROPOSED ORDINANCE NO. 2004 - _____

AN ORDINANCE OF THE CITY OF SAN MARCOS AMENDING TITLE 2, CHAPTER 2.08, SECTION 2.08.030(b) BY PROVIDING THAT MAXIMUM ANNUAL UPWARD ADJUSTMENTS FOR MEETING STIPENDS ARE LIMITED TO FIVE PERCENT (5%) UNLESS APPROVED BY A MAJORITY VOTE OF THE PEOPLE

The City Council of the City of San Marcos, California, in accordance with the passage of Proposition V by the affirmative vote of a majority of the qualified voters voting in the City of San Marcos Regular Municipal Election held on November 2, 2004, as certified by the Registrar of Voters, County of San Diego, on November ___, 2004, and in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos specifically, as well as the provisions of California Civil Code Section 719 and California Government Code Section 37380, does ordain as follows:

SECTION 1. That Title 2, Chapter 2.08, Section 2.08.030(b) of the Municipal Code of the City of San Marcos is amended to provide that the existing five percent (5%) maximum annual upward adjustment permitted under the Municipal Code may be exceeded only by a majority vote of those qualified electors voting in a Citywide election. For purposes of clarity, the existing language of Section 2.08.030(b) is set forth below, with the additional sentence shown as underlined text.

2.08.030(b) Each member of the City Council, including the Mayor, shall receive a stipend in the amount of $50.00 per meeting when acting in the capacity as members of the Legislative Body of the Redevelopment Agency, the Industrial Development Authority, San Marcos Public Facilities Authority, the Mobilehome Park Financing Authority, the San Marcos Fire Protection District, the Discovery Valley Utility, Cal-CLERA Joint Powers Authority and/or the City Council when holding hearings relating to Community Development Block Grant (CDBG) funds. The meeting stipend established by this Section shall be exclusive of any salary payable to each member of the City Council, including the Mayor, or received as reimbursement for any actual necessary expenses incurred in the performance of the official duties for the City. Said meeting stipend shall only be received by the City Council, including the Mayor, when the legislative body in question has an item on the agenda for that particular meeting, and that member attends such meeting. The stipend established by this Section may be adjusted by ordinance of the City Council in an amount not to exceed 5% per year. The stipend established by this Section may not be adjusted upward in an amount exceeding 5% per year without a majority vote of those qualified electors voting in a Citywide election. (Ord 2004 - , Approved by a vote of the People on November 2 2004).

SECTION 2. This Ordinance shall be effective thirty (30) days following its approval by a majority of those qualified electors voting in a Citywide election. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof as a summary as required by state law.

CITY OF SAN MARCOS

Proposition W

(This proposition will appear on the ballot in the following form.)

PROP W Shall an ordinance be adopted to require an affirmative vote of a majority of the electorate to amend the prohibition against duplicate reimbursement to City Councilmembers for expenses already paid for in full or in part by the City from any other source?

This proposition requires approval by a majority (over 50%) of the voters.

Full text of this proposition follows the argument.

CITY ATTORNEY IMPARTIAL ANALYSIS

You are asked to vote on whether an existing prohibition against duplicate reimbursement to City Council members, for expenses already paid for by the City, should be amended only by a majority vote of the qualified electorate.

Section 2.08.050(j) of the San Marcos Municipal Code currently provides that in the event any other governmental agency, organization, board or commission on which the Council member serves as a City representative offers to reimburse the Council member for travel, mileage, meals, lodging or other legitimate expenses, and if such expenses are already paid for in full or in part by the City, the Council member may either: (i) decline the reimbursement; or (ii) accept it and deliver it to the City Manager to be deposited into the City's general fund.

This measure proposes a new Section 2.08.050(k), which would provide that this prohibition against duplicate reimbursements cannot be modified or amended without a majority vote to that effect at a Citywide election.

A "yes" vote is a vote in favor of prohibiting the amendment of Section 2.08.050(j) of the San Marcos Municipal Code, and the City Council would be prohibited from modifying said Section to allow duplicate reimbursements for expenses that have already been paid for in full or in part by the City, unless a majority voted in favor of such amendment at a Citywide election.

A "no" vote is a vote against limiting the action of current and future City Councils on the issue of duplicate reimbursements, and they will retain the ability to approve an ordinance to amend Section 2.08.050(j) to permit duplicate expense reimbursements.

ARGUMENT IN FAVOR OF PROPOSITION W

Stop Double Dipping
Vote YES on Proposition W

Your yes vote on Prop W will insure that San Marcos Council members now and in the future collect reimbursement for travel expenses only once!

Some San Marcos Council members were legally collecting twice for travel expenses, once from city taxpayers in the form of a monthly car allowance, and again from other taxpayer supported agencies in additional mileage reimbursements. This is called “Double Dipping”.

The current City Council put an end to this practice with the ordinance they adopted in 2003 that you are being asked to support.

If the voters of San Marcos pass proposition W, then the only way future San Marcos City Councils will be able to re-enact “Double Dipping” practices will be by voter approval.

Please VOTE YES on Proposition W to prevent future “Double Dipping”!

F. H. “CORKY” SMITH, Mayor
City of San Marcos

MIKE PRESTON, Vice Mayor
City of San Marcos

LEE B. THIBADEAU, Councilman
City of San Marcos

ARGUMENT AGAINST PROPOSITION W

No argument against the proposition was filed
in the office of the City Clerk.

PROPOSED ORDINANCE NO. 2004 - _____

AN ORDINANCE OF THE CITY OF SAN MARCOS AMENDING TITLE 2, CHAPTER 2.08, SECTION 2.08.050(j), BY PROVIDING THAT THE EXISTING PROHIBITION AGAINST CITY COUNCILMEMBERS RECEIVING DUPLICATE REIMBURSEMENT FOR EXPENSES ALREADY PAID FOR IN FULL OR IN PART BY THE CITY FROM ANY OTHER SOURCE CANNOT BE MODIFIED OR AMENDED WITHOUT A MAJORITY VOTE OF THE PEOPLE

The City Council of the City of San Marcos, California, in accordance with the passage of Proposition W by the affirmative vote of a majority of the qualified voters voting in the City of San Marcos Regular Municipal Election held on November 2, 2004, as certified by the Registrar of Voters, County of San Diego, on November __, 2004, and in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos specifically, as well as the provisions of California Civil Code Section 719 and California Government Code Section 37380, does ordain as follows:

SECTION 1. That Title 2, Chapter 2.08, Section 2.08.050 of the Municipal Code of the City of San Marcos is amended to add a new subsection (k) to provide that the existing prohibition against City Councilmembers receiving duplicate reimbursement for expenses already paid for in full or in part by the City can be modified or amended only by a majority vote of those qualified electors voting in a Citywide election. For purposes of clarity, the existing language of Section 2.08.050(j) is set forth below, with the additional subsection (k) shown as underlined.
specifically:

(j) In the event any other governmental agency, organization, board or commission on which the Councilmember serves as a representative of the City offers to reimburse the Councilmember for travel expenses (including mileage reimbursement), meals, lodging or other legitimate expenses already paid in full or in part by the City, the Councilmember shall take one of the following actions:

(i) Decline such reimbursement; or
(ii) Accept the reimbursement on behalf of the taxpayers of the City and deliver such reimbursement to the City Manager for deposit into the City's general fund.

<u>(k) The prohibition against duplicate reimbursement to City Councilmembers for those expenses already paid in full or in part by the City as set forth in subsection (j), above cannot be modified or amended without a majority vote of those qualified electors voting in a Citywide election. (Ord 2004 -____</u>, Approved by a vote of the People on November 2, 2004).

SECTION 2. This Ordinance shall be effective thirty (30) days following its approval by a majority of those qualified electors voting in a Citywide election. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof as a summary as required by state law.

CITY OF SAN MARCOS

Proposition X

(This proposition will appear on the ballot in the following form.)

PROP X Shall the San Marcos City Charter be amended by adding 16 new provisions encompassing 1,700 words restricting the City's current right to enter into contracts for natural gas and electric utility services unless certain criteria are first met, including, but not limited to, a requirement that the City charge the same cumulative rate as is charged by the City's incumbent franchisee, and a requirement for contract approval by voters?

This proposition requires approval by a majority (over 50%) of the voters.

CITY ATTORNEY IMPARTIAL ANALYSIS

You are asked to vote on whether Section 202 of the San Marcos City Charter should be amended to add sixteen (16) new provisions relating to utility franchises. The City Charter currently contains a Preamble and six (6) Articles consisting of eleven (11) substantive Sections.

This measure proposes a Charter amendment to require that any contract to construct, acquire, develop, expand, operate, manage and provide, directly, indirectly or jointly, natural gas and electric utility services could occur only as the result of a majority vote at a City-wide regular election.

The proposed Charter amendment would also add the following requirements for any such contract award: (a) an operations and management entity must have five years of experience providing such services to a similarly-sized customer base; (b) utility services must be charged at the same or a lower rate as that charged by SDG&E, inclusive of all taxes, fees, surcharges, etc.; (c) the entity must have the financial ability to perform the contract without encumbering any City fund or requiring any City bonded indebtedness; (d) financial support must be provided for public purpose programs to the same level as that provided by SDG&E; (e) the entity must meet any renewable energy requirements imposed by law on investor-owned utilities; (f) the entity must meet safety and construction requirements to the same levels as are imposed on investor-owned utilities; (g) the entity must meet the reliability and customer service standards imposed by the California Public Utilities Commission (CPUC); (h) the entity must indemnify and hold the City harmless for damages that may arise from operations under the contract; (i) a CPA who has not done business with the City or with the proposed entity for at least three (3) years must certify that the entity satisfies these and any other City qualifications not in conflict with these requirements; and (j) at least two public hearings must be held after receipt of the written CPA certification.

Any proposed contract meeting the foregoing requirements must be submitted to the voters in the form of a proposed ordinance at a regular municipal election. The proposed Charter amendment states that it is retroactive in effect to May 14, 2003.

A "yes" vote is in favor of the proposed Charter amendment and in favor of imposing all of the above requirements to any contract to construct, acquire, develop, expand, operate, manage and/or provide natural gas and electric utility services. A "no" vote is a vote against the proposed Charter amendment and against imposing the above requirements to such contracts.

Proposition X is being submitted to the voters with Proposition U, the Ratepayer Protection Act, another proposed Charter amendment relating to natural gas and electric utility services. If approved by a greater number of affirmative votes, this amendment would render the Charter amendment proposed under Proposition U null and void. If any provision of this proposed Charter amendment is successfully challenged prior to the election, the remaining provisions are to be severed and presented to the voters.

ARGUMENT IN FAVOR OF PROPOSITION X

No argument in favor of the proposition was filed
in the office of the City Clerk.

ARGUMENT AGAINST PROPOSITION X

No argument against the proposition was filed
in the office of the City Clerk.

PROPOSED CHARTER AMENDMENT

RIGHT TO VOTE INITIATIVE

Section I. FINDINGS AND PURPOSE.

The voters of the City of San Marcos declare that it is in the best interest of the taxpayers of this community to require a vote of the people before the City enters into any contract for the construction, development, acquisition, expansion, operation, management, and provision of electricity and natural gas which may have a direct impact on the energy utility bills, energy service, or energy safety and reliability of City residents.

Further, the voters declare that energy service is vital and must be regulated through specific guidelines approved by City voters. To protect the energy consumers and residents of San Marcos, the "Right to Vote Initiative" details those public interest requirements and provides for voter approval of any proposed contract for the construction, development, acquisition, expansion, operation, management, and provision of electricity and natural gas to residents within the City boundaries.

These criteria are designed to protect city residents and the City from financial risk and ensure that entities that contract with the City demonstrate a minimum level of experience, and a history of safe and reliable energy service, for a customer base of similar size to that which could be served in San Marcos. Further, the initiative requires an independent audit of any proposed energy contract, public hearings, and voter approval of the terms and conditions of the proposed contract.

Section II. CHARTER AMENDMENTS.

Section 202 of the Charter of the City of San Marcos is amended as follows (additions are indicated by underlining; deletions are indicated by strikeout).

Section 202. Utility Franchises.

a. The City shall have the power to adopt any ordinance providing for the acquisition, development, or operation by the City of any public utility, or any ordinance providing for the granting of a franchise to any public utility not owned by the City which proposes to use or is using City streets, highways or other rights-of-way.

b. Pursuant to any ordinance adopted by the City providing for the acquisition, development, or operation by the City of any public utility, the City may enter into a contract with any entity to construct, acquire, develop, expand, operate, manage and provide, either directly, indirectly, or jointly, natural gas and electric utility services only if the following minimum terms and qualifications are met:

1. The entity that would operate and manage the utility shall itself have a minimum of five-years operational experience providing natural gas and electric utility services to a customer base of similar size to that which could be served in the City of San Marcos.

2. The entity, the City or its agent shall charge the same or a lower cumulative rate (including all taxes, fees, surcharges, over rides or add-ons of whatever nature) for natural gas and electricity services for each consumer classification, as that which is charged by the City's incumbent franchisee.

3. The entity shall have the financial ability to fully perform the contract for its full term without encumbrances to the City general fund, or any other city fund, or additional bonded indebtedness incurred by the city.

4. The entity shall post bonds for construction of facilities and for operation of said utility in an amount determined by the Qualified Independent Auditor.

5. The entity shall provide the same level of financial support for public purpose programs as is provided by the incumbent franchisee.

6. The entity shall be required to meet the same criteria for renewable energy imposed on investor-owned utilities by California and federal law, currently and as may be changed from time to time.

7. The entity shall have met the safety and construction standards required by the applicable state and federal law and regulations, and shall be required to meet the same level of safety and construction standards imposed on investor-owned utilities by the California Public Utilities Commission, and California and federal law, currently and as may be changed from time to time.

8. The entity shall have met, and shall be required to meet in the performance of the contract the same level of reliability standards imposed by the California Public Utilities Commission, currently and as may be changed from time to time.

9. The entity shall have met, and shall be required to meet in the performance of the contract, the same level of customer service standards imposed by the California Public Utilities Commission, currently and as may be changed from time to time.

10. The entity shall be required to indemnify and hold harmless the municipality and its officers from all liability for damages proximately resulting from any operations under the contract.

11. A Qualified Independent Auditor shall certify in writing to the City, prior to the holding of public hearings, that the entity satisfies these minimum qualifications, and any other qualifications set by the City.

12. After receipt of the audit, two or more public hearings shall be held on the terms and conditions of the proposed contract.

c. On or after, May 14, 2003, the terms and qualifications of any proposed contract for the construction, development, acquisition, expansion, operation, management, and provision, directly, indirectly, or jointly, by the City of San Marcos of natural gas and electric utility service, shall satisfy the terms and qualifications set forth in section 202(b).

d. The proposed contract shall be submitted to the voters in the form of a proposed ordinance at a regular municipal election. If approved by the voters, the City may enter into the contract.

e. The City may, in its discretion add other provisions to the proposed contract as the City deems necessary or prudent. Notwithstanding the foregoing sentence, however, any such provisions added by the City shall not be in conflict with, modify, or nullify the section 202(b) terms and qualifications approved by the voters.

Section III DEFINITIONS.

In all sections of this Charter amendment:

"City" means the City of San Marcos, including without limitation, a utility established by the City of San Marcos, any commission, any agency or unit of City government.

"And" includes the conjunctive and the disjunctive.

"Qualified Independent Auditor" means a certified public accountant employed by a national accounting firm. Neither the accountant nor the firm shall have been employed by the City or the proposed entity-contractor, directly or indirectly, within the three years preceding retention by the City for the purpose of the audit. The accountant must be qualified to audit the matters contained in section 202(b) of the Charter. The Qualified Independent Auditor and his/her firm shall be disqualified from direct or indirect employment by the City for a period of three years after performing the audit.

Section IV. CONSTRUCTION.

It is the intent of this Charter amendment to reserve to the qualified electors of the City of San Marcos, in addition to the full extent of the initiative power under the Constitution and laws of the State of California, the power through the initiative, as provided in this Charter amendment, to approve contracts by the City, or any utility established by the City, with regard to the construction, acquisition, development, expansion, operation, management, and provision, either directly, indirectly, or jointly, of natural gas and electric utility services by the City, insofar as these matters constitute municipal affairs.

This Charter amendment is not intended to conflict with preemptive state or federal law or regulation, including, without limitation, the power of eminent domain, and shall be so construed and applied.

This Charter amendment and all its provisions shall control and prevail over all other conflicting provisions of San Marcos ordinances or regulations now existing or adopted by the City or its electorate prior to or after the effective date hereof.

The provisions of this Charter amendment shall be liberally interpreted in order to give effect to its purposes as set forth in Section I.

Section V. CONFLICTING CHARTER AMENDMENTS.

This Charter amendment is intended to provide for a comprehensive regulatory scheme with regard to the matters set forth in sections 202(b), 202(c), 202(d), and 202(e). In the event that this Charter amendment and another Charter amendment or Charter amendments relating to city contracts for the construction, acquisition, development, expansion, operation, management, and provision, either directly, indirectly, or jointly, by the City of natural gas and electric utility services shall appear on the same election ballot as this Charter amendment, the provisions of such other Charter amendments shall be deemed to be in conflict with this Charter amendment, In the event that more than one such Charter amendment passes and this Charter amendment receives a greater number of affirmative votes, the provisions of this Charter amendment shall prevail in their entirety, and the provisions of the other Charter amendment or Charter amendments shall be null and void in their entirety.

Section VI. SEVERABILITY.

If any provision, part or clause of this Charter amendment or the application thereof to any person, entity or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision, part or clause or the application thereof, which can be given effect. To this end the provisions of this Charter amendment are severable to the greatest extent permitted by law. The people of the City of San Marcos expressly declare that even if one or more provision, part or clause of this Charter amendment or the application thereof to any person or circumstances is held invalid or unconstitutional in any such judicial challenge, or otherwise, the remaining provisions of this Charter amendment would have been enacted without change.

In the event a pre-election challenge is successfully made to any part or provision of this Charter amendment, the People of the City of San Marcos signing the petition to qualify this Charter amendment for the ballot expressly state their desire and intent that such invalid or unconstitutional provision shall be severed and, in order to preserve the initiative right and not mislead the voters, the remaining provisions of the Charter amendment providing for either the right to vote or any or all of the qualifications contained in section 202(b) or both, shall be submitted to the voters of the City of San Marcos with only any invalid parts or provisions excised.